
BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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DOCKETS

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320-12-BZ

23 West 116th Street, north side of W. 116th Street, 450' east of intersection of Lenox Avenue and W. 116th Street., Block 1600, Lot(s) 20, Borough of **Manhattan, Community Board: 10.** special permit (73-36) to allow physical culture establishment. C4-5X district.

321-12-BZ

22 Girard Street, west side of Girard Street, 149.63' south of Shore Boulevard., Block 8745, Lot(s) 70, Borough of **Brooklyn, Community Board: 15.** Special permit (73-36) to allow an enlargement of a single family residence. R3-1 district.

322-12-BZ

701 Avenue P, northeast corner of East 7th Street and Avenue P., Block 6614, Lot(s) 60, Borough of **Brooklyn, Community Board: 12.** Variance (72-21) to allow the enlargement of a single family residence. R5 district.

323-12-BZ

25 Broadway, southwest corner of the intersection formed by Broadway and Morris Street., Block 13, Lot(s) 27, Borough of **Manhattan, Community Board: 1.** Special permit (73-36) to allow the operation of a physical culture establishment. C5-5;LM district.

324-12-BZ

45 76th Street, north side of 76th Street between Narrows Avenue and Colonial Road, Block 5937, Lot(s) 69, Borough of **Brooklyn, Community Board: 10.** Special permit (73-622) to allow an enlargement of the existing single-family home R3-1 district.

325-12-BZ

1273-1285 York Avenue, West side of York Avenue bounded by East 68th and 69th Streets., Block 1463, Lot(s) 21, 31, Borough of **Manhattan, Community Board: 8.** Variance (72-21) of height and setback, lot coverage, rear yard, floor area and parking to facilitate development of a Use Group 4 maternity hospital and ambulatory diagnostic or treatment health care facilities. R10/R8/R9 district.

326-12-A

52 Canal Street, Canal Street and Orchard Street, Block 294, Lot(s) 22, Borough of **Manhattan, Community Board: 3.** Appeal of Permit Revocations dated November 14, 2012 by the Department of Buildings. C6-2 district.

327-12-A

1560 2nd Avenue, 2nd Avenue and 81st Street, Block 1543, Lot(s) 49, Borough of **Manhattan, Community Board: 8.** Appeal of Permit Revocations dated November 14, 2012 by the Department of Buildings.

328-12-A

2061 2nd Avenue, 2nd Avenue and 106th Street, Block 1655, Lot(s) 28, Borough of **Manhattan, Community Board: 11.** Appeal of Permit Revocations dated November 14, 2012 by Department of Buildings.

329-12-A

2240 1st Avenue, 1st Avenue and 115th Street, Block 1709, Lot(s) 1, Borough of **Manhattan, Community Board: 11.** Appeal of Permit Revocations dated November 14, 2012 by the Department of Buildings.

330-12-A

160 East 25th Street, 3rd Avenue and 25th Street, Block 880, Lot(s) 50, Borough of **Manhattan, Community Board: 6.** Appeal of Permit Revocations dated November 14, 2012 by the Department of Buildings.

331-12-A

289 Hudson Street, Hudson Street and Spring Street., Block 594, Lot(s) 79, Borough of **Manhattan, Community Board: 9.** Appeal of Permit Revocations dated November 14, 2012, by the Department of Buildings.

332-12-A

127 Ludlow Street, Ludlow Street and Rivington Street, Block 410, Lot(s) 17, Borough of **Manhattan, Community Board: 3.** Appeal of Permit Revocations dated November 14, 2012 by Department of Buildings.

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333-12-A

1786 3rd Avenue, 3rd Avenue and 99th Street, Block 1627, Lot(s) 33, Borough of **Manhattan, Community Board: 11**. Appeal of Permit Revocations dated November 14, 2012 by Department of Buildings.

334-12-A

17 Avenue B, Avenue B and 2nd Street, Block 385, Lot(s) 1, Borough of **Manhattan, Community Board: 3**. Appeal of Permit Revocations dated November 14, 2012 by Department of Buildings.

335-12-A

173 Bowery, Bowery and Delancey Streets., Block 424, Lot(s) 12, Borough of **Manhattan, Community Board: 3**. Appeal of Permit Revocations dated November 14, 2012 by Department of Buildings.

336-12-A

240 Sullivan Street, Sullivan Street and West 3rd Street, Block 540, Lot(s) 23, Borough of **Manhattan, Community Board: 2**. Appeal of Permit Revocations dated November 14, 2012 by Department of Buildings.

337-12-A

361 1st Avenue, 1st Avenue and 21st Street, Block 927, Lot(s) 25, Borough of **Manhattan, Community Board: 3**. Appeal of Permit Revocations dated November 14, 2012 by the Department of Buildings.

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

CALENDAR

JANUARY 15, 2013, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, January 15, 2013, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

551-37-BZ

APPLICANT – Eric Palatnik, P.C., for Manocher M. Mehrfar, owner.

SUBJECT – Application October 12, 2012 – Extension of Term (§11-411) of a previously granted Variance for the continued operation of an automobile repair shop (Red's Auto Repair) which expired on July 15, 2012; Waiver of the Ruled. R1-2 zoning district.

PREMISES AFFECTED – 233-02 Northern Boulevard, between 234th and 233rd Street, Block 8166, Lot 20, Borough of Queens.

COMMUNITY BOARD #11Q

18-02-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 8610 Flatlands Realty, LLC, owner.

SUBJECT – Application August 17, 2012 – Extension of Term (§11-411) of a previously granted Variance for the continued operation of an automotive laundry (UG 16B) which expired on August 13, 2012. C2-3/R5D zoning district.

PREMISES AFFECTED – 8610 Flatlands Avenue, southwest corner of intersection of Flatlands Avenue and 87th Street, Block 8023, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEALS CALENDAR

208-12-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 647-649 Washington Avenue, LLC, owner.

SUBJECT – Application July 2, 2012 – Proposed construction of eighteen (18) single family homes that do not front on a legally mapped street, contrary to General City Law Section 36. R3A Zoning District.

PREMISES AFFECTED – 17 McGee Lane, north side of McGee Lane, east of Harbor Road and West of Union Avenue, Block 01226, Lot 123, Borough of Staten Island.

COMMUNITY BOARD #1SI

216-12-A thru 232-12-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 647-649 Washington Avenue, LLC, owner.

SUBJECT – Application July 2, 2012 – Proposed construction of eighteen (18) single family homes that do not front on a legally mapped street, contrary to General City Law Section 36. R3A Zoning District.

PREMISES AFFECTED – 19, 21, 23, 25, 27, 29, 31, 33, 35, 37, 39, 41, 43, 45, 47 and 49 McGee Lane, north side of McGee Lane, east of Harbor Road and West of Union Avenue, Block 01226, Lots 122, 121, 120, 119, 118, 117, 116, 115, 114, 113, 112, 111, 110, 109, 108, 107 and 106, Borough of Staten Island.

COMMUNITY BOARD #1SI

JANUARY 15, 2013, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, January 15, 2013, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

242-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation Toldos Yehuda, owners.

SUBJECT – Application August 2, 2012 – Variance (§72-21) to permit the construction of a Use Group 4A House of Worship, contrary to height, setback, sky exposure plane, rear yard, and parking requirements. M1-1 zoning district.

PREMISES AFFECTED – 1621-1629 61st Street, northeast side of 61st Street, 170' southeast from the intersection of 16th Avenue and 61st Street, Borough of Brooklyn.

COMMUNITY BOARD #12BK

257-12-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Birta Hanono and Elie Hanono, owners.

SUBJECT – Application August 29, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (ZR §23-141); side yard (§23-461) and less than the required rear yard (ZR §23-47). R4 (OP) zoning district.

PREMISES AFFECTED – 2359 East 5th Street, east side of East 5th Street between Avenue W and Angela Drive, Block 7181, Lot 44, Borough of Brooklyn.

COMMUNITY BOARD #15BK

CALENDAR

285-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Pigranel Management Corp., owner; Narita Bodywork, Inc., lessee.

SUBJECT – Application October 3, 2012 – Application filed pursuant to Z.R.§73-36, seeking a special permit to allow the operation of a physical culture establishment (*Narita Bodyworks*) on the 4th floor of the existing building at the premises. M1-6 zoning district.

PREMISES AFFECTED – 54 West 39th Street, south side of West 39th Street, between Fifth Avenue and Avenue of the Americas, Block 840, Lot 78, Borough of Manhattan.

COMMUNITY BOARD #5M

291-12-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP for 301-303 West 125, LLC, owner; Blink 125th Street Inc., lessee.

SUBJECT – Application October 9, 2012 – Application for special permit to allow physical culture establishment (*Blink*) within proposed commercial building.

PREMISES AFFECTED – 301 West 125th Street, northwest corner of intersection of West 125th Street and Frederick Douglas Boulevard, Block 1952, Lot 29, Borough of Manhattan.

COMMUNITY BOARD #10M

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, DECEMBER 11, 2012
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

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

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this application is a request for a re-opening and an extension of term for a previously granted variance to allow transient parking in an accessory garage, which expired on May 2, 2012; and

WHEREAS, a public hearing was held on this application on November 20, 2012, after due notice by publication in *The City Record*, and then to decision on December 11, 2012; and

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

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

WHEREAS, the subject site is located on the south side of West 30th Street, between Eighth Avenue and Ninth Avenue, within an R8B zoning district; and

WHEREAS, the site is occupied by a six-story residential building; and

WHEREAS, the cellar and sub-cellar are occupied by a 45-space accessory garage, with 19 spaces in the cellar and 26 spaces in the sub-cellar; and

WHEREAS, on May 2, 1967, the Board granted an application pursuant to Section 60(1)(b) of the Multiple Dwelling Law (“MDL”), to permit a maximum of 22 surplus parking spaces to be used for transient parking, for a term of

15 years; and

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

WHEREAS, most recently, on January 31, 2006, the Board granted a ten-year extension of term, which expired on May 12, 2012; and

WHEREAS, the applicant submitted a photograph of the sign posted onsite, which states building residents’ right to recapture the surplus parking spaces; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution pursuant to Section 60(1)(b) of the MDL, said resolution having been adopted on May 2, 1967, as subsequently extended, so that as amended this portion of the resolution shall read: “granted for a term of ten (10) years from May 2, 2012, to expire on May 2, 2022; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked ‘Received September 4, 2012’ – (4) sheets; and *on further condition*;

THAT this term will expire on May 2, 2022;

THAT the number of daily transient parking spaces will be no greater than 22;

THAT all residential leases will indicate that the spaces devoted to transient parking can be recaptured by residential tenants on 30 days notice to the owner;

THAT a sign providing the same information about tenant recapture rights be placed in a conspicuous place within the garage;

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 the layout of the parking garage shall be as approved by the Department of Buildings;

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. 104088345)

Adopted by the Board of Standards and Appeals, December 11, 2012.

299-82-BZ

APPLICANT – Bryan Cave LLP/Robert S. Davis, Esq., for 10 Stanton Owners LLC, Chrystie Land Assoc. LLC c/o Sukenik, Segal & Graff, P.C.

SUBJECT – Application May 4, 2012 – Amendment to a previously granted variance (§72-21) which allowed a residential building. Proposed amendment would permit a

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new mixed use hotel and residential building on the subject zoning lot. C6-1 zoning district.

PREMISES AFFECTED – 207-217 Chrystie Street, northwest corner of Chrystie Street and Stan Street, Block 427, Lot 2, 200, 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, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to an existing variance, to allow a modification to the site plan to reflect a second building; 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 December 11, 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 3, Manhattan, recommends approval of this application; and

WHEREAS, a representative of the Tenant Association of 10 Stanton Street provided testimony in support of the application, noting specifically the proposed improvements to open space and the inclusion of new communal open space on the roof of the existing building at the site; and

WHEREAS, certain neighbors, including Sperone Westwater (the “Gallery”), the Lower East Side Preservation Initiative, the New Museum, the Bowery-Stanton Block Association, and the Bowery Alliance of Neighbors provided testimony in opposition to the application (the “Opposition”); and

WHEREAS, the Opposition’s primary assertions are (1) there will be significant environmental impacts if the Board approves the application such that the project is subject to environmental review per the State Environmental Quality Review Act (SEQRA) and the City Environmental Quality Review (CEQR) regulations, and (2) the scale of the proposed building is incompatible with the surrounding area; and

WHEREAS, the Opposition raises concerns about the potential adverse impacts associated with: (1) the elimination of open space, which it contends was important to the Board’s consideration of the original variance; (2) impaired views from the Sara Delano Roosevelt Park and shadows across it and the Liz Christy/Bowery-Houston Community Garden; (3) the incompatibility of the height with surrounding lowrise buildings; and (4) the blocked and impaired views of adjacent buildings, including the Gallery; and

WHEREAS, the subject zoning lot consists of Tax Lots 2 and 200, with frontage on Stanton Street, Chrystie Street, and the Bowery, and has a lot area of approximately 57,135

sq. ft.; and

WHEREAS, the site is located within a C6-1 zoning district; and

WHEREAS, the Lot 2 portion of the site is occupied by a nine-story multiple dwelling building, with a height of 84’-6”, floor area of 146,484 sq. ft., and an FAR of 2.56 (the “Existing Building”); and

WHEREAS, the applicant proposes to build a 25-story mixed-use hotel/residential building containing hotel use on floors 1-18 and residential apartments on floors 19-25 with 195,560 sq. ft. of total floor area, and a height of 274 feet (289 feet including bulkhead) on the Tax Lot 200 portion of the site (the “New Building”); and

WHEREAS, together, the Existing Building and the New Building will have 179,894 sq. ft. (3.15 FAR) of residential floor area and 162,150 sq. ft. (2.84 FAR) of hotel floor area for a total of 342,044 sq. ft. (5.99 FAR) across the site; and

WHEREAS, the applicant states that a maximum residential FAR of 3.42 and a maximum commercial FAR of 6.0 is permitted on the site; and

WHEREAS, the applicant states that the New Building complies with all zoning requirements and that no variance of any zoning provision is required; and

WHEREAS, accordingly, the applicant states that the purpose for the amendment is to substitute the new site plan, reflecting the New Building, for the site plan approved by the prior approval; and

WHEREAS, on June 11, 1982, under the subject calendar number, the Board granted a variance of the applicable height and setback regulations of a portion of the then-proposed Existing Building to allow for a “minor intrusion into the sky exposure plane” of portions of the upper stories (the “1982 Approval”); and

WHEREAS, as additional background, the applicant provides that in January 1970, acting through the Department of Housing Preservation and Development (HPD), the City of New York established the Cooper Square Urban Renewal Plan (URP) for a five-block area between the Bowery and Second Avenue/Chrystie Street from East 5th Street to Stanton Street (the Cooper Square Urban Renewal Area); and

WHEREAS, on November 16, 1982, the City Planning Commission approved two Uniform Land Use Review Procedure (ULURP) applications related to the zoning lot including the land disposition of the zoning lot to a developer; and

WHEREAS, the private developer and HDC entered into a housing assistance payment contract with HUD and agreed to maintain the Existing Building as Section 8 housing for a term of 20 years; and

WHEREAS, at the time of the 1982 Approval, the zoning lot comprised Tax Lots 1, 47-51 and parts of Tax Lots 4 and 27; it was subsequently merged into Tax Lot 1 prior to development of the Existing Building; in 2009, Tax Lot 1 was subdivided into Tax lots 2 and 200; and

WHEREAS, the Existing Building was constructed on the Tax Lot 2 portion of the zoning lot and the remainder of

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the zoning lot was occupied by an accessory residential parking lot for 20 cars and landscaped open space; and

WHEREAS, the applicant states that on February 13, 2010, the Cooper Square URP expired and the obligation to maintain the Existing Building as Section 8 housing will expire on June 25, 2015; and

WHEREAS, the applicant states that by agreement with the Tenant Association of 10 Stanton Street, the applicant will continue to apply for federal housing subsidies for the Existing Building through 2035; and

WHEREAS, the applicant notes that a subway tunnel for the B and D lines runs beneath the portion of the site closest to Chrystie Street, so to avoid construction above or near the subway tunnel, the street wall of the New Building will be located approximately 66 feet from Chrystie Street; and

WHEREAS, the applicant asserts that the height of 274 feet (289 feet to the top of the mechanical bulkhead) fits well within the Chrystie Street and Stanton Street sky exposure planes and it therefore complies with C6-1 zoning with respect to height and setback (unlike the Existing Building); and

WHEREAS, the applicant proposes 34,480 sq. ft. of open space, which is slightly more than the open space required by the underlying zoning; and

WHEREAS, further, the applicant notes that it does not request any increase or change to the variance of the height and setback regulations granted for the Existing Building; and

WHEREAS, in support of its position that none of the ZR § 72-21 findings of the original variance are implicated, the applicant states that the subway tunnel restricted the placement of the Existing Building and that subway tunnel still exists and affects the development of the site, so the (a) finding is not implicated; and

WHEREAS, as to the (b) finding, the applicant cites to the Board's prior decision in BSA Cal. No. 885-78-BZ (120 West 25th Street) in which it approved a proposal for a site subject to a variance to transfer unused development rights to an adjacent site, based on facts including that 30 years had passed since the initial approval and that at the time of the earlier grant there was not any demand for and therefore no value to the excess development rights; and

WHEREAS, the applicant notes that in 1982, the surrounding area was economically depressed with no new development or economic investment in many years prior to the adoption of the Cooper Square URP in 1970; in fact, the URP was necessitated by the fact that the real estate in the area had no value sufficient to induce private investment and development; and

WHEREAS, the applicant asserts that as in 120 West 25th Street, "there was no demand for and therefore no value to the development rights appurtenant to any of the properties in the area;" and

WHEREAS, the applicant asserts that the grant of the height and setback waivers for the Existing Building put the site's owner on an equal footing with the owners of other

properties in the surrounding area which do not have a subway tunnel running beneath them, creating practical difficulty and unnecessary hardship in constructing a concrete plank and bearing wall building; and

WHEREAS, the applicant asserts that the provision of height/setback waivers did not require that excess development rights, which had no value at the time, be stripped away while all the other properties in the area who similarly had valueless development rights in 1982 were able to retain their full development rights; and

WHEREAS, accordingly, the applicant asserts that because (1) 30 years have elapsed since the original variance grant and (2) the surrounding area was so economically depressed in 1982 that the unused development rights had no value and were unlikely to have been contemplated by the Board in granting the variance, development of the New Building using the unused development rights will not implicate or affect the basis of the Board's conclusion on the (b) finding; and

WHEREAS, the applicant asserts that, although the Board did not specifically address the compatibility of the proposed Existing Building with the surrounding area, it concluded that the height and setback would not alter the essential character of the neighborhood or impair the use or development of adjacent property by virtue of making all of the findings; and

WHEREAS, in support of the assertion that the area has changed a lot since the 1982 Approval, the applicant lists a number of developments in the area that have been constructed since 1982, including (1) a 14-story (130 feet) mixed-use building constructed in 2003 on a former Cooper Square URP site, which contains food store and 360 apartments, adjacent to the north of the site; (2) one block to the north, on another former Cooper Square Site, a nine-story (approximately 90 feet) mixed-use building with commercial use and 206 apartments constructed in 2005 and a seven-story mixed-use building with 90 apartments constructed in 2007; (3) a 12-story (126 feet) building with 212 dormitory units for New York University at 1 East 2nd Street; (4) two 12-story (100 feet and 120 feet) and one ten-story (128 feet) mixed-use commercial residential buildings on East Houston Street within three blocks of the site; and (5) two blocks south of the site, a 16-story (160 feet) mixed-use building built in 2005; and

WHEREAS, the applicant provided the following information on hotels and buildings with heights in the 200-ft. range in the area: (1) the Bowery Hotel at 16 stories (190 feet) built in 2003; (2) the Standard Hotel with 21 stories (224 feet) built in 2006; (3) the Thompson LES Hotel at 20 stories (208 feet); (4) the Hotel on Rivington with 20 stories (194 feet); (5) 353 Bowery (24 stories (210 feet)); (6) 66 First Avenue (towers of 21 stories (197 feet) and 21 stories (195 feet)); (7) 40 First Avenue (21 stories (193 feet)); (8) 207 East Houston (23 stories (276 feet)); (9) 101 Ludlow (17 stories (230 feet)); and (9) 62 Essex Street (23 stories (229 feet)); and

WHEREAS, the applicant asserts that the

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neighborhood is now mixed-use with many new buildings of ten and 12 stories and some of 20 stories or more, in contrast to the area in 1982 when the neighborhood was characterized by four- to six-story older buildings; and

WHEREAS, as to the (d) finding, the applicant states that the practical difficulties and unnecessary hardship which led to the request for the variance still exist as do the HUD and Section 8 financing and building height requirements associated with the subsidized Existing Building, respectively; and

WHEREAS, the applicant asserts that none of the physical conditions or City policies were created by the owner or any predecessor in interest; and

WHEREAS, as to the (e) finding, the applicant notes that the 1982 Approval characterized the zoning waivers as allowing a “minor intrusion in the sky exposure plane” and the New Building does not require any new zoning relief; and

WHEREAS, the applicant cites to BSA Cal. No. 1149-62-BZ (Saint Francis Xavier/Clothing Workers Center) to support its position that an amendment to a prior variance like the proposed is appropriate when “the waivers and conditions of the underlying grant are not implicated” and “the configuration of the other buildings on the zoning lot will remain the same;” and

WHEREAS, the applicant enumerates the similarities with the Saint Francis Xavier case as follows (1) several decades have passed since the original variance grant; (2) the surrounding area was so economically depressed in 1982 that the unused development rights had no value and were unlikely to have been contemplated by the Board in granting the original variance; (3) no new variances and no changes to the original variance are required; and (4) except for the addition of the rooftop open space, the configuration of the Existing Building will remain the same; and

WHEREAS, the applicant asserts that it is not disturbing the prior approval by constructing the New Building in the open space because there is not any record that the Board intended to require the applicant to maintain the open space as a condition of the variance; in contrast, the applicant asserts that there was discussion about the parking spaces and the Board required that the applicant provide all of the required spaces, which it has and which will be maintained; and

WHEREAS, as to the open space, the applicant notes that the site currently has a total of 40,388 sq. ft. of open space, of which 7,677 sq. ft. is paved and used for the residential parking lot and driveway and 32,711 sq. ft. is unpaved and includes sidewalks, walking paths, play areas and lawn; and

WHEREAS, the applicant proposes 28,141 sq. ft. of open space at grade, of which 10,057 sq. ft. will be paved and used for the residential parking lot and driveway as well as the proposed hotel drop-off, and 18,084 sq. ft. would be landscaped; the remaining 6,339 sq. ft. of open space will be provided on several rooftops of the New Building; and

WHEREAS, the applicant states that the open spaces

at the front of the Existing Building along Stanton Street and the corners of Bowery and Chrystie Street will not be reduced; and

WHEREAS, additionally, the applicant proposes to redevelop the roof of the Existing Building as residential open area and part of the program to upgrade and improve the Existing Building; and

WHEREAS, the applicant notes that the proposed rooftop open space cannot be counted towards the open space requirement of ZR § 23-142 because it is above a portion of the building that contains dwelling units, but it will nonetheless provide approximately 9,150 sq. ft. of open area for the residents of the Existing Building; and

WHEREAS, the applicant asserts that including the rooftop area, there will be 5,466 fewer sq. ft. of open space than currently, however the new open space will be significantly improved over the existing conditions; and

WHEREAS, the applicant also notes that the site is across the street from the nearly eight-acre Sara Delano Roosevelt Park which provides access to more open space; and

WHEREAS, based on review of the record, the Board concludes that the Existing Building neither requires new waivers to zoning, nor affects the original waivers (across the site), nor affects the required findings made at the time of the original grant; and

WHEREAS, the Opposition asserts that whenever an agency takes a discretionary action, it must consider the environmental impacts of that action and that the only exceptions to such review are those where the action is minimal in its impacts; and

WHEREAS, the Opposition asserts that the modification of the 1982 Approval to allow construction on the zoning lot governed by the Board is a discretionary act of the Board and there is no basis for determining that this is a Type II action subject to exemption, but rather, given its size and scope, it should be classified as a Type I action subject to environmental review; and

WHEREAS, the Opposition also states that the modification does not substantially comply with the Board’s previous approval and the findings under which the approval was made are negatively affected by such amendments; and

WHEREAS, the Opposition cites to several New York State cases which discuss the appropriateness of a Type II finding including Zutt v. State of New York, 949 N.Y.S.2d 402 (2d Dept. 2012); Town of Goshen v. Serdarevic, 793 N.Y.S. 485 (2005); and Williamsburg Around the Bridge Block Association v. Giuliani, 644 N.Y.S.2d 252 (1996); and

WHEREAS, the Opposition states that it is irrelevant that the project is as-of-right after the Board’s approval since the Board’s approval is required before commencing the so-called as-of-right construction; and

WHEREAS, in response to the Opposition’s concerns, the applicant states that (1) the Board has the discretion, per its Rules of Practice and Procedure § 1-07.1(a)(1) to determine which amendments to variances granted under ZR § 72-21 may be filed on the SOC calendar and may allow

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applications to be heard there unless it determines that “the scope of the application is major,” in which case, the Board “may request that a new application be filed on the BZ [zoning] calendar;” and

WHEREAS, in support of its assertion that the Board was within its authority to hear the application on the SOC calendar and not require an environmental review, the applicant cites to Fisher v. Board of Standards and Appeals, 71 A.D.3d 487 (1st Dept. 2010) and 873 N.Y.S.2d 511 (Sup. Ct. 2008) which is the case that arose from the Board’s decision for Saint Francis Xavier/Clothing Workers Center; and

WHEREAS, the applicant notes that the matter in Fisher was an application for the enlargement of the zoning lot of a site subject to a Board variance; the court noted that “the configuration of the other buildings on the zoning lot will remain the same” and that the application which “did not seek a new zoning variance or a relaxation of the Zoning Resolution requirements” and, thus the approval constituted “a technical amendment to the originally approved site plan” See also East 91st Neighbors to Preserve Landmarks v. New York City Board of Standards and Appeals, 294 A.D.2d 126 (1st Dept 2002); and

WHEREAS, the applicant notes that the Board’s instructions for SOC applications do not include the requirement for a CEQR application; and

WHEREAS, the applicant also cites to Incorporated Village of Atlantic Beach v. Gavalas, 81 N.Y.2d 322, 326 (1993), in which the Court of Appeals analyzed the question of whether an action is discretionary or ministerial as follows:

The pivotal inquiry in such matter is whether the information that would be considered in an environmental review may form the basis for a decision whether or not to undertake or approve the action under consideration. If an agency has some discretion, but that discretion is circumscribed by a narrow set of criteria that do not bear any relationship to the environmental concerns that may be raised in an environmental review, the agency’s decisions will not be considered ‘actions’ for purposes of SEQRA and CEQR; and

WHEREAS, the applicant asserts that as in Atlantic Beach, the preparation of an environmental assessment would be a “meaningless and futile act” because the Board could not properly deny the requested minor amendment “on the basis of SEQRA’s broader environmental concerns;” and

WHEREAS, the applicant asserts that the limited question before the Board is whether the findings made in granting the 1982 Approval are implicated or affected by the requested minor amendment and is completely unrelated to, and could not be informed by the information provided by an environmental assessment; and

WHEREAS, the applicant responds to the Opposition’s assertion that an item may only be included on an agency’s supplemental list of Type II actions if such action does not have a significant adverse environmental impact based on the criteria in SEQRA 617.7(c), stating that minor amendments to

previously granted variances are not exempt because they are a *supplemental* Type II action but because they are exempt as *per se* Type II actions under 617.7(c)(19) as “official acts of a ministerial nature involving no exercise of discretion;” and

WHEREAS, the applicant refutes the Opposition’s assertion that the action is a Type I action because it is an Unlisted action which exceeds certain Type I thresholds and meets certain other criteria, because it asserts that a minor amendment of a previously granted variance is not an Unlisted action; and

WHEREAS, as to the concerns about the effect of the New Building on the Gallery and the adjacent park and gardens, the applicant asserts that (1) the New Building was not included in the area downzonings and thus is not subject to the conditions of the downzoning, (2) a building even reduced to half the size of the New Building would have the same effect on the Gallery as the proposal, (3) the Gallery does not have a protected right to light and air beyond what the Zoning Resolution and other relevant statutes require, and (4) the New Building is not subject to environmental review and does not require a shadow study, but even so, there is already a shadow across the garden from the 229 Chrystie Street building; and

WHEREAS, the applicant notes that it reduced the height of the proposal from 330 feet, which was similarly permitted by the underlying zoning district regulations to 274 feet, which results in a height that is substantially lower than what is permitted as-of-right in the C6-1 zoning district; and

WHEREAS, the applicant states that development in full compliance with all applicable zoning requirements is presumed to be compatible with the neighborhood character and to have no significant adverse impacts on the environment and that is why such buildings do not require analysis under CEQR See Matter of Neville v. Koch, 79 N.Y.2d 416 (1992); the court in Neville stated that “so long as the proposed use is one of the ‘Uses Permitted As of Right’ in the City’s Zoning Resolution, a developer who also satisfies the Building Code can simply file its architectural plans with the Department of Buildings and begin construction upon issuance of a building permit;” and

WHEREAS, the Board concludes that the application for the New Building was appropriately classified as a minor amendment and heard on the SOC calendar and that the question before it is limited to whether the amendment disturbs the findings and conditions of the original variance and that such approval is of a ministerial nature that does not require environmental review; and

WHEREAS, the Board agrees with the applicant that the question of whether the New Building is compatible with neighborhood character is limited to a determination of whether the (c) finding of the 1982 Approval would be disturbed; and

WHEREAS, the Board agrees that the New Building will cast a shadow, but that because the building is within the building envelope contemplated by zoning for the C6-1 zoning district, it is presumed to not have a significant adverse impact and is thus not subject to environmental review; and

WHEREAS, the Board notes that the original (c) finding

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analysis was reserved to whether the Existing Building and its encroachment into the sky exposure plane was compatible with the character of the neighborhood; the Board notes that the single non-complying height/setback is not related to, and thus is not affected by the construction of the New Building; and

WHEREAS, the Board agrees with the applicant that there is not any evidence that the open space on the Board-approved site plan was a condition of the initial approval or that a redesign of that space would be in conflict with the prior approval; and

WHEREAS, the Board does not find that the existing open space was a required condition for the height/setback waivers associated with the Existing Building; and

WHEREAS, further, the Board notes that the applicant proposes to provide open space in compliance with zoning district requirements; and

WHEREAS, the Board notes that in the context of an amendment to a variance, the trigger for environmental review is not the height of the building but whether the effect on the variance is major or minor; any new non-compliance with zoning would be considered major as that would require new discretionary relief, but a modification within the scope of the original grant would not; and

WHEREAS, the Board finds that an action such as the proposed that does not have any effect on, and is neutral to, zoning compliance is not considered major as opposed to a proposal which increases the degree of non-compliance or introduces new non-compliance; and

WHEREAS, the Board notes that there is no assertion that the New Building requires any zoning waivers or in any way impacts the intrusion into the sky exposure plane of the upper stories of the Existing Building; and

WHEREAS, the Board notes that in Fisher, the Appellate Division upheld the Board's determination that an amendment that did not include a new variance or undermine the prior findings was technical in nature and not subject to environmental review; and

WHEREAS, the Board finds notes that the Appellate Division found that environmental review was not required because (1) the modification did not change any condition of the original approval and (2) no new non-compliance was created; and

WHEREAS, the Board notes that the court referred to a zoning lot merger (and a proposal for a 20-story hotel building on the new merged lot) involving a variance site under the Board's jurisdiction as being an as-of-right amendment; and

WHEREAS, the Board finds the facts in Fisher to be similar to the subject case; and

WHEREAS, however, the Board notes that it may exercise its discretion and ask for environmental review of amendments to prior approvals if the basis of the analysis has changed in a way that would affect CEQR categories; and

WHEREAS, lastly, the Board notes that it does not find that the height/setback variance associated with the 1982 Approval extinguished all other rights on the zoning lot; and

WHEREAS, based upon its review of the record, the

Board finds that the proposed modification of the site plan is appropriate.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on June 11, 1982, so that as amended this portion of the resolution shall read: "to permit the construction of the New Building on the site and to permit modifications to the BSA-approved site plan on condition that all site conditions will comply with drawings marked 'Received December 4, 2012'– (29) sheets; and on further condition:

THAT the New Building will conform to the BSA-approved plans;

THAT any changes to the bulk of the New Building are subject to review and approval;

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

THAT the Department of Buildings must ensure compliance with all 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. 121011396)

Adopted by the Board of Standards and Appeals, December 11, 2012.

95-90-BZ

APPLICANT – Akerman Senterfitt, LLP, for Bell Realty, owner; CVS Pharmacy, lessee.

SUBJECT – Application July 26, 2012 – Extension of Term of an approved variance (§72-21) which permitted retail (UG 6) with accessory parking for 28 vehicles which expired on January 28, 2012. R1-2 zoning district.

PREMISES AFFECTED – 242-24 Northern Boulevard, bounded by Northern Boulevard north of Douglaston Parkway, west and 243rd Street to the east, Block 8179, Lot 1, 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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of the term for a previously granted variance for the construction of a commercial building in a residential district, which expired on January 28, 2012; and

WHEREAS, a public hearing was held on this application on October 30, 2012, after due notice by publication in *The City Record*, with continued hearings on October 30, 2012 and November 15, 2012 and then to decision on December 11, 2012; and

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WHEREAS, Community Board 11, Queens, recommends approval of this application provided the applicant comply with the previous conditions of the grant and in addition that store managers be trained in the requirements of the variance, and that in inclement weather chains be used to close the entryway if the gates are frozen; and

WHEREAS, the subject site is located on a corner through lot bounded by Douglaston Parkway to the west, Northern Boulevard to the north, and 243rd Street to the east, within an R1-2 zoning district; and

WHEREAS, on January 28, 1992, under the subject calendar number, the Board granted a variance to permit the construction of a three-story commercial building for a term of 20 years, which expired on January 28, 2012; and

WHEREAS, subsequently, the grant has been amended on various occasions; and

WHEREAS, most recently, on May 6, 2003, the Board held a compliance hearing based on complaints received about the operation of the site, in which the Board found adequate documentation had been submitted to demonstrate compliance with the variance; and

WHEREAS, the applicant now seeks an additional 20-year extension of the term; and

WHEREAS, at hearing, the Board questioned whether the site has been in compliance with the conditions of the previous grants; and

WHEREAS, in response, the applicant submitted a compliance chart, photographs, and an affidavit from the store manager reflecting that the site operates in accordance with the conditions of the previous resolutions, and that the “no left turn” sign at the curb cut of Northern Boulevard, which was damaged during Hurricane Sandy, will be re-installed; and

WHEREAS, as to the Community Board’s requests, the affidavit submitted by the applicant states that store managers have been familiarized with the conditions of the variance, and that in inclement weather chains will be used to close the entryway if the gates are frozen; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated January 28, 1992, so that as amended this portion of the resolution shall read: “to extend the term for 20 years from the date of this grant, to expire on January 28, 2032; *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT the term of the grant will expire on January 28, 2032;

THAT street trees and landscaping will be maintained in accordance with the BSA-approved plans;

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

THAT the HVAC unit will be located in the center of

the roof, in accordance with the BSA-approved plans;

THAT the parking lot will be locked after hours;

THAT a “no left turn” sign be posted at the curb cut of Northern Boulevard;

THAT signage will comply with the BSA-approved plans;

THAT the garbage enclosure will be covered and enclosed and located in accordance with the BSA-approved plans;

THAT the garbage will be stored within the enclosure and deliveries and garbage pickup will not take place before 7:00 a.m. or after 9:00 p.m.;

THAT if a dumpster is used it will have a rubber lid;

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

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

Adopted by the Board of Standards and Appeals December 11, 2012.

271-90-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for EPT Realty Corp., owner.

SUBJECT – Application October 11, 2011 – Extension of Term (§11-411) for the continued operation of a UG16 automotive repair shop with used car sales which expired on October 29, 2011. R7X/C2-3 zoning district.

PREMISES AFFECTED – 68-01/5 Queens Boulevard, northeast corner of intersection of Queens Boulevard and 68th Street, Block 1348, Lot 53, Borough of Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening, an extension of term of a prior grant for an automotive repair shop with used car sales, which expired on October 29, 2011, and an amendment to permit an increase in the number of used cars available for sale; and

WHEREAS, a public hearing was held on this application on March 6, 2012, after due notice by publication in *The City Record*, with continued hearings on April 24, 2012, June 5, 2012, July 10, 2012, August 7, 2012, September 11, 2012, October 16, 2012 and October 30, 2012, and then to decision on December 11, 2012; and

WHEREAS, the premises and surrounding area had

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

WHEREAS, Community Board 2, Queens, recommends approval of this application provided the applicant remove the flags and banners from the site and improve the landscaping on the site; and

WHEREAS, the subject site is an irregular corner lot located at the northeast corner of Queens Boulevard and 68th Street, located within a C2-3 (R7X) zoning district; and

WHEREAS, the site has 89.35 feet of frontage on Queens Boulevard, 57.7 feet of frontage on 68th Street, and a total lot area of 5,351 sq. ft.; and

WHEREAS, the site is occupied by a one-story automotive repair shop with used car sales; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 13, 1958, when, under BSA Cal. No. 632-57-BZ, the Board granted a variance to permit the construction and maintenance of a gasoline service station with accessory uses for a term of 15 years; and

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

WHEREAS, on October 29, 1991, under the subject calendar number, the Board granted the re-establishment of the expired variance and a change in use from gasoline service station with accessory uses (Use Group 16) to motor vehicle repair shop with used car sales limited to five cars (Use Group 16), pursuant to ZR §§ 11-411 and 11-413, for a term of ten years; and

WHEREAS, most recently, on September 24, 2002, the Board granted a ten-year extension of term, to expire on October 29, 2011; 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, the applicant also requests an amendment to permit an increase in the number of used cars available for sale at the site from five to ten; and

WHEREAS, the applicant represents that since the prior approval the demand for used car sales has increased relative to the demand for automotive repairs; and

WHEREAS, at hearing, the Board raised concerns regarding the lack of maneuverability on the site if five additional spaces are devoted to used car sales; and

WHEREAS, in response, the applicant submitted revised plans reducing the number of parking spaces devoted to used car sales from ten to eight, which the applicant states will allow for greater maneuverability within the lot while still affording the owner and tenant the opportunity to make continued productive use of the site; and

WHEREAS, specifically, the applicant states that the proposed location of the eight parking spaces on the used automobile portion of the lot provides a center turning area, allowing easy access to each parked vehicle, as well as a space in the interior of the lot for washing and preparing vehicles,

and that the existing fence on the site maintains the separation between the two uses on the site without hampering maneuverability; and

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

WHEREAS, the Board also directed the applicant to provide landscaping in the planting area at the rear of the site, and bring the signage into compliance with C2 district regulations; and

WHEREAS, in response, the applicant submitted photographs reflecting that new evergreen shrubs have been planted in the planting area at the rear of the site, a photograph showing that the automobile sales signage has been reduced, and a signage analysis reflecting that the site complies with C2 district signage regulations; and

WHEREAS, accordingly, based upon the submitted evidence, the Board finds that the requested extension of term and amendment are appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens and amends* the resolution, as adopted on October 29, 1991, 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 ten years from the expiration of the prior grant, to expire on October 29, 2021, and to permit an increase in the number of used cars available for sale at the site from five to eight; *on condition* that the use shall substantially conform to drawings as filed with this application, marked ‘Received August 29, 2012’-(1) sheet and ‘October 22, 2012’-(1) sheet, and *on further condition*:

THAT the term of this grant will be for ten years from the expiration of the prior grant, to expire on October 29, 2021;

THAT the number of spaces devoted to used car sales will be limited to eight;

THAT there will be no parking of automobiles on the sidewalk at any time;

THAT there will be no used cars for sale parked on the street;

THAT there will be no outdoor repair work;

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

THAT signage will comply with C2 district regulations;

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. 400113550)

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Adopted by the Board of Standards and Appeals,
December 11, 2012.

67-91-BZ

APPLICANT – Sheldon Lobel, P.C., for H.N.F. Realty, LLC, owner; Cumberland Farms, Inc. lessee.

SUBJECT – Application July 27, 2012 – Extension of Term (§11-411) of an approved variance permitting the operation of an automotive service station (UG 16B) with accessory uses which expired on March 17, 2012; Waiver of the Rules. C1-2 zoning district.

PREMISES AFFECTED – 260-09 Nassau Boulevard, north corner of intersection formed by Little Neck Parkway and Nassau Boulevard, Block 8274, Lot 135, 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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term of a prior grant for an automotive service station, which expired on March 17, 2012; and

WHEREAS, a public hearing was held on this application on October 30, 2012, after due notice by publication in *The City Record*, with a continued hearing on November 15, 2012, and then to decision on December 11, 2012; and

WHEREAS, Community Board 11, Queens, recommends approval of this application with the following conditions: (1) the planted areas in the rear and at the corner of the property be properly landscaped and maintained free of debris; (2) the retaining wall on the north end of the property be repaired and maintained; (3) directional lines into and out of the site be clearly indicated by painted arrows on the ground; (4) no parking be allowed on landscaped area in the rear of the property; (5) service for those who require assistance be available and indicated by signage; (6) broken tiles on the floor of the store be replaced and the store maintained in good condition; and (7) usage of the storage trailer be identified on the plans; and

WHEREAS, the subject site is an irregularly-shaped lot located on the north corner of Little Neck Parkway and Nassau Boulevard, partially within a C1-2 (R4) zoning district and partially within an R1-2 zoning district; and

WHEREAS, the site has 231 feet of frontage on Little Neck Parkway, 100 feet of frontage on Nassau Boulevard, and a total lot area of 17,100 sq. ft.; and

WHEREAS, the site is occupied by a one-story automotive service station with an automotive repair shop and accessory convenience store; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 15, 1947, when, under BSA Cal. No. 721-41-BZ, the Board granted a variance to permit an automotive service station with accessory uses; and

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

WHEREAS, on March 17, 1992, under the subject calendar number, the Board granted the re-establishment of the expired variance, pursuant to ZR § 11-411, for a term of ten years; and

WHEREAS, most recently, on October 19, 2004, the Board granted a ten-year extension of term and an amendment to permit a minor reconfiguration of the sales area, private office, and utility room to facilitate the sale of convenience store items, and the placement of a container for storage and refrigeration of soft drinks, pursuant to ZR § 11-411 and 11-412, which expired on March 17, 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 response to the concerns raised by the Community Board, the applicant submitted photographs and a letter reflecting that (1) the site’s landscaped areas have been cleaned and will be maintained on a weekly basis, (2) the retaining wall has been repaired, (3) the directional lines and parking lot striping on the site have been repainted, (4) parking will no longer be allowed on the landscaped area at the rear of the site, (5) decals have been added to the gasoline pumps advising customers to press the “help” button in the event a customer needs assistance, (6) the broken tiles on the floor of the store have been replaced, and (7) the storage trailer on the site is used for inventory for the accessory convenience store; and

WHEREAS, accordingly, based upon the submitted evidence, the Board finds that the requested extension of term and amendment are appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens and amends* the resolution, as adopted on March 17, 1992, 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 ten years from the expiration of the prior grant, to expire on March 17, 2022; *on condition* that the use shall substantially conform to drawings as filed with this application, marked ‘Received July 27, 2012’–(5) sheets, and *on further condition*:

THAT the term of this grant will be for ten years from the expiration of the prior grant, to expire on March 17, 2022;

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

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

THAT no parking will be permitted on the landscaped area at the rear of the site;

THAT signage will comply with C1 district regulations;

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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. 401822550)

Adopted by the Board of Standards and Appeals, December 11, 2012.

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

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....5

THE RESOLUTION –

WHEREAS, this is an application for a reopening, a waiver of the Rules of Practice and Procedure, an extension of term of a previously approved variance for an accessory parking facility for commercial use, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on August 21, 2012 after due notice by publication in *The City Record*, with continued hearings on September 25, 2012, October 16, 2012 and November 20, 2012, and then to decision on December 11, 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, the site is located on the southwest corner of Creston Avenue and East 191st Street, partially within an R8 zoning district and partially within a C4-4 zoning district; and

WHEREAS, on December 7, 1948, under BSA Cal. No. 861-48-BZ, the Board granted a variance to permit the site to be used for the parking of more than five motor vehicles, for a term of two years; and

WHEREAS, subsequently, the grant was amended and the term extended at various times, until its expiration on January 10, 1988; and

WHEREAS, on April 23, 2002, under the subject calendar number, the Board reestablished the expired variance pursuant to ZR § 11-411, to permit an accessory parking facility for commercial use at the site, for a term of ten years, which expired on April 23, 2012; a condition of the grant was that a new certificate of occupancy be obtained by April 23, 2003; and

WHEREAS, most recently, on January 10, 2012, the Board granted a six month extension of time to obtain a certificate of occupancy, which expired on July 10, 2012; and

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

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

WHEREAS, the applicant also requests an additional extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant states that a certificate of occupancy has not been obtained due to delays at the Department of Buildings; and

WHEREAS, at hearing, the Board directed the applicant to clean up the site; and

WHEREAS, in response, the applicant submitted photographs reflecting that the required striping and directional arrows now appear clearly, the walls of the adjacent building are free of graffiti, and the lot has been swept clean; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens*, and *amends* the resolution, dated April 23, 2002, so that as amended this portion of the resolution shall read: “to permit an extension of term for an additional period of ten years from the expiration of the prior grant, to expire on April 23, 2022, and to grant an extension of time to obtain a certificate of occupancy for one year from the date of this resolution, to expire on December 11, 2013; *on condition*: that the use shall substantially conform to drawings as filed with this application, marked ‘Received September 11, 2012’–(1) sheet, and on further condition:

THAT the term of this grant shall be for ten years from the expiration of the prior grant, to expire on April 23, 2022;

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

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

THAT a new certificate of occupancy shall be obtained by December 11, 2013;

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

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

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. 200683590)

Adopted by the Board of Standards and Appeals December 11, 2012.

314-08-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 437-51 West 13th Street LLC, owner.

SUBJECT – Application September 12, 2012 – Extension of Time to complete construction of an approved variance (§72-21) to permit the construction of a 12-story commercial office and retail building, which will expire on November 24, 2013; waiver of the Rules. M1-5 zoning district.

PREMISES AFFECTED – 437-447 West 13th Street, southeast portion of block bounded by West 13th, West 14th and Washington Streets and Tenth Avenue, Block 646, Lot 19, 20, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to complete construction of a previously granted variance to permit the construction of a ten-story commercial building, which expires on November 24, 2013; and

WHEREAS, a public hearing was held on this application on October 30, 2012, after due notice by publication in *The City Record*, with a continued hearing on November 15, 2012, and then to decision on December 11, 2012; and

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

WHEREAS, the site is located on the northwest corner of Washington Street and West 13th Street, in an M1-5 zoning district; and

WHEREAS, the site has 147'-0" of frontage on the north side of West 13th Street, 103'-3" of frontage on the west

side of Washington Street, and a lot area of 15,178 sq. ft.; and

WHEREAS, the Board has exercised jurisdiction over the site since November 24, 2009 when, under the subject calendar number, the Board granted a variance to permit the proposed construction of a ten-story commercial building which does not comply with the zoning requirements for FAR, height and setback, and rear yard, and which provides Use Group 10 retail use, contrary to ZR §§ 43-12, 43-43, 43-26, and 42-12; and

WHEREAS, substantial construction is to be completed by November 24, 2013, in accordance with ZR § 72-23; and

WHEREAS, the applicant states that additional time is necessary to complete the project; thus, the applicant now requests an extension of time to complete construction; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction 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, *reopens*, and *amends* the resolution, dated November 24, 2013, so that as amended this portion of the resolution shall read: “to grant an extension of the time to complete construction for a term of four years from the date of this grant, to expire on December 11, 2016; *on condition*:

THAT substantial construction shall be completed by December 11, 2016;

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) and/or configuration(s) not related to the relief granted.” (DOB Application No. 110115768)

Adopted by the Board of Standards and Appeals, December 11, 2012.

107-06-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Barbizon Hotel Associates, LP, owner; Equinox 63rd Street, Inc. lessee.

SUBJECT – Application September 14, 2012 – Amendment to previously granted Special Permit (§73-36) for the increase (693 square feet) of floor area of an existing Physical Culture Establishment (*Equinox*). C10-8X/R8B zoning district.

PREMISES AFFECTED – 140 East 63rd Street, southeast corner of intersection of East 63rd Street and Lexington Avenue, Block 1397, Lot 7505, Borough of Manhattan.

COMMUNITY BOARD #8M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin,

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Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

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

APPEALS CALENDAR

232-10-A

APPLICANT – OTR Media Group, Incorporated, for 4th Avenue Loft Corporation, owner.

SUBJECT – Application December 23, 2010 – An appeal challenging Department of Buildings’ denial of a sign permit on the basis that the advertising sign had not been legally established and not discontinued as per ZR §52-83. C1-6 zoning district.

PREMISES AFFECTED – 59 Fourth Avenue, 9th Street & Fourth Avenue. Block 555, Lot 11. Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Appeal granted.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an appeal of a final determination, issued by the First Deputy Commissioner of the Department of Buildings (“DOB”) on November 23, 2010 (the “Final Determination”), which states, in pertinent part:

The request to establish legality for a nonconforming advertising sign on the subject premises is hereby denied.

The evidence submitted fails to establish that a lawful advertising sign was established and not discontinued as per 52-831; and

WHEREAS, a public hearing was held on this appeal on August 13, 2011 after due notice by publication in *The City Record*, with a continued hearing on October 23, 2012, and then to decision on December 11, 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 site is located on the east side of Fourth Avenue, between East Ninth Street and East Tenth Street, within a C6-2A zoning district; and

¹ DOB notes that the Final Determination improperly cites ZR § 52-83 as the basis for the denial, and that ZR §§ 52-11 and 52-61 should have been cited, as DOB’s determination was that insufficient evidence had been submitted to demonstrate that a painted wall advertising sign was lawfully established at the subject site and never discontinued for a period of two or more years.

WHEREAS, the site is occupied by an eight-story mixed-use commercial/residential building (the “Building”); the southern façade of the Building (the “Wall”) has been used to display signage since approximately 1900, including a painted advertising sign on the upper corner of the Wall (the “Sign”), which is the subject of this appeal; and

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

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

PROCEDURAL HISTORY

WHEREAS, on January 26, 2009, DOB issued a stop work order for “outdoor advertising company sign on display structure without permit...”; and

WHEREAS, on May 24, 2010, the Appellant filed a permit application (Job No. 120353606) with DOB for a 1,000 sq. ft. (25’-0” by 40’-0”) non-illuminated painted advertising wall sign; the application stated that the sign complied with the non-conforming advertising sign regulations; and

WHEREAS, on June 8, 2010, DOB denied the permit application, finding that there was insufficient evidence that the sign was lawfully established and not discontinued; and

WHEREAS, on October 23, 2010, the Appellant filed a Zoning Resolution Determination Form (“ZRDI”) with the Manhattan Borough Office requesting an override of all objections and a determination that the Sign is permitted as a legal non-conforming advertising sign; and

WHEREAS, on November 23, 2010, DOB issued the Final Determination denying the Appellant’s ZRD1 request; and

WHEREAS, the Appellant initially sought a determination from the Board that signage located on the lower portion of the Wall was also permitted as a legal non-conforming advertising sign; however, the Appellant did not pursue its arguments with respect to the lower portion of the Wall; and

RELEVANT ZONING RESOLUTION PROVISIONS

ZR § 12-10 (*Definitions*)

Non-conforming, or non-conformity

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

* * *

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

General Provisions

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

* * *

ZR § 52-61 (*Discontinuance*)

General Provisions

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

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

THE APPLICABLE STANDARD FOR NON-CONFORMING USES

WHEREAS, DOB and the Appellant agree that the site is currently within a C6-2A zoning district and that the Sign is not permitted as-of-right within the zoning district; and

WHEREAS, accordingly, in order to establish the affirmative defense that the non-conforming signs are permitted to remain, the Appellant must meet the Zoning Resolution's criteria for a "non-conforming use" as defined at ZR § 12-10; and

WHEREAS, ZR § 12-10 defines "non-conforming" use as "any lawful use, whether of a *building or other structure* or of a tract of land, which does not conform to any one or more of the applicable use regulations of the district in which it is located, either on December 15, 1961 or as a result of any subsequent amendment thereto"; and

WHEREAS, additionally, the Appellant must comply with ZR § 52-61 (*Discontinuance, General Provisions*) which states that: "[i]f, for a continuous period of two years, either the *non-conforming use of land with minor improvements* is discontinued, or the active operation of substantially all the *non-conforming uses* in any *building or other structure* is discontinued, such land . . . shall thereafter be used only for a conforming use"; and

WHEREAS, in this case, the Appellant must also show that advertising signage existed on the Wall prior to June 28, 1940, the date the 1916 Zoning Resolution was amended to restrict advertising signage in the district where the subject site is located; and

WHEREAS, accordingly, DOB asserts that as per the Zoning Resolution, the Appellant must establish that the use was lawfully established before it became unlawful, by zoning, on June 28, 1940 as well as on December 15, 1961, the date the 1961 Zoning Resolution was enacted, and it must have continued without any two-year period of discontinuance since December 15, 1961; and

WHEREAS, thus, the Board notes that the standard to apply to the subject sign is (1) the sign existed lawfully on June 28, 1940 and December 15, 1961, and (2) that the use did not change or cease for a two-year period since December 15, 1961. See ZR §§ 12-10, 52-61; and

LAWFUL ESTABLISHMENT

WHEREAS, the Appellant states that a sign has existed on the Wall since at least 1900, originally as a painted advertising sign; and

WHEREAS, the Appellant contends that advertising signage existed on the Wall prior to June 28, 1940, the date the 1916 Zoning Resolution was amended to define and distinguish "advertising" signs from "accessory" signs; and

WHEREAS, the Appellant states that while the 1940 text amendment restricted advertising signage in the district where the subject site is located, by that time the Wall had been used to display signage, including advertising signage, for approximately 40 years; and

WHEREAS, the Appellant asserts that the Wall continued to be used for advertising signage prior to and after December 15, 1961; and

WHEREAS, in support of the existence of advertising signage on the Wall prior to June 28, 1940, the Appellant submitted photographs, copies of the business directory for the City of New York, and newspaper/magazine articles; and

WHEREAS, in support of the existence of the signage on the Wall prior to and since December 15, 1961, the Appellant submitted photographs reflecting that a "Hebrew National" painted advertising sign was located on the upper portion of the Wall from at least June 1, 1960 through 1965 or later; and

WHEREAS, accordingly, the Appellant states that a painted advertising sign was lawfully established on the upper portion of the Wall prior to the enactment of the 1961 Zoning Resolution; and

WHEREAS, DOB states that it accepts the Appellant's photographic and documentary evidence of the existence of advertising signage prior to June 28, 1940 through 1960; and

WHEREAS, DOB further states that it accepts the Appellant's evidence demonstrating the "Hebrew National" painted advertising sign existed prior to 1961 through 1965; and

WHEREAS, accordingly, DOB agrees that an advertising sign was lawfully established at the site prior to December 15, 1961 and lawfully existed on December 15, 1961, and therefore the owner of the site achieved a right to maintain a painted advertising sign in the same location and position of the "Hebrew National" sign, provided that such sign was not discontinued for a period of two or more years; and

CONTINUITY OF THE SIGN

WHEREAS, at the outset, DOB states that the Appellant has submitted sufficient evidence to demonstrate continuity of the non-conforming advertising sign on the top portion of the Wall from 1961 through 1992 and from 2005 until the filing of subject appeal; and

WHEREAS, accordingly, the Board finds it appropriate to limit its review of the continuity of the Sign to the period from 1992 through 2005, which is the only time period for which DOB has alleged a discontinuance of the Sign for a period in excess of two years, contrary to ZR § 52-61; and

• Appellant's Position

WHEREAS, the Appellant submitted photographs, leases, and letters as primary evidence to establish the continuity of use of the Sign between 1992 and 2005; and

WHEREAS, the Appellant also submitted an affidavit from Patrick Curley, a resident of the Building and President of the 4th Avenue Loft Corporation stating that a sign has been located on the south facing wall from 1978 continuously through the present (the "Curley Affidavit"), and an affidavit

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from Chris Mitrofanis, the owner of the adjacent retail establishment at 59 Fourth Avenue, stating that the upper wall has been used for advertising signs continuously from 1984 through 2009, with no two-year period of discontinuance during that time (the “Mitrofanis Affidavit”) (collectively, the “Affidavits”); and

WHEREAS, in support of the existence of the Sign in 1992, the Appellant submitted: (1) a photograph of a painted advertising sign for “Tower Records” on the upper portion of the Wall, along with evidence that the photograph was taken in approximately 1992; and (2) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 1993, the Appellant submitted: (1) the 1992 photograph of the Tower Records advertising sign; and (2) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 1994, the Appellant submitted: (1) the 1992 photograph of the Tower Records advertising sign; (2) an option agreement dated July 14, 1994 between the owner and Transportation Displays Incorporated/TDI (“TDI”) granting the exclusive option for TDI to lease the south wall of the Building for the purpose of affixing advertising copy thereto for one year (the “1994 Option Agreement”); and (3) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 1995, the Appellant submitted: (1) a photograph showing the Building with the same painted advertising sign for “Tower Records” which it asserts was taken in June 1995 (the “Appellant’s June 1995 Photograph”); (2) the 1994 Option Agreement; and (3) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 1996, the Appellant submitted: (1) the June 1995 Photograph of the “Tower Records” sign; (2) the 1994 Option Agreement; and (3) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 1997, the Appellant submitted: (1) a photograph showing a sign with illegible copy on the upper portion of the Wall, dated October 1997; and (2) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 1998, the Appellant submitted: (1) the 1997 photograph; and (2) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 1999, the Appellant submitted: (1) a photograph showing an advertising sign for “Fetch-O-Matic” on the upper portion of the Wall, along with evidence that the photograph was taken in 1999 or 2000 (the “1999/2000 Fetch-O-Matic Photograph”); and (2) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 2000, the Appellant submitted: (1) the 1999/2000 Fetch-O-Matic Photograph; (2) an October 6, 2000 letter from Vista Media Group, Inc., stating that it assumed the lease rights and obligations under the lease with TDI/Outdoor Systems/Infinity, and noting that the monthly lease payment was enclosed (the “October 6, 2000 Letter”); and (3) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 2001, the Appellant submitted: (1) the 1999/2000 Fetch-O-Matic Photograph; (2) the October 6, 2000 Letter; (3) a “Wallscape Rental Agreement” dated August 27, 2001

granting Vista Media Group, Inc., the use of a portion of the south wall of the property for the display of signage, for a term of five years, commencing on January 15, 2002 (the “August 27, 2001 Five-Year Lease”); and (4) the Affidavits; and

WHEREAS, in support of the existence of the Sign from 2002 through 2005, the Appellant submitted: (1) the 1999/2000 Fetch-O-Matic Photograph; (2) the August 27, 2001 Five-Year Lease; and (3) the Affidavits; and

WHEREAS, based on the above, the Appellant asserts that it has established that the Sign was continuously in existence as an advertising sign from 1992 through 2005, without any two-year period of discontinuance; and

- Department of Buildings’ Position

WHEREAS, DOB asserts that there is insufficient evidence to show continuity of the non-conforming advertising sign on the upper portion of the Wall from 1992 through 2005; and

WHEREAS, DOB states that its Sign Enforcement Unit discovered a photograph dated 1995 on a website called nycsubway.org, which shows only the faded remnants of a painted sign on the upper portion of the Wall (the “1995 DOB Photograph”); and

WHEREAS, DOB further states that it is unable to reconcile the fact that the photograph allegedly taken in June 1995 submitted by the Appellant shows only a slightly faded painted advertising sign for Tower Records while the 1995 DOB Photograph shows a significantly faded painted advertising sign; and

WHEREAS, DOB notes that the Appellant’s June 1995 Photograph was originally submitted at the Board’s October 23, 2012 hearing as taken in June 1993, and asserts that if the photograph was taken in June 1995 then the Appellant is claiming that the Tower Records painted sign existed from 1987 to June 1995 with only slight fading, but from June 1995 until the time when the 1995 DOB Photograph was taken, the painted Tower Records advertising sign faded away significantly; and

WHEREAS, DOB notes that the 1997 photograph submitted by the Appellant similarly shows only the faded remnants of a painted sign on the upper portion of the Wall; and

WHEREAS, DOB states that its Sign Enforcement Unit also discovered a photograph on the flickr.com website dated September 10, 2001, which again shows only the faded remnants of a painted sign on the upper portion of the Wall (the “September 10, 2001 DOB Photograph”), which is consistent with the 1995 DOB Photograph and the Appellant’s 1997 photograph; and

WHEREAS, DOB further states that the September 10, 2001 DOB Photograph shows the identical advertising sign on the lower portion of the Wall (entitled “Rivet Up”) as existed on the Appellant’s June 1995 Photograph; and

WHEREAS, DOB asserts that the September 10, 2001 DOB Photograph calls into question the authenticity of the Appellant’s June 1995 Photograph because it is not plausible that an advertising copy for “Rivet Up” existed both in June 1995 and on September 10, 2001, particularly when there are

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several photographs between that time period which show a different advertising copy on the lower portion of the Wall; and

WHEREAS, DOB notes that the Appellant's June 1995 Photograph and the 1999/2000 Fetch-O-Matic Photograph are from "private collections" and that the Appellant has not submitted affidavits from the photographer attesting to the date they were taken, and indicates that as such they should be given less weight than the 1995 DOB Photograph and the September 10, 2001 DOB Photograph, both of which are publicly available; and

WHEREAS, accordingly, based on the photographs from 1995, 1997, and 2001 which DOB contends show only the faded remnants of a painted sign, and the questionable credibility of the Appellant's June 1995 Photograph, DOB concludes that the Appellant has failed to establish the continuity of the advertising sign on the upper portion of the Wall, as required by ZR § 52-61; and

APPELLANT'S RESPONSE TO DEPARTMENT OF BUILDINGS' ARGUMENTS

WHEREAS, in response to DOB's position regarding the authenticity of the Appellant's June 1995 Photograph, the Appellant asserts that 1995 is the most likely year that the photograph was taken; and

WHEREAS, the Appellant states that the date of this photograph was determined by scrutinizing the details of the photograph, including: (1) a scaffolding in front of the building located at 21 Astor Place (Block 545, Lot 7503), and that DOB records indicate that Permit No. 101007928 was approved on March 13, 1995 for a sidewalk shed at the site; (2) the building at 770 Broadway is boarded with a sidewalk shed and therefore the Kmart store that currently occupies the space, and which the Appellant established through a newspaper article opened in November 1996, had not yet opened; and (3) a 23-story building that was constructed on East 12th Street between Third Avenue and Fourth Avenue in 1996 is not visible in the photograph, and therefore was not constructed yet; and

WHEREAS, therefore, Appellant argues that the photograph was clearly taken prior to the 1996 opening of Kmart at 770 Broadway and the completion of the 23-story building, and the existence of the sidewalk shed at 21 Astor Place indicates that it was taken after March 13, 1995; and

WHEREAS, the Appellant states that the 1995 DOB Photograph shows that the lower portion of the Wall was occupied by an advertisement for an Old Navy store that the Appellant contends did not open until November of 1995, and therefore argues that the photograph was more likely taken in 1996 or later, because there are leaves on the trees in the photograph; and

WHEREAS, as to the September 10, 2001 DOB Photograph, the Appellant contends that the date on the photograph is likely incorrect, as the photograph is from flickr.com, and the dating system for the website relates to the date the photograph was uploaded, not necessarily the date it was taken; and

WHEREAS, the Appellant provides an example of a

photograph on flickr.com that was taken in 1978 but for which the website states "this photo was taken on July 16, 2006"; therefore, the Appellant asserts that the date listed on the website for the photograph is not necessarily an accurate depiction of the date the photograph was taken; and

WHEREAS, as to DOB's concerns regarding the 1999/2000 Fetch-O-Matic Photograph, the Appellant submitted an affidavit from the photographer (the Mitrofanis Affidavit) which states that the photograph was taken in or around 1999, and the Appellant also submitted an August 29, 2000 press release for FetchOMatic.com, announcing an upcoming advertising campaign for the new company; and

WHEREAS, in response to DOB's indication that the photographs submitted by the Appellant should be given less weight because they are from private collections rather than publicly accessible sources, the Appellant notes that DOB Technical Policy and Procedure Notice 14/1988, which DOB issued to establish guidelines for DOB's review of whether a non-conforming use has been continuous, does not state that an appellant must provide publicly accessible photographs, or that such photographs are given more weight than photographs from private collections; and

WHEREAS, accordingly, the Appellant claims that the dates of the photographs it submitted from 1995, 1997, and 1999/2000 are credible, and along with the Affidavits, the 1994 Option Agreement, the 2000 Letter, and the 2001 Five-Year Lease, are sufficient to establish the continuous use of the advertising sign on the upper portion of the Wall from 1992 through 2005; and

CONCLUSION

WHEREAS, the Board finds that the Appellant has met its burden of establishing that the Sign was lawfully established prior to December 15, 1961 and has been in continuous use, without any two-year interruption since that date; and

WHEREAS, specifically, the Board finds the evidence submitted by the Appellant sufficient to establish the continuous use of the Sign on the upper portion of the Wall from 1992 through 2005, the only time period contested by DOB; and

WHEREAS, as to the evidence submitted by the Appellant to establish the continuous use of the Sign during this time period, the Board notes that the Appellant provided evidence in the form of photographs, leases, option agreements, letters, and affidavits, and that some combination of this evidence was provided for each year beginning from 1992 through 2005; and

WHEREAS, as to the credibility of the Appellant's June 1995 Photograph, the Board finds the Appellant's methodology for determining the date of the photograph compelling, in that it clearly was taken prior to 1996, and the presence of the sidewalk shed in front of the 21 Astor Place building, for which the Appellant found a permit was issued by DOB on March 13, 1995, indicates that it was likely taken in 1995; and

WHEREAS, the Board does not consider the fact that the Appellant originally presented the photograph at the

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Board's October 23, 2012 hearing as being taken in June 1993 to undermine the credibility of the photograph; and

WHEREAS, specifically, the Board notes that even if the photograph was taken in June 1993, it still serves as relevant evidence of the continuity of the Sign, as it reflects that the same Tower Records sign that is shown in the 1992 photograph remained in place in 1993; and

WHEREAS, as to the 1995 DOB Photograph, the Board notes that it shows a faded sign on the upper portion of the Wall, similar to that shown in the 1997 photograph submitted by the Appellant; however, the Board does not find that these photographs necessarily contradict the Appellant's June 1995 Photograph; and

WHEREAS, the Board notes that while the Sign may be faded in 1995 DOB Photograph and the Appellant's 1997 photograph, these photographs still clearly show a painted sign on the upper portion of the Building, and DOB has not articulated any standard by which to determine at what point a painted sign becomes discontinued on the basis of faded copy; and

WHEREAS, as to the 1999/2000 Fetch-O-Matic Photograph, the Board finds the Mitrofanis Affidavit combined with the August 29, 2000 press release submitted by the Appellant to be sufficient evidence to establish that the photograph was taken in 1999 or 2000; and

WHEREAS, as to the September 10, 2001 DOB Photograph, the Board agrees with the Appellant that the dating system for the website flickr.com is not reliable, in that it appears to be based on the date the photograph was uploaded and not necessarily the date the photograph was actually taken; and

WHEREAS, the Board disagrees with DOB's contention that the September 10, 2001 DOB Photograph necessarily calls into question the authenticity of the Appellant's June 1995 Photograph because there is an identical advertising sign for "Rivet Up" on the lower portion of the Building in both photographs; rather, the Board finds that the presence of the "Rivet Up" sign in both photographs actually makes it more likely that the September 10, 2001 DOB Photograph was actually taken closer to the date of the Appellant's June 1995 Photograph, since the Board finds the Appellant's evidence that the latter photograph was taken prior to 1996 to be compelling and because there is no "Rivet Up" sign in the 1999/2000 Fetch-O-Matic Photograph; and

WHEREAS, the Board agrees with the Appellant that the fact that the Appellant's June 1995 Photograph and 1999/2000 Fetch-O-Matic Photograph are from private collections while the photographs submitted by DOB are publicly accessible does not automatically entitle the latter to more weight; and

WHEREAS, accordingly, the Board finds that the Appellant has submitted sufficient evidence to establish that the Sign has been in continuous use from 1992 through 2005, without any two-year interruption; and

WHEREAS, the Board accepts DOB's determination that the painted advertising sign was lawfully established prior to June 28, 1940 as well as December 15, 1961 and has been

in continuous use without any two-year interruption from 1961 through 1992 and from 2005 until the date the subject application was filed; and

WHEREAS, the Board notes that while the Appellant is requesting that the Board permit a 25'-0" by 40'-0" (1,000 sq. ft.) painted advertising sign on the upper portion of the Wall, the permitted size and location of the Sign is limited to the dimensions and location of the Hebrew National sign which existed on the site from 1960 through 1965; and

WHEREAS, while no evidence has been submitted as to the exact dimensions of the Hebrew National sign, the Board notes that if DOB determines that the Appellant's requested dimensions of 25'-0" by 40'-0" (1,000 sq. ft.) exceed the dimensions of the Hebrew National sign, the latter will be controlling; and

Therefore it is Resolved that this appeal, challenging a Final Determination issued on November 23, 2010, is granted.

Adopted by the Board of Standards and Appeals, December 11, 2012.

88-12-A & 89-12-A

APPLICANT – Fried Frank by Richard G. Leland, Esq.,
Van Wagner Communications, LLC

OWNER OF PREMISES – Name Mutual, LLC.

SUBJECT – Application April 11, 2012 – Appeal from determination of the Department of Buildings regarding right to maintain existing advertising signs. C6-4 zoning district.

PREMISES AFFECTED – 462 11th Avenue, between 37th and 38th Streets, Block 709, Lot 3, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Appeal Denied.

THE VOTE TO GRANT –

Affirmative:0

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

THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to two Notice of Sign Registration Rejection letters from the Borough Commissioner of the Department of Buildings ("DOB"), dated March 12, 2012, denying registration for two signs at the subject site (the "Final Determinations"), which read, in pertinent part:

The Department of Buildings is in receipt of additional documentation submitted in response to the Deficiency Letter from the Signs Enforcement Unit and in connection with the application for registration of the above-referenced sign. Unfortunately, the intent of viewing is not relevant in this assessment and as such, the sign is rejected from registration. While we recognize your assertion that the sign was not intended to be visible from arterial, we affirm our rejection. This sign will be subject to enforcement action 30 days from the issuance of this letter; and

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WHEREAS a public hearing was held on this application on October 30, 2012, after due notice by publication in *The City Record*, with a continued hearing on November 15, 2012, and then to decision on December 11, 2012; and

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

WHEREAS, the subject site is located at the southeast corner of Eleventh Avenue and West 38th Street, in a C6-4 zoning district; and

WHEREAS, the site is a vacant lot and is occupied by a sign structure with a height of 130 feet that contains two north-facing signs (the "Signs"); the lot is also occupied by two south-facing signs, which DOB has not objected to and are not discussed in the appeal; and

WHEREAS, the Appellant states that the Signs are rectangular advertising signs each measuring 20 feet in height by 60 feet in length for a surface area of 1,200 sq. ft., with the lower sign (the "Lower Sign") located at a height of between 36 feet and 56 feet and the upper sign (the "Upper Sign") located at a height of between 110 feet and 130 feet; and

WHEREAS, the Appellant states that the signs face Eleventh Avenue and are located two blocks to the southwest of the entrance to the approaches to the Lincoln Tunnel at West 39th Street and West 40th Street, between Tenth and Eleventh avenues; and

WHEREAS, the Appellant states that when the Signs were installed in 2000, the site was within an M1-5 zoning district, but that pursuant to a 2005 rezoning, the site is now zoned C6-4 within the Special Hudson Yards District; and

WHEREAS, the Upper Sign is located 350'-11" and the Lower Sign is located 327'-0" from an entrance to the Lincoln Tunnel, a designated arterial highway pursuant to Zoning Resolution Appendix H; and

WHEREAS, this appeal is brought on behalf of the owner of the sign structure (the "Appellant"); and

WHEREAS, the Appellant seeks a reversal of DOB's rejection of its sign registration based on the fact that (1) the Signs are not "within view" of an arterial highway and are not subject to the limitations associated with signs within view of arterial highways; and (2) the Signs were constructed pursuant to DOB-issued permits, which reflects DOB's acceptance that the Signs are not "within view" of an arterial highway; and

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

REGISTRATION REQUIREMENT

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

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

WHEREAS, the amendments are codified under

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

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

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

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

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

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

WHEREAS, the Appellant asserts that the acceptable forms of evidence set forth at Rule 49 are, in pertinent part as follows:

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

WHEREAS, the Appellant notes that affidavits are also listed as an acceptable form of evidence; and

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

REGISTRATION PROCESS

WHEREAS, the Appellant states that on September 1,

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2009, pursuant to the requirements of Article 502 and Rule 49, it submitted an inventory of outdoor signs under its control and a Sign Registration Application for the Sign and completed an OAC3 Outdoor Advertising Company Sign Profile, attaching the following documentation: (1) a diagram of the Signs; (2) photographs of the Signs; and (3) Permit Nos. 102681849-01-AL, 102724580-01-SG, 102789939-010-AL, and 102788306-01-SG, along with Notices of Completion for each application; and

WHEREAS, on October 3, 2011, DOB issued two Notices of Sign Registration Deficiency, stating that it is unable to accept the Signs for registration due to "Failure to provide proof of legal establishment – 2000 Permit . . . states not adjacent to arterial;" and

WHEREAS, by letter, dated December 14, 2011, the Appellant submitted a response to DOB, noting that DOB had issued permits for the Signs in 2000 and that the Appellant had operated the Signs for more than a decade in reliance on DOB's permits; and

WHEREAS, the Appellant also included evidence demonstrating that the Signs were installed to be visible towards Eleventh Avenue and the only designated arterial highway in proximity of the site (the approaches to the Lincoln Tunnel) is separated from the Signs by two streets such that the Signs are substantially obstructed from being viewed from the approaches; and

WHEREAS, by letter, dated January 6, 2012, the Appellant made a submission to DOB of photographs to support its position that the Signs are directed toward Eleventh Avenue and any view from the Lincoln Tunnel approach is substantially obstructed; and

WHEREAS, by letter, dated March 12, 2012, DOB issued the determinations which form the basis of the appeal, stating that it found the "documentation inadequate to support the registration and as such the sign is rejected from registration;" and

RELEVANT STATUTORY PROVISIONS

ZR § 42-55

Additional Regulations for Signs Near Certain Parks and Designated Arterial Highways

M1 M2 M3

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

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

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

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

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

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

* * *

ZR § 42-58

Signs Erected Prior to December 13, 2000

M1 M2 M3

In all districts, as indicated, a #sign# erected prior to December 13, 2000, shall have #non-conforming use# status pursuant to Sections 52-82 (Non-Conforming Signs Other Than Advertising Signs) or 52-83 (Non-Conforming Advertising Signs) with respect to the extent of the degree of #non-conformity# of such #sign# as of such date with the provisions of Sections 42-52, 42-53 and 42-54, where such #sign# shall have been issued a permit by the Department of Buildings on or before such date.

* * *

Building Code § 28-502.4 – Reporting Requirement

An outdoor advertising company shall provide the department with a list with the location of signs, sign structures and sign locations under the control

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of such outdoor advertising company in accordance with the following provisions:

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

* * *

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

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

* * *

RCNY § 49-16 – Non-conforming Signs

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

* * *

RCNY § 49-43 – Advertising Signs

Absent evidence that revenue from the sign is clearly incidental to the revenue generated from the use on the zoning lot to which it directs attention, the following signs are deemed to be advertising signs for the purposes of compliance with the Zoning Resolution:

- (a) Signs that direct attention to a business on the zoning lot that is primarily operating a storage or warehouse use for business activities conducted off the zoning lot, and that storage or warehouse use occupies less than the full building on the zoning lot; or
- (b) All signs, other than non-commercial, larger than 200 square feet, unless it is apparent from the copy and/or depictions on the sign that it is used to direct the attention of vehicular and pedestrian traffic to the business on the zoning lot; and

THE APPELLANT’S POSITION

WHEREAS, the Appellant contends that the Final Determinations should be reversed because (1) the Signs are not “within view” of an arterial highway and are not subject to the limitations associated with signs within view of arterial highways; and (2) the Signs were constructed pursuant to DOB-issued permits, which reflects DOB’s acceptance that the Signs are not “within view” of an arterial highway; and

1. The Signs are Not “Within View” of an Arterial Highway

WHEREAS, the Appellant asserts that DOB misinterprets the meaning of “within view” under ZR § 42-55; and

WHEREAS, the Appellant notes that the Zoning Resolution does not define “within view,” however they look to ZR § 42-55 subsections (c)(1) and (c)(2), which include in their criteria for coverage by the regulations that the sign’s “message is visible” from an arterial highway; and

WHEREAS, additionally, the Appellant notes that the Zoning Resolution does not define what constitutes a “message” being “visible,” so they find that a plain language interpretation is required; and

WHEREAS, the Appellant cites to Webster’s Dictionary which defines “message,” as “a written or oral communication or other transmitted information sent by messenger or by some other means (as by signals)” or “a group of words used to advertise or notify;” and

WHEREAS, the Appellant also cites to the dictionary for the definition of “visible,” which states “capable of being seen,” “easily seen,” or “capable of being perceived mentally;” and

WHEREAS, the Appellant concludes that according to the definitions, the intent of the zoning is to limit the applicability of ZR § 42-55 to signs that actually communicate their message to persons that are on an arterial highway and would not be applicable to a sign that is substantially obstructed such that the message of the obstructed sign cannot be communicated to a person on the arterial highway; and

WHEREAS, in contrast, the Appellant asserts that ZR § 42-55 does not apply to a sign that does not face an arterial highway or a sign that is obstructed by objects between the sign and the arterial highway because those signs are incapable of communicating or advertising; and

WHEREAS, the Appellant submitted photographs and maps in support of its position that the Signs are situated to read to Eleventh Avenue and advertising copy on the Signs is sold for the purpose of showing on Eleventh Avenue, particularly given that there are two intervening streets, numerous trees, and walls surrounding the entrance to the Lincoln Tunnel which prevent communication of the Signs’ message to persons traveling into the tunnel; and

WHEREAS, the Appellant asserts that the Signs are not discernible from cars approaching the tunnel from the north and are not visible at all from the eastern approach; and

WHEREAS, the Appellant asserts that a utility tower

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(including a spiral staircase and lighting), several trees, and the tunnel entrance walls prevent travelers from discerning the Signs' messages; and

WHEREAS, the Appellant asserts that there is just a fleeting moment when none of the obstructions are in the way of the sign and the Signs are in view, but it does not provide a situation in which the "message is visible," as required for ZR § 42-55 to apply under a plain language reading; and

WHEREAS, the Appellant states that the Google Streetview photograph DOB submitted is taken at that fleeting moment when the Signs appear and even then they are not discernible; and

WHEREAS, the Appellant reiterates that the intent of the Signs was to communicate with viewers travelling on Eleventh Avenue and because they are not discernible from any approach to the Lincoln Tunnel, ZR § 42-55 does not apply; and

WHEREAS, the Appellant further notes that DOB provides its own definition of "within view" in Rule 49 as follows: "the term 'within view' shall mean that part or all of the sign copy, sign structure, or sign location that is discernible;" and

WHEREAS, the Appellant asserts that through Rule 49, DOB exceeded its authority by creating a new definition of "within view" which DOB has construed otherwise since December 15, 1961; and

WHEREAS, the Appellant asserts that if the Rule 49 definition is disregarded, and only the plain language interpretation of the "within view" standards of ZR § 42-55 is applied, the message of the Signs is not visible from the approach of the Lincoln Tunnel and ZR § 42-55 does not apply to the Signs; and

WHEREAS, in sum, the Appellant states that where only a portion of the sign is visible from an arterial highway for only a fleeting moment and the message of the sign is not visible, the sign is not "within view" of the arterial highway within the meaning of ZR § 42-55; and

2. The Signs were Constructed Pursuant to DOB-Issued Permits

WHEREAS, the Appellant asserts that the Signs were constructed pursuant to DOB-issued permits, which reflects DOB's agreement at the time of permit issuance that the Signs were not "within view" of an arterial highway and that DOB's reversal of position with respect to its prior confirmation of the legality of the Signs is improper; and

WHEREAS, the Appellant asserts that it provided DOB with evidence of permits, which demonstrate that the signs were installed pursuant to lawfully-issued permits, which were issued when the Signs were permitted in the underlying M1-5 zoning district and DOB was aware of their location vis a vis the Lincoln Tunnel approaches, but permitted the Signs pursuant to its interpretation of then-ZR § 42-53 (which has been recodified as ZR § 42-55); and

WHEREAS, the Appellant asserts that DOB has changed its position with regard to the application of ZR § 42-55 and that Local Law 31 did not give DOB the authority

to create a new interpretation of long-standing language requiring that a sign be "within view" of an arterial highway and at the time of the permit issuance, DOB did not consider the Signs to be within view of any arterial highway; and

WHEREAS, the Appellant represents that it has relied in good faith on DOB's approval of the Signs, has made investments in maintaining and marketing in reliance on the approvals, and equity does not allow DOB to revise its prior approvals and require the removal of the Signs; and

DOB'S POSITION

WHEREAS, DOB asserts that it rejected the Sign Registration Applications because the August 4, 2000 permit for the Upper Sign and the December 13, 2000 permit for the Lower Sign were unlawful and improperly issued since the surface area of the Signs did not comply with the requirements of then-ZR § 42-53; ZR § 42-53, in effect at the time the 2000 permits were issued, regulated advertising signs that were within view of arterial highways in Manufacturing Districts and stated, in pertinent part:

No advertising sign shall be located, nor shall an advertising sign be structurally altered, relocated or reconstructed, within 200 feet of an arterial highway or of a public park with an area of one-half acre or more, if such advertising sign is within view of such arterial highway . . . Beyond 200 feet from such arterial highway or public park, an advertising sign shall be located at a distance of at least as many linear feet therefrom as there are square feet of surface are on the face of such sign; and

WHEREAS, therefore, DOB states that signs in manufacturing districts, like the M1-5 district the Signs were in at the time of their installation in 2000 until 2005 when the area was rezoned to be within a C6-4 zoning district, were and still are permitted as-of-right under the current ZR § 42-55 (under which the former ZR § 42-53 was recodified) with certain restrictions, when located more than 200 feet from an arterial highway; and

WHEREAS, however, DOB states that such signs are limited in surface area based on their distance from the arterial highway; and

WHEREAS, DOB disagrees with the Appellant's position that the Signs are not subject to the restrictions on surface area set forth in the former ZR § 42-53 because they are not "within view" of the arterial highway – the Lincoln Tunnel and approaches; and

WHEREAS, DOB states that it has examined photographs of the signs taken from the approaches and finds that both the Upper and Lower signs are clearly visible and thus "within view" of the approach to the tunnel; and

WHEREAS, DOB notes that the Appellant's effort to register the Signs reflects a concession on the Appellant's part that the Signs are within view of the arterial highway since Rule 49-15 specifically requires "a sign inventory that shall include all signs, sign structures and sign locations located (1) within a distance of 900 linear feet from and within view of an arterial highway; or (2) within 200 linear

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feet from and within view of a public park of one half acre or more;” and

WHEREAS, DOB asserts that since the Upper Sign is within view of the arterial highway and located 350 feet from it, the maximum permitted surface area of the Upper Sign was 350 sq. ft. when the 2000 Permit was erroneously issued; DOB notes that the 2000 Permit and the Sign Registration Application both indicate a surface area of 1,200 sq. ft., which exceeded the then-ZR § 42-53 and still exceeds the permitted surface area per the current ZR § 42-55; and

WHEREAS, accordingly, DOB finds that the 2000 Permit for the Upper Sign was unlawful and improperly issued and the Upper Sign must be removed since no advertising sign is permitted as-of-right in the current C6-4 zoning district pursuant to ZR § 32-63; and

WHEREAS, similarly, because the Lower Sign is within view of the arterial highway and located 327 feet from it, the maximum permitted surface area of the Lower Sign was 327 sq. ft. when the 2000 Permit was issued and no advertising sign is permitted as-of-right in the current C6-4 zoning district pursuant to ZR § 32-63; and

WHEREAS, DOB states that the Appellant cites to ZR § 42-58 but does not make an argument that the Upper Sign should be granted non-conforming use status pursuant to ZR § 42-58 and any such future claim that the Upper Sign should be granted non-conforming use status is without merit; and

WHEREAS, DOB cites to ZR § 42-58, which states in pertinent part:

A sign erected prior to December 13, 2000, shall have non-conforming use status pursuant to Section 52-82 (Non-Conforming Signs Other Than Advertising Signs) or 52-83 (Non-Conforming Advertising Signs) with respect to the extent of the degree of non-conformity of such sign as of such date with the provisions of Section 42-52, 42-53, and 42-54, where such sign shall have been issued a permit by the Department of Buildings on or before such date; and

WHEREAS, DOB concludes that the Upper Sign’s August 4, 2000 permit was unlawful and improperly issued since the proposed sign did not comply with the surface area requirements of then- ZR § 42-53; therefore, the sign cannot be granted non-conforming use status under ZR § 42-58; and

CONCLUSION

WHEREAS, the Board agrees with DOB that the Signs are within view of the Lincoln Tunnel approaches and thus subject to the restrictions of ZR § 42-55; and

WHEREAS, on the analysis of the meaning of “within view,” the Board finds that the Appellant’s assertions about intent are misplaced and the Appellant’s interpretation of the meaning of the term is strained; and

WHEREAS, the Board notes that (1) there is not any indication in the text that the intended audience for signs is relevant, and (2) the plain meaning of “within view” is a more objective and less-nuanced concept than the Appellant

proposes; and

WHEREAS, the Board finds that regardless of whether travelers on the approaches were the intended audience for the Signs, if they are within the travelers’ view, ZR § 42-55 must apply; and

WHEREAS, the Board finds that the goal of the statute was to regulate signs within view of arterial highways and that enforcement is best-served by applying an objective standard, rather than a subjective standard involving a scale of the levels of visibility; and

WHEREAS, the Board finds that the Appellant’s approach and emphasis on discernibility of a message is untenable due to the individuality associated both with the sense of sight and the amount of time it takes to communicate a message as well as the broad range of advertising messages, which can include large logos and illustrations or smaller text; and

WHEREAS, similarly, the Board is not persuaded that obstructions (like trees and walls) along the arterial highway at certain points along the traveler’s path render the Signs outside of view; and

WHEREAS, the Board notes that the “fleeting moment” the Appellant claims the Signs can be viewed, first recognizes that they can be viewed and secondly, introduces yet another level of subjectivity as that “fleeting moment” could be longer in instances when traffic has slowed or stopped; and

WHEREAS, the Board notes that a representative of the sign company, in a letter to DOB dated December 11, 2011 stated “[w]hile [the Signs] may also be within view from an entrance to the Lincoln Tunnel, that was not the intended target of the sign;” and

WHEREAS, as to the Appellant’s contention that DOB has inequitably changed its position on the meaning of “within view,” the Board notes that there is no indication that DOB formerly had a different interpretation of “within view,” or that it relies on the definition set forth in Rule 49; but, even if DOB did change its position, it has the ability to correct erroneous determinations; and

WHEREAS, the Board declines to take a position on the fairness of DOB’s rejection of the registration after erroneously issuing the 2000 permits, but it does note that the Appellant has enjoyed the benefit of the 1,200-sq.-ft. Signs since that time; and

WHEREAS, the Board also declines to take a position on whether the Upper Sign could be established as a legal non-conforming sign because that alternate relief was not at issue in the appeal; and

WHEREAS, accordingly, the Board finds that DOB appropriately applied ZR § 42-55 to the Signs and neither is permitted; and

WHEREAS, therefore, the Board finds that DOB properly rejected the Appellant’s registration of the Signs.

Therefore it is resolved that the subject appeal, seeking a reversal of the Final Determinations of the Department of Buildings, dated March 12, 2012, is hereby denied.

Adopted by the Board of Standards and Appeals,

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December 11, 2012.

117-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Van Wyck Expressway & Atlantic Avenue, Block 9989, Lot 70. 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 January 29, 2013, at 10 A.M., for decision, hearing closed.

118-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – BQE & Queens Boulevard, Borough of Queens.

COMMUNITY BOARD #2Q

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

119-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – BQE & 31st Street, Block 1137, Lot 22. Borough of Queens.

COMMUNITY BOARD #1Q

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 10 A.M., for decision, hearing closed.

120-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – BQE & 31st Avenue, Block 1137, Lot 22. Borough of Queens.

COMMUNITY BOARD #1Q

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 10 A.M., for decision, hearing closed.

121-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeals challenging the Department of Building’s determination that signs located on railroad properties are subject to New York City signage regulation. R4, M1-1 zoning district.

PREMISES AFFECTED – BQE & 32nd Avenue, Block 1137, Lot 22. Borough of Queens.

COMMUNITY BOARD #1Q

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 10 A.M., for decision, hearing closed.

122-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

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SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – BQE & 32nd Avenue, Block 1137, Lot 22. Borough of Queens.

COMMUNITY BOARD #1Q

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 10 A.M., for decision, hearing closed.

123-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – BQE & 34th Avenue, Block 1255, Lot 1. Borough of Queens.

COMMUNITY BOARD #2Q

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

124-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – BQE & 34th Avenue, Block 1255, Lot 1. Borough of Queens

COMMUNITY BOARD #2Q

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

125-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Long Island Expressway, East of 25th Street, Block 110, Lot 1. Borough of Queens.

COMMUNITY BOARD #2Q

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

126-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Long Island Expressway, East of 25th Street, Block 110, Lot 1. Borough of Queens.

COMMUNITY BOARD #2Q

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

127-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Northern Boulevard and BQE, Block 1163, Lot 1. Borough of Queens.

COMMUNITY BOARD #2Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin,

MINUTES

Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

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

128-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Queens Boulevard and BQE, Block 1343, Lot 129 & 139, Borough of Queens.

COMMUNITY BOARD #2Q

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

129-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Queens Boulevard and 74th Street, Block 2448, Lot 213. Borough of Queens.

COMMUNITY BOARD #4Q

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 10 A.M., for decision, hearing closed.

130-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that

multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Skillman Avenue, b/t 28th and 29th Street, Block 72, Lot 250. Borough of Queens.

COMMUNITY BOARD #2Q

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

131-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Van Wyck Expressway n/o Roosevelt Avenue, Block 1833, Lot 230. Borough of Queens.

COMMUNITY BOARD #1Q

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 10 A.M., for decision, hearing closed.

132-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Van Wyck Expressway n/o Roosevelt Avenue, Block 1833, Lot 230. Borough of Queens.

COMMUNITY BOARD #1Q

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 10 A.M., for decision, hearing closed.

MINUTES

133-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Woodhaven Boulevard N/O Elliot Avenue, Block 3101, Lot 9. Borough of Queens.

COMMUNITY BOARD #6Q

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 10 A.M., for decision, hearing closed.

134-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Long Island Expressway & 74th Street, Block 2814, Lot 4. Borough of Queens.

COMMUNITY BOARD #5Q

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 10 A.M., for decision, hearing closed.

135-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Long Island Expressway & 74th Street, Block 2814, Lot 4. Borough of Queens.

COMMUNITY BOARD #5Q

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 10 A.M., for decision, hearing closed.

171-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Cross Bronx Expressway E/O Sheridan Expressway. Borough of Bronx.

COMMUNITY BOARD #9BX

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 10 A.M., for decision, hearing closed.

172-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Cross Bronx Expressway & Bronx River, Block 3904, Lot 1. Borough of Bronx.

COMMUNITY BOARD #6BX

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 10 A.M., for decision, hearing closed.

173-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that

MINUTES

multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Cross Bronx Expressway E/O Bronx River & Sheridan Expressway, Block 3904, Lot 1. Borough of Bronx.

COMMUNITY BOARD #6BX

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 10 A.M., for decision, hearing closed.

174-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – I-95 & Hutchinson Parkway, Block 4411, Lot 1, Borough of Bronx.

COMMUNITY BOARD #11BX

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 10 A.M., for decision, hearing closed.

175-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – I-95 & Hutchinson Parkway, Block 4411, Lot 1, Borough of Bronx.

COMMUNITY BOARD #11BX

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 10 A.M., for decision, hearing closed.

176-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Bruckner Boulevard & Hunts Point Avenue, Block 2734, Lot 30. Borough of Bronx.

COMMUNITY BOARD #2BX

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 10 A.M., for decision, hearing closed.

177-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Bruckner Boulevard & Hunts Point Avenue, Block 2734, Lot 30. Borough of Bronx.

COMMUNITY BOARD #2BX

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 10 A.M., for decision, hearing closed.

178-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Bruckner Expressway N/O 156th Street, Block 2730, Lot 101. Borough of Bronx.

COMMUNITY BOARD #2BX

THE VOTE TO CLOSE HEARING –

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

MINUTES

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

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

179-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Bruckner Expressway N/O 156th Street, Block 2730, Lot 101. Borough of Bronx.

COMMUNITY BOARD #2BX

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 10 A.M., for decision, hearing closed.

180-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Major Deegan Expressway S/O Van Cortland, Block 3269, Lot 70. Borough of Bronx.

COMMUNITY BOARD #7BX

APPEARANCES –

For Applicant: Ross Markowitz.

For Opposition: Mark Davis, Department of Buildings.

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 10 A.M., for decision, hearing closed.

273-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Major Deegan @ 167th Street, 2539, Lot 502. Borough of Bronx.

COMMUNITY BOARD #4BX

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 10 A.M., for decision, hearing closed.

274-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Major Deegan @ 167th Street, Block 2539, Lot 502. Borough of Bronx.

COMMUNITY BOARD #4BX

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 10 A.M., for decision, hearing closed.

182-12-A

APPLICANT – Davidoff Hatcher & Citron LLP, for Lamar Advertising of Penn LLC, lessee.

OWNER OF PREMISES – Metropolitan Transportation Authority.

SUBJECT – Application June 11, 2012 – Appeal challenging Department of Buildings’ determination that a sign located on railroad property is subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Major Deegan Expressway and 161st Street. Borough of Bronx.

COMMUNITY BOARD #4BX

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 10 A.M., for decision, hearing closed.

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183-12-A

APPLICANT – Herrick, Feinstein, LLP by David Feuerstein, Esq. for Clear Channel Outdoor, Inc., lessee.

OWNER OF PREMISES – Department of Ports and Trade.

SUBJECT – Application June 11, 2012 – Appeal challenging Department of Buildings' determination that a sign located on railroad property is subject to the NYC Zoning Resolution.

PREMISES AFFECTED – 476 Exterior Street, E. 149th Street to North Major Deegan Expressway to East Harlem River to West, Block 02349, Lot 0112, Borough of Bronx.

COMMUNITY BOARD #1BX

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 10 A.M., for decision, hearing closed.

184-12-A

APPLICANT – Herrick, Feinstein, LLP by David Feuerstein, Esq. for Clear Channel Outdoor, Inc., lessee.

OWNER OF PREMISES – Department of Ports and Trade.

SUBJECT – Application June 11, 2012 – Appeal challenging Department of Buildings' determination that a sign located on railroad property is subject to the NYC Zoning Resolution.

PREMISES AFFECTED – 477 Exterior Street, E. 149th Street to North Major Deegan Expressway to East Harlem River to West, Block 02349, Lot 0112, Borough of Bronx.

COMMUNITY BOARD #1BX

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 10 A.M., for decision, hearing closed.

185-12-A

APPLICANT – Herrick, Feinstein, LLP by David Feuerstein, Esq. for Clear Channel Outdoor, Inc., lessee.

OWNER OF PREMISES – Department of Ports and Trade.

SUBJECT – Application June 11, 2012 – Appeal challenging Department of Buildings' determination that a sign located on railroad property is subject to the NYC Zoning Resolution.

PREMISES AFFECTED – 475 Exterior Street, E. 149th Street to North Major Deegan Expressway to East Harlem River to West, Block 02349, Lot 0112, Borough of Bronx.

COMMUNITY BOARD #1BX

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 10 A.M., for decision, hearing closed.

186-12-A

APPLICANT – Herrick, Feinstein, LLP by David Feuerstein, Esq. for Clear Channel Outdoor, Inc., lessee.

OWNER OF PREMISES – MTA

SUBJECT – Application June 11, 2012 – Appeal challenging Department of Buildings' determination that a sign located on railroad property is subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Major Deegan Expressway, Borough of Bronx.

COMMUNITY BOARD #1BX

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 10 A.M., for decision, hearing closed.

187-12-A

APPLICANT – Herrick, Feinstein, LLP by David Feuerstein, Esq. for Clear Channel Outdoor, Inc., lessee.

OWNER OF PREMISES – MTA

SUBJECT – Application June 11, 2012 – Appeal challenging Department of Buildings' determination that a sign located on railroad property is subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Major Deegan Expressway, Borough of Bronx.

COMMUNITY BOARD #1BX

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 10 A.M., for decision, hearing closed.

188-12-A

APPLICANT – Herrick, Feinstein, LLP by David Feuerstein, Esq. for Clear Channel Outdoor, Inc., lessee.

OWNER OF PREMISES – MTA

SUBJECT – Application June 11, 2012 – Appeal challenging Department of Buildings' determination that a sign located on railroad property is subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Major Deegan Expressway, Borough of Bronx.

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COMMUNITY BOARD #1BX

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 10 A.M., for decision, hearing closed.

162-12-A

APPLICANT – Davidoff Hutcher & Citron, LLP, for CBS Outdoor, Inc.

OWNER OF PREMISES: Winston Network, Inc.

SUBJECT – Application May 31, 2012 – Appeal from Department of Buildings' determination that sign is not entitled to continue non-conforming use status as advertising sign, pursuant to Z.R. §52-731. R4 zoning district.

PREMISES AFFECTED – 49-21 Astoria Boulevard North, northwest corner of Astoria Boulevard North and Hazen Street, Block 1000, Lot 19, Borough of Queens.

COMMUNITY BOARD #1Q

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 February 5, 2013, at 10 A.M., for decision, hearing closed.

167-12-A

APPLICANT – Davidoff Hutcher & Citron, LLP, for Lamar Advertising of Penn LLC.

OWNER OF PREMISES: Flash Inn Inc. c/o Danny Miranda

SUBJECT – Application June 7, 2012 – Appeal from Department of Buildings' determination that sign is not entitled to continued non-conforming use status as advertising sign, pursuant to Z.R. §52-731. R7-2 zoning district.

PREMISES AFFECTED – 101-07 Macombs Place, northwest corner of Macombs Place and West 154th Street, Block 2040, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #10M

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 February 5, 2013, at 10 A.M., for decision, hearing closed.

169-12-A & 170-12-A

APPLICANT – Davidoff Hutcher & Citron LLP, for Lamar Advertising of Penn LLC.

OWNER OF PREMISES – 26-28 Market Street, Inc.

SUBJECT – Application June 7, 2012 – Appeal from Department of Buildings' determination that signs are not entitled to continued non-conforming use status as advertising signs, pursuant to Z.R. §52-731. R7-2 zoning district.

PREMISES AFFECTED – 24-28 Market Street, southeast intersection of Market Street and Henry Street, Block 275, Lot 20, Borough of Manhattan.

COMMUNITY BOARD #3M

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to February 5, 2013, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

ZONING CALENDAR

160-11-BZ

CEQR #12-BSA-032M

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

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated August 7, 2012 citing on Department of Buildings Application No. 120703382, reads in pertinent part:

Proposed construction in the rear yard at the level of the cellar increases degree of existing non-compliance with lot coverage requirements of ZR

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24-11 contrary to ZR 54-31.

Proposed construction in the rear yard at the level of cellar is not a permitted obstruction in required rear yard pursuant to ZR 24-33 and therefore increases degree of existing non-compliance with rear yard requirements of ZR 24-36 contrary to ZR 54-31.

Proposed enlargement increases degree of existing non-compliance with maximum building height limitation of 75 feet of ZR 23-633, rear yard setback requirement of 24-552 and special height limitations of 60 feet of ZR 24-591 in LH-1A District contrary to ZR 54-31; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R8B zoning district within Limited Height District 1A (LH-1A) and the Upper East Side Historic District, an enlargement to an existing community facility building, which does not comply with lot coverage, rear setback, rear yard, and height regulations contrary to ZR §§ 24-11, 24-33, 24-36, 23-633, 24-552, 24-591, and 54-31; 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 December 11, 2012; and

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

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

WHEREAS, the application is brought on behalf of the Jewish National Fund (“JNF”), a nonprofit institution; and

WHEREAS, the site is located on the south side of East 69th Street, between Park Avenue and Madison Avenue; and

WHEREAS, the site has a width of 50 feet, a depth of 104.5 feet, and a lot area of approximately 5,020 sq. ft.; and

WHEREAS, the site is occupied by a five-story building (the “Main Building”) and a four-story annex (the “Annex”) (together, the “Building”); and

WHEREAS, the Main Building was constructed in 1919-1920 as a single-family home; and

WHEREAS, on October 26, 1954, the Board granted an appeal pursuant to BSA Cal. No. 552-54-A to allow for the Main Building to be occupied by community facility use with certain conditions that did not comply with the Building Code; the applicant represents that the status of the building as non-fireproof construction is the only condition associated with the 1954 grant that is still applicable; and

WHEREAS, on July 24, 1962, the Board granted a variance pursuant to BSA Cal. No. 323-62-BZ to allow for the construction of the Annex, which did not comply with lot coverage regulations; and

WHEREAS, the JNF has occupied the entire building for community facility (Use Group 4) purposes for more than 55 years; and

WHEREAS, the Building has a floor area of approximately 18,153 sq. ft. (3.8 FAR); and

WHEREAS, the building serves as JNF’s headquarters and is occupied by administrative services, and meeting and educational space; and

WHEREAS, the Main Building is occupied by: (1) a lobby, gallery, and boardroom on the first floor; (2) a superintendent’s office on the mezzanine; (3) offices, a gallery, and conference rooms on the second floor; (4) offices and a conference room on the third floor; and (5) offices on the fourth and fifth floors; and

WHEREAS, the Annex is occupied by: (1) offices on the first floor; (2) an office and a conference room on the second floor; and (3) offices on the third and fourth floors; and

WHEREAS, the applicant represents that the building complies with the regulations of the Zoning Resolution with the exception of (1) the rear yard with a depth of 18’-5 ½” (a rear yard with a minimum depth of 30’-0” is required); (2) a building height of 81’-11” (60’-0” is the maximum permitted height); and (3) a lot coverage of 75.5 percent (70 percent lot coverage is the maximum permitted); and

WHEREAS, the Building does not contain a means of egress which complies with current Building Code requirements; and

WHEREAS, the applicant represents that the variance request is necessitated by unique conditions of the site that create a hardship, specifically: (1) the constraints of the existing Building; and (2) the programmatic needs of the JNF; and

WHEREAS, as to the constraints of the existing building, as noted above, the building was built as a single-family home approximately 90 years ago, but has been operated as a community facility for more than 55 years; and

WHEREAS, the applicant identifies the following goals of the proposal: (1) to create an ADA-accessible means of egress, two new stairwells and an elevator within the existing building; (2) to improve the safety and security; and (3) to update the Building’s infrastructure, including the heating and cooling system; and

WHEREAS, the applicant notes that, due to several existing non-complying conditions, it is unable to feasibly accommodate its needs within an as-of-right building envelope, while complying with all zoning requirements; and

WHEREAS, the applicant proposed to recapture some of the 1,947 sq. ft. of floor area lost as a result of the new means of egress by enclosing the Main Building’s fourth floor at the fifth floor and enclosing the existing light well, adding 922 sq. ft. of floor area; and

WHEREAS, the applicant states that the proposed relocation of floor area will allow JNF to better accommodate its existing workforce; and

WHEREAS, the applicant states that the proposal will also add 281 sq. ft. of floor space in the rear of the cellar, which will enable JNF to locate all of its public service programs in the cellar; and

WHEREAS, the applicant states that the Building’s existing mechanical room space is inadequate to accommodate a new energy-efficient gas-fired chiller/heater required to heat

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and cool the Building; and

WHEREAS, the applicant states that the height of the new mechanical bulkhead will be the same as the existing 81'-11" bulkhead but will occupy an additional 141 sq. ft. of surface area as it will be located in space previously occupied by a skylight; and

WHEREAS, the applicant also proposes to demolish the Annex and rebuild it upon its existing footprint to a height of 37'-8" (4'-1 1/2" lower in height than the existing); and

WHEREAS, the applicant states that the reconstruction of the Annex will align the floor levels with the Main Building and allow it to be ADA-accessible; and

WHEREAS, JNF also proposes to refurbish the façade of the Main Building and upgrade the current mechanical plumbing; and

WHEREAS, the applicant states that the variance is required to address the following conditions (1) the enclosure of the fourth floor roof at the fifth floor will increase the degree of non-compliance with height and rear yard regulations, which require a rear yard set back with a depth of 10'-0"; (2) the height of the new mechanical bulkhead will be the same as the existing bulkhead at 81'-11", but will contain an additional 141 sq. ft. of surface area, thereby increasing the degree of non-compliance with height regulations; and (3) the addition of 281 sq. ft. of space in the cellar will create a vertical penetration in the rear yard of 2'-6", increasing the degree of non-compliance with rear yard and lot coverage regulations; and

WHEREAS, the applicant states that the unique conditions inherent in the site including (1) the functional obsolescence of the Building; (2) the absence of ADA-accessibility; (3) inefficient energy infrastructure; and (4) the adoption of the R8B/LH1-A zoning district regulations which limit the ability to modify the Building; and

WHEREAS, the applicant also asserts that by its variance grant under BSA Cal. No. 323-62-BZ, the Board recognized that the site had unique conditions which create practical difficulties and unnecessary hardship in strictly complying with the bulk regulations of the ZR; and

WHEREAS, the applicant asserts that the obsolescence of the building precludes it from improving and modernizing the Building to include (1) an ADA-accessible means of egress without recapturing the floor area used for the new egress space, by enclosing the fourth floor roof at the fifth floor; (2) maximized security and separation between public and private work space within the building; and (3) a modern energy efficient HVAC system; and

WHEREAS, the applicant states that the Building's current stairs and elevator are not ADA-compliant and that in order to be available to the entire community, it must renovate the Building to contain two means of egress and an elevator which complies with ADA-accessibility requirements; and

WHEREAS, currently, the only means of egress is in the Main Building and it has two steps to enter the building into the main lobby and then another three steps to access the narrow non-ADA compliant elevator; and

WHEREAS, further, the applicant states that the stair

landings of the Main Building and the stair landings of the Annex above the first floor are at different elevations, which requires additional assistance to access the Annex; and

WHEREAS, the applicant states that its many educational and community events are not truly available to those for whom climbing stairs is a problem; and

WHEREAS, the applicant notes that 1,947 sq. ft. of floor area will be lost due to the creation of the new egress; and

WHEREAS, the applicant asserts that the only place within the building envelope to recapture the lost space is at the fourth floor roof at the fifth floor of the Main Building, where the applicant proposes to enclose and recapture 647 sq. ft. of floor area; and

WHEREAS, as to the separation of uses, the applicant states that the United States Department of Homeland Security has identified JNF as a potential target of terrorist organizations and has issued grants for security cameras and blast mitigation for windows; JNF further seeks to secure the Building by limiting the public's access to the Building to the cellar and not to allow access to the upper floors; and

WHEREAS, in order to accomplish this goal, the applicant states that it must make the rear yard ADA-accessible from the cellar, which requires that the roof of the cellar at the rear of the Main Building be vertically extended 2'-6" into the rear yard, thus creating a new non-compliance with an obstruction of that height in the required rear yard; and

WHEREAS, the applicant represents that the Building's existing mechanical room space is inadequate to accommodate the installation of a new energy efficient gas fired chiller/heater equipment required to heat and cool the Building and that a new larger mechanical bulkhead must be constructed; and

WHEREAS, the applicant states that the height of the new mechanical bulkhead will match the height of the existing bulkhead at 81'-11", but there will be an increase in the surface area of the bulkhead from 187 sq. ft. to 328 sq. ft. by incorporating a space previously occupied by an existing skylight; and

WHEREAS, the applicant states that a variance is required because the increase in surface area will increase the degree of non-compliance with height regulations; and

WHEREAS, accordingly, based upon the above, the Board finds that the limitations and inefficiencies of the Building, when considered in conjunction with the programmatic needs of JNF, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the JNF is a non-profit institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

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

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WHEREAS, the applicant states that the surrounding area is primarily characterized by schools, offices, and multiple dwelling buildings, with many buildings occupied by ground floor retail use; and

WHEREAS, the applicant submitted a Certificate of Appropriateness from the Landmarks Preservation Commission, dated November 19, 2012, granting its approval for the proposal; and

WHEREAS, the applicant states that since 1951, JNF has occupied the site with Use Group 4 community facility use within its national headquarters and JNF does not propose to change its longstanding conforming use at the site; and

WHEREAS, as to the height, the applicant states that the proposed enclosure of the fourth floor roof at the fifth floor will align with the rear wall of the Main Building; the enlargement of the cellar will result in a vertical obstruction in the required rear yard only to a height of 2'-6"; and the mechanical room will be at the same height and will only be 141 sq. ft. larger than the existing mechanical room; and

WHEREAS, the applicant notes that the increase in lot coverage is limited to the vertical elevation of the cellar and will not be visible from the street; and

WHEREAS, the applicant notes that the surrounding rear yard conditions include one open rear yard, one building without lot line windows, but built to the property line, and one site with a shed located in the rear yard; and

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

WHEREAS, the applicant states that the hardship was not self-created and that no complying development that would meet the programmatic needs of the JNF 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 represents that the requested waivers are the minimum necessary to accommodate the current and projected programmatic needs; and

WHEREAS, the Board notes that the applicant will locate the majority of the enlargement within the existing building envelope so as to minimize any impact; and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary to allow the JNF to fulfill 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 a Type I action pursuant to Sections 617.5(c) of 6 NYCRR; and

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") CEQR No. 12BSA032M,

dated October 7, 2011; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a negative declaration determination, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, within an R8B zoning district within Limited Height District 1A and the Upper East Side Historic District, an enlargement to an existing community facility building, which does not comply with lot coverage, rear setback, rear yard, and height regulations contrary to ZR §§ 24-11, 24-33, 24-36, 23,633, 24-552, 24-591, and 54-31, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 10, 2012"—sixteen (16) sheets; and *on further condition*:

THAT the proposal will be constructed in accordance with the BSA-approved plans;

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

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

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

Adopted by the Board of Standards and Appeals, December 11, 2012.

104-12-BZ

CEQR #12-BSA-117Q

APPLICANT – Sheldon Lobel, P.C., for Paula Jacob, owner.

SUBJECT – Application April 12, 2012 – Re-instatement (§11-411) of a previously approved variance which expired on May 20, 2000 which permitted accessory retail parking on the R5 portion of a zoning lot; Extension of Time to obtain a Certificate of Occupancy which expired on April 11, 1994; Waiver of the Rules. C2-4/R6A and R5 zoning district.

PREMISES AFFECTED – 178-21 & 179-19 Hillside Avenue, northside of Hillside Avenue between 178th Street and Midland Parkway, Block 9937, Lot 60, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,

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Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening, a reinstatement of a prior Board approval for accessory retail parking lot on the residential portion of a zoning lot split by district boundaries, pursuant to ZR § 11-411, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on July 10, 2012, after due notice by publication in the *City Record*, with continued hearings on September 25, 2012 and October 30, 2012, and then to decision on December 11, 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 8, Queens, recommends approval of this application; and

WHEREAS, the premises is located on the north side of Hillside Avenue between 178th Street and Midland Parkway, partially within a C2-4 (R6A) zoning district and partially within an R5 zoning district; and

WHEREAS, the site has 230 feet of frontage along Hillside Avenue, a maximum lot depth of 144 feet, and a total lot area of 31,651 sq. ft.; and

WHEREAS, the majority of the site is located within the C2-4 (R6A) zoning district, which runs parallel to Hillside Avenue for a depth of 100 feet, and the rear portion of the site is within the R5 zoning district; and

WHEREAS, the site consists of a one-story commercial retail building currently divided into ten separate stores, with a commercial parking lot with 40 parking spaces at the rear of the building in the R5 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 24, 1951 when, under BSA Cal. No. 821-50-BZ, the Board granted a variance to permit accessory commercial parking in the residential portion of the lot, for a term of five years; and

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

WHEREAS, on December 11, 1990, the Board granted a ten-year extension of term, which expired on May 20, 2000; and

WHEREAS, most recently, on April 19, 1994, the Board granted an extension of time to obtain a certificate of occupancy, which expired on April 11, 1995; and

WHEREAS, the term of the variance has not been extended since its expiration on May 20, 2000; and

WHEREAS, the applicant represents, however, that the use of the residential portion of the parking lot for accessory commercial parking was continuous since the time of the initial grant; and

WHEREAS, accordingly, the applicant now proposes to reinstate the prior grant; 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, the applicant also requests an extension of time to obtain a certificate of occupancy; and

WHEREAS, at hearing, the Board raised concerns about the maintenance of the site and the compliance of the signage with underlying district regulations; and

WHEREAS, in response, the applicant submitted photographs reflecting that the graffiti on the rear retaining wall has been painted over, opaque screening has been installed on the chain-link fence adjoining the residential property to the rear of the site, and a new drainage system has been installed for the parking lot; and

WHEREAS, the applicant also submitted a revised site plan reflecting a new parking lot striping plan which provides additional space for maneuverability, creates a space for the placement of the site's refuse containers, and reduces the number of parking spaces on the site from 40 to 31; and

WHEREAS, the applicant also submitted a signage chart reflecting that the signage on eight of the building's ten storefronts comply with the underlying signage regulations, and of the remaining two retail businesses one recently vacated the building and the applicant will have the signage removed, and the owner is working with the final business to reduce the size of its existing sign or obtain a new sign that complies with district regulations; and

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 11-411 to permit, partially within a C2-4 (R6A) zoning district and partially within an R5 zoning district, the reinstatement of a prior Board approval for accessory retail parking lot on the residential portion of a zoning lot split by district boundaries, for a term of ten years from the date of this grant, to expire on December 11, 2022, and an extension of time to obtain a certificate of occupancy to December 11, 2013; *on condition* that any and all work will substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received December 5, 2012"-(1) sheet and "Received December 11, 2012"-(1) sheet; and *on further condition*:

THAT the term of this grant will be for ten years, to expire on December 11, 2022;

THAT all signage will comply with C2 district regulations;

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

THAT a new certificate of occupancy will be obtained by December 11, 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

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the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

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

THAT 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. 6463/1950)

Adopted by the Board of Standards and Appeals, December 11, 2012.

112-12-BZ

CEQR #12-BSA-122R

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Raymond B. and Colleen Olsen, owners.

SUBJECT – Application April 23, 2012 – Special Permit (§73-621) for the enlargement of an existing one-family dwelling, contrary to open space regulations (§23-141). R2 zoning district.

PREMISES AFFECTED – 244 Demorest Avenue, southwest corner of intersection of Demorest Avenue and Leonard Avenue, Block 444, Lot 15, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated March 29, 2012, acting on Department of Buildings Application No. 5200874847, reads in pertinent part:

Proposed enlargement for one family in an R2 zoning district will result in decreasing the required open space ratio as per ZR 23-141; and

WHEREAS, this is an application under ZR §§ 73-621 and 73-03, to permit, in an R2 zoning district, the proposed enlargement to a single-family home, which does not comply with the zoning requirement for open space ratio, contrary to ZR § 23-141; and

WHEREAS, a public hearing was held on this application on October 30, 2012 after due notice by publication in *The City Record*, and then to decision on December 11, 2012; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

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

WHEREAS, the subject site is located on the southwest corner of Demorest Avenue and Leonard Avenue,

within an R2 zoning district; and

WHEREAS, the subject site has 40 feet of frontage along Demorest Avenue, 75 feet of frontage along Leonard Avenue, and a total lot area of 3,000 sq. ft.; and

WHEREAS, the site is occupied by a one-story single-family home with a floor area of 1,078 sq. ft. (0.36 FAR); and

WHEREAS, the applicant seeks an increase in the floor area from 1,078 sq. ft. (0.36 FAR) to 1,423 sq. ft. (0.47 FAR); the maximum floor area permitted is 1,500 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 135 percent (150 percent is the minimum required); and

WHEREAS, as a threshold matter, in R1-2 zoning districts, ZR § 73-621 is only available to enlarge homes that existed on December 15, 1961; and

WHEREAS, in support of the finding that the subject home was constructed prior to December 15, 1961, the applicant submitted a certificate of occupancy for the home issued on October 27, 1960; and

WHEREAS, the Board has reviewed the evidence and accepts that the home existed in its pre-enlarged state prior to December 15, 1961; and

WHEREAS, ZR § 73-621 permits the enlargement of a residential building such as the subject single-family home if the following requirements are met: (1) the proposed open space ratio is at least 90 percent of the required open space; (2) in districts where there are lot coverage limits, the proposed lot coverage does not exceed 110 percent of the maximum permitted; and (3) the proposed floor area ratio does not exceed 110 percent of the maximum permitted; and

WHEREAS, as to the open space, the applicant submitted plans reflecting that the proposed reduction in the open space ratio results in an open space ratio that is 90 percent of the minimum required; and

WHEREAS, as to the lot coverage and floor area ratio, the applicant notes that the proposed home's lot coverage and floor area ratio will comply with the underlying R2 district regulations; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 73-621; 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

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the evidence in the record supports the findings required to be made under ZR §§ 73-621 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for open space ratio, contrary to ZR § 23-141; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received September 29, 2012"–(8) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a floor area of 1,423 sq. ft. (0.47 FAR) and a minimum open space ratio of 135 percent, as illustrated on the BSA-approved plans;

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

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

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

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

Adopted by the Board of Standards and Appeals, December 11, 2012.

137-12-BZ

CEQR #12-BSA-126M

APPLICANT – Fried Frank Harris Shriver & Jacobson, LLP, for Haug Properties, LLC, owner; HSS Properties Corporation, lessee.

SUBJECT – Application April 27, 2012 – Variance (§72-21) to allow for an ambulatory diagnostic and treatment health care facility (*Hospital for Special Surgery*), contrary to rear yard equivalent, use, height and setback, floor area, and parking spaces (§§42-12, 43-122, 43-23, 43-28, 43-44, and 13-133) regulations. M1-4/M3-2 zoning districts.

PREMISES AFFECTED – 515-523 East 73rd Street, Block 1485, Lot 11, 14, 40, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated March 28, 2012, acting on Department of Buildings Application No. 120969639, reads in pertinent part:

1. Proposed floor area ratio for a community facility in M1-4 zoning district portion of the lot exceeds 6.5 FAR and is contrary to ZR 43-122. The community facility use does not have a maximum FAR in M3-2 portion of the lot.
2. The proposed ambulatory diagnostic or treatment health care facility located in M3-2 zoning portion of the lot is not a permitted use as per ZR 42-12 (for the zoning lot not existing prior to 1961).
3. Proposed structure 75 feet in height, along the street line of East 73rd Street is not a permitted obstruction in the rear yard equivalent, contrary to ZR 43-28(b) and ZR 43-23(b).
4. Proposed 75 feet in height structure, along the street line of East 73rd Street is not permitted in the Depth of Optional Front Open Area of 15 feet, for the alternate front setback, as per ZR 43-44.
5. Proposed accessory parking for the community facility in Community Board No. 8 in Manhattan exceeds 1 space per 4,000 square feet of floor area, and is contrary to ZR 13-133; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within an M1-4 zoning district and partially within an M3-2 zoning district, the construction of a new community facility building that does not comply with zoning regulations for floor area, rear yard, height and setback, parking, and use, contrary to ZR §§ 42-12, 43-122, 43-23, 43-28, 43-44, and 13-133; and

WHEREAS, a public hearing was held on this application on September 25, 2012, after due notice by publication in the *City Record*, and then to decision on December 11, 2012; and

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

WHEREAS, Community Board 8, Manhattan, recommends approval of the application; and

WHEREAS, an adjacent neighbor provided testimony citing concerns about the potential impacts of traffic and construction on the site and the surrounding area; and

WHEREAS, the application is brought on behalf of the Hospital for Special Surgery (the "Hospital"), a non-profit hospital, research, and educational facility; and

WHEREAS, the subject zoning lot is located on the a through block with frontage on East 73rd Street and East 74th

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Street, between the FDR Drive and York Avenue; and

WHEREAS, the zoning lot has a lot area of 20,434 sq. ft., of which 19,863 square feet is located in an M1-4 zoning district and a sliver of 571 square feet (5.59 feet in width by 102.17 feet in depth) is located in an M3-2 zoning district; and

WHEREAS, the site is an irregular Z-shaped lot that consists of a through lot portion in the center and one small interior lot portion on each street frontage; the through lot portion measures 75 feet in width by 204 feet in depth, the East 73rd Street interior lot, to the east of the through lot portion, measures 25 feet in width by 102 feet in depth, and the East 74th Street interior lot, to the west of the through lot portion, also measures 25 feet in width by 102 feet in depth; and

WHEREAS, there are currently three buildings on the site: a one-story building at 515-521 East 73rd Street, a two-story building at 512-518 East 74th Street, and a three-story building at 523 East 73rd Street; 512-518 East 74th Street/517-519 East 73rd Street is currently occupied by an automotive repair garage; 523 East 73rd Street is occupied by an orthopedic rehabilitation device company; the existing buildings will be demolished to allow for the construction of the proposed ambulatory care facility; and

WHEREAS, the proposed building is 13 stories (including rooftop mechanical floor), with a total floor area of 163,472 sq. ft., a street wall height of 60 feet along East 73rd Street and 131.5 feet along East 74th Street, and a total height of 185.5 feet (including a rooftop mechanical floor of 18 feet in height); and

WHEREAS, the applicant proposes the following uses: (1) the cellar level will be occupied by 98 accessory off-street parking; (2) the first floor will be occupied by the building entrance and main lobby and a through-block drive lane to allow drop-off and pick-up of patients, two loading berths to the west of the drive-through lane, and bulk oxygen storage to the east of the drive-through lane; (3) the second floor will be occupied by the post-anesthesia care unit along with a visitor waiting area; (4) floors three through five will be occupied by the operating floors, with six operating rooms per floor with ancillary facilities including pre-operative holding, orthopedic surgical equipment staging, support areas for doctors to perform post-surgery patient follow-up, and family waiting areas; (5) the sixth floor will be occupied by the building's sterilization facilities, as well as staff lockers and break areas; (6) the seventh floor will be occupied by mechanical and building support facilities; (7) the eighth floor will be occupied by MRI and X-Ray facilities, ten examination rooms, five physician office suites, and the proposed new teaching center; (8) the ninth floor will be occupied by rehabilitation, sports medicine, and occupational therapy departments; (9) the tenth through twelfth floors will be occupied by additional X-Ray facilities as well as physicians' offices; and (10) the thirteenth floor will be occupied by mechanical systems; and

WHEREAS, the applicant states that the proposed building will have the following non-compliances and non-conformance: (1) a floor area of 163,472 sq. ft. (8.00 FAR)

(129,110 sq. ft. and an FAR of 6.5 are the maximum permitted); (2) one rear yard equivalent with a depth of 20 feet along East 74th Street (two open areas with depths of 20 feet each or one open area with a depth of 40 feet is required); (3) on the East 73rd Street frontage, a setback with a depth of five feet is provided above the fifth floor (a setback of 15 feet is required along the frontage); (4) 98 parking spaces (a maximum of 41 parking spaces is permitted); and (5) Use Group 4 hospital use within the 571 sq. ft. of lot area in the M3-2 zoning district (Use Group 4 hospital use is not permitted within the M3-2 zoning district); and

WHEREAS, because the proposed building does not comply with the underlying zoning district regulations, the subject variance is requested; and

WHEREAS, the applicant represents that the variance request is necessitated by unique conditions of the site that create a hardship, specifically: (1) the site's irregular shape; (2) the high water table; (3) subsurface contamination; (4) the presence of bedrock close to the surface; and (5) the programmatic needs of Hospital; and

WHEREAS, the applicant states that the site is an irregular Z-shaped lot, which creates a hardship in accommodating the most efficient floor plates; and

WHEREAS, specifically, given the irregular shape, contiguous floor plates are limited to the through-block portion of the lot that is only 75 feet in width and pushing the floor plate back another 20 feet to have a rear yard equivalent and street line setback, given the physical condition of the lot, would make it impossible to accommodate the minimum of six operating rooms per floor, together with the required medical equipment staging areas and surgery support areas, that are necessary to meet the Hospital's programmatic needs; and

WHEREAS, the applicant represents that the irregular shape constrains the floorplates, which would be even further constrained if the required yards and setbacks were provided at both frontages; and

WHEREAS, the applicant represents that the subsurface conditions contribute to the practical difficulties and unnecessary hardship as the Hospital initially explored the construction of three full floors below grade to benefit from the exemption of cellar space from floor area calculations; the location of three floors below grade would have resulted in a building complying with the applicable floor area regulations; and

WHEREAS, the applicant states that due to the conditions outlined in its geotechnical report, it is not feasible to construct more than one level below grade due to the presence of groundwater beginning at approximately eight feet below grade in certain areas of the site and that such groundwater is known to be contaminated; and

WHEREAS, the applicant represents that any excavation to a level below the groundwater level requires dewatering of the site (i.e. pumping and disposal of the groundwater) as well as measures to protect the new development from water infiltration; and

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WHEREAS, further, with respect to dewatering, if groundwater is contaminated it must be treated prior to disposal, while uncontaminated groundwater can be pumped into municipal drainage systems, which results in additional expense; and

WHEREAS, further, the applicant states that there are underground fuel storage tanks at the Department of Sanitation property directly to the east of the site, and long-term leakage from such tanks may have caused groundwater contamination and additional contamination has been found at the Con Edison facility to the north of the site that may similarly have caused groundwater contamination; and

WHEREAS, the applicant states that a Phase II Subsurface Investigation confirms the presence of contaminants in groundwater samples taken from the site; and

WHEREAS, the applicant states that the single cellar level that is proposed will extend 14 feet below grade; because this is below the presence of groundwater, costly dewatering and decontamination measures will be required even for the single cellar level but, far less costly than to excavate further to allow for additional cellar levels, as originally considered; and

WHEREAS, the applicant notes that in addition to the need for dewatering, any below-grade levels will need to be waterproofed; and

WHEREAS, as to the bedrock, the applicant states that it is encountered as high as one foot below grade, with rock quantity increasing in depth, therefore construction of below grade levels requires substantial excavation; and

WHEREAS, the applicant notes that the proposed single cellar level would require excavation of a variety of materials, including fill, till, decomposed rock, and bedrock; further, the additional two below-grade levels that were initially considered would be located predominantly in bedrock, therefore substantial blasting would be required in order to construct the two additional below-grade levels that were initially considered; and

WHEREAS, the applicant represents that the intensive excavation (including drilling, chipping, hoe-ramming, and/or blasting) and associated shoring and foundation work required for such additional below-grade levels would substantially increase development costs for the and would not be financially feasible; and

WHEREAS, as to the Hospital's programmatic needs, as an academic medical center, it seeks a minimally efficient critical mass of operating rooms on each floor along with certain other critical functions that can only be accommodated in the proposed building; and

WHEREAS, the applicant requires uniform floorplates for efficiency in construction design and in use of the building; and

WHEREAS, the applicant states that these other critical needs include the following: (1) training facilities in the form of dedicated space for learning within the ambulatory care facility; (2) physician's offices to maximize physicians' efficiency and ability to offer care including

patient evaluation, surgery, research, and teaching; (3) diagnostic services which allow the opportunity to diagnose (through X-ray or MRI) in the same facility where the patient's doctor is located; (4) rehabilitation services for post-surgery intensive physical therapy programs; and (5) parking to help serve a patient population with mobility limitations and their family and caregivers; and

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

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

WHEREAS, furthermore, the Board finds that notwithstanding the Hospital's ability to rely on programmatic needs to satisfy the findings under ZR § 72-21(a), the applicant has provided sufficient evidence to establish that there are unique physical conditions on the site to justify the requested zoning relief; and

WHEREAS, accordingly, based upon the above, the Board finds that the unique physical conditions on the site, when considered in conjunction with the programmatic needs of the Hospital, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the applicant is a non-profit institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

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

WHEREAS, the applicant notes that the site is located in an M1-4 manufacturing zoning district between an R10 high density residential zoning district and an M3-2 heavy manufacturing district and that like the mix of residential and manufacturing zoning, the uses in the area are mixed between institutional, commercial, industrial and residential uses, with a large concentration of medical uses similar to the proposed ambulatory care facility; and

WHEREAS, the applicant asserts that the proposed hospital is consistent with the concentration of medical facilities in the surrounding area and complements the essential character of the neighborhood; and

WHEREAS, the applicant notes that the site is located between one and two blocks from the Hospital's existing medical facilities in the area, including the main hospital, the Caspary Research Building, the Belaire Building, and the

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Dana Center; and

WHEREAS, the applicant notes that additional medical facilities in the area include New York-Presbyterian Hospital on East 69th Street between First Avenue and York Avenue, Memorial Sloan-Kettering Hospital on York Avenue between East 67th and East 68th Streets, Memorial Sloan-Kettering Integrative Medicine Outpatient Center on First Avenue between East 74th and East 75th Streets, Gracie Square Hospital located on East 76th Street between First Avenue and York Avenue, and Rockefeller University Hospital on York Avenue between East 65th and East 66th Streets; and

WHEREAS, the applicant asserts that the design of the proposed building is consistent with the urban design of the surrounding area, which contains buildings that rise without setbacks, forming consistent street walls on the side streets, and the material of the building will be consistent with the more contemporary buildings in the area which are clad in metal and glass curtain walls; and

WHEREAS, the applicant states that the proposed building will not impair the use of immediately adjacent properties as in the M3-2 district, a new institutional facility is anticipated to be developed on the vacant DSNY property directly east of the site and a large Con Edison facility occupies the majority of the block directly to the north; and

WHEREAS, the applicant asserts that the adjacent residential building, catering facility, and nursery school are currently adjacent to an active through-block automotive repair shop, with vehicles frequently double-parked in the street and noises and fumes associated with automotive repair shops and that the proposed building, with a through block drop-off area and below grade parking will be consistent with current uses of adjacent properties and will not impair the use or development of such properties; and

WHEREAS, the applicant notes that other uses in the building two residential towers of 38 stories (River Terrace) and 50 stories (East River Place); and

WHEREAS, the applicant states that by providing a through-block drive lane and on-site parking, particularly important for mobility-impaired patients, the Hospital will also take its traffic onto its site and away from the surrounding streets; and

WHEREAS, an adjacent neighbor made the following requests for the proposal: (1) that a third car lane be provided; (2) that a second car lift be provided to facilitate the flow of traffic into the parking garage; and (3) that the applicant hire an independent architect or engineer to review the construction and logistics and to ensure protection of the adjacent building; and

WHEREAS, in response, the applicant states that it has designed the site with a through-block roadway with a width of 24-feet so that patients can be exit and enter cars off of the street and out of the way of traffic; further, a nine-space lay-by is provided to address any overflow during peak hours; and

WHEREAS, further, the applicant states that the traffic flow has been carefully considered and the roadway and parking facility have been designed conservatively to

accommodate a vehicle volume in excess of the projected peak demand; and

WHEREAS, as to construction safety, the applicant states that it is subject to DOB, DEP, and DOT review and approval and will comply with all construction requirements prior to and during construction; and

WHEREAS, the applicant notes that it is constructing a shallow one-level foundation which will be less likely to disturb adjacent sites than would the deeper foundation associated with an as-of-right building; and

WHEREAS, the applicant states that it will remain in communication with its neighbor regarding its construction status and allow for review of its plans; and

WHEREAS, the Board agrees that the applicant's traffic and parking plan will promote the goal of removing stopped cars from the public streets and that there is not a need to hire an independent architect or engineer to review the construction given that the applicant is required to comply with all DOB, DEP, and DOT regulations; and

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

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of Hospital could occur on the existing site; 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 represents that the requested waivers are the minimum relief necessary to accommodate the projected programmatic needs; and

WHEREAS, the applicant asserts that the proposed floor plates are of the minimum size to accommodate the six operating rooms per floor that are needed to meet the Hospital's programmatic needs for efficient and cost-effective surgery floors and that any less than six operating rooms per floor would result in tremendous inefficiency and an increase in the cost of patient care; and

WHEREAS, additionally, the applicant notes that the amount of floor area proposed is the minimum necessary to provide an integrated ambulatory care facility providing a continuum of care and training while meeting the growing demand for the Hospital's services; and

WHEREAS, the Board has reviewed the applicant's program needs and assertions as to the insufficiency of a complying scenario and has determined that the requested relief is the minimum necessary to allow the Hospital to fulfill 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 a Type I action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board conducted an environmental

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review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement (“EAS”) CEQR No. 12BSA126M, dated December 10, 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, the New York City Department of Environmental Protection’s (DEP) Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials, air quality and noise impacts; and

WHEREAS, DEP reviewed and accepted the July 2012 Remedial Action Plan site-specific Construction Health and Safety Plan; and

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

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

WHEREAS, 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;

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

WHEREAS, accordingly, 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 6NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and the Board of Standards and Appeals makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site partially within an M1-4 zoning district and partially within an M3-2 zoning district, the construction of a new community facility building that does not comply with zoning regulations for floor area, rear yard, height and setback, parking, and use, contrary to ZR §§ 42-12, 43-122, 43-23, 43-28, 43-44, and 13-133, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked

‘Received December 12, 2012’– twenty-five (25) sheets; and *on further condition:*

THAT the following will be the bulk parameters of the proposed building: a maximum floor area of 163,472 sq. ft. (8.0 FAR), setbacks as reflected, and a maximum of 98 parking spaces, in accordance with the BSA-approved plans;

THAT DOB will not issue a Certificate of Occupancy until the applicant has provided DOB with DEP’s approval of the Remedial Closure Report;

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

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

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

Adopted by the Board of Standards and Appeals, December 11, 2012.

154-12-BZ CEQR #12-BSA-136K

APPLICANT – Law Office of Fredrick A. Becker, for Caroline Teitelbaum and Joshua Teitelbaum, owners.

SUBJECT – Application May 11, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141); side yard (§23-461(a)) and rear yard (§23-47) regulations. R2 zoning district.

PREMISES AFFECTED – 1202 East 22nd Street, west side of East 22nd Street between Avenue K and Avenue L, Block 7621, Lot 59, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 24, 2012, acting on Department of Buildings Application No. 320297282, reads in pertinent part:

- Proposed floor area contrary to ZR 23-141.
- Proposed open space ratio is contrary to ZR 23-141.
- Proposed side yard is contrary to ZR 23-461(a).
- Proposed rear yard is contrary to ZR 23-47; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space ratio, side yards, and rear yard, contrary to ZR §§ 23-

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141, 23-461 and 23-47; and

WHEREAS, a public hearing was held on this application on October 30, 2012, after due notice by publication in *The City Record*, and then to decision on December 11, 2012; and

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

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

WHEREAS, the subject site is located on the west side of East 22nd Street, between Avenue K and Avenue L, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a single-family home with a floor area of 1,885.25 sq. ft. (0.47 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 1,885.25 sq. ft. (0.47 FAR) to 4,099.62 sq. ft. (1.03 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 55.3 percent (150 percent is the minimum required); and

WHEREAS, the applicant proposes to maintain the existing side yard along the southern lot line with a minimum width of 3'-6 1/4" and to provide a side yard along the northern lot line with a width of 7'-0" (two side yards with minimum widths of 5'-0" each and a total width of 13'-0" are required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 22'-0" (a minimum rear yard depth of 30'-0" is required); and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, and will not impair the future use or development of the surrounding area; and

WHEREAS, the applicant submitted a survey of other legal homes in the surrounding area with FARs greater than 1.0; and

WHEREAS, the survey reflects that within one block of either side of the site there are at least ten homes with FARs greater than 1.0, and at least eight homes with FARs of 1.03 or greater; and

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

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

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

outweighed by the advantages to be derived by the community; and

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

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received August 24, 2012"-(8) sheets and "November 27, 2012"-(3) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 4,099.62 sq. ft. (1.03 FAR); a minimum open space ratio of 55.3 percent; side yard along the southern lot line with a minimum width of 3'-6 1/4" and a side yard along the northern lot line with a width of 7'-0"; and a rear yard with a minimum depth of 22'-0", as illustrated on the BSA-approved plans;

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

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

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

Adopted by the Board of Standards and Appeals, December 11, 2012.

163-12-BZ CEQR #12-BSA-141M

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for NYU Hospitals Center, owner; New York University, lessee.
SUBJECT – Application May 31, 2012 – Variance (§72-21) to permit the development of a new biomedical research facility on the main campus of the NYU Langone Medical Center, contrary to rear yard equivalent, height, lot coverage, and tower coverage (§§24-382, 24-522, 24-11, 24-54) regulations. R8 zoning district.

PREMISES AFFECTED – 435 East 30th Street, East 34th Street, Franklin D. Roosevelt (FDR) Drive Service Road, East 30th Street and First Avenue, Block 962, Lot 80, 108,

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1001-1107, Borough of Manhattan.

COMMUNITY BOARD #6M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 24, 2012, acting on Department of Buildings Application No. 121183432, reads in pertinent part:

1. Proposed building portion is located within the required rear yard equivalent; contrary to ZR 24-382.
2. Proposed building portion located within the initial setback distance exceeds the maximum permitted height of 85 feet above curb level and also penetrates the sky exposure plane; contrary to ZR 24-522.
3. The proposed total lot coverage within the interior and through lot portions of zoning lot exceeds 65 percent; contrary to ZR 24-11.
4. The proposed building increases the degree of non-compliance allowed by prior BSA variance (Cal. No. 186-10-BZ) with respect to tower coverage limitation; contrary to ZR 24-54 and 186-10-BZ; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R8 zoning district, the construction of a new biomedical research facility on the main campus of the New York University Langone Medical Center (the “Medical Center”) that does not comply with zoning regulations for rear yard equivalent, height and setback, lot coverage, and tower coverage, contrary to ZR §§ 24-382, 24-522, 24-11, and 24-54; and

WHEREAS, a public hearing was held on this application on August 4, 2012, after due notice by publication in the *City Record*, with a continued hearing on October 30, 2012 and then to decision on December 11, 2012; and

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

WHEREAS, Community Board 6, Manhattan, recommends approval of this application; and

WHEREAS, the application is brought on behalf of the Medical Center, a non-profit educational institution and hospital; and

WHEREAS, the subject zoning lot is located on the superblock bounded by East 34th Street to the north, the Franklin D. Roosevelt Drive (the “FDR Drive”) to the east, East 30th Street to the south, and First Avenue to the west, within an R8 zoning district; and

WHEREAS, the zoning lot has a lot area of 408,511 sq. ft.; and

WHEREAS, on November 20, 2001, the Board granted

a special permit pursuant to ZR § 73-64 to allow the construction of a new medical research and laboratory building (Use Group 3A) on the site, contrary to zoning regulations for height and setback, rear yard, and minimum distance between buildings; and

WHEREAS, on July 13, 2010, under BSA Cal. No. 41-10-BZ, the Board granted a variance to permit the renovation and enlargement of the existing Emergency Department and the addition of 354 sq. ft. of signage at the entrances and on the façade of the Emergency Department, contrary to zoning regulations for rear yard and signage; and

WHEREAS, most recently, on March 15, 2011, the Board granted a variance to permit the construction of two new community facility buildings, contrary to zoning regulations for rear yard, rear yard equivalents, height and setback, rear yard setback, tower coverage, maximum permitted parking, minimum square footage per parking space, or curb cut requirements; and

WHEREAS, the applicant notes that the zoning lot is subject to a 1949 indenture between the City and New York University (“NYU”), pursuant to which portions of East 31st Street, East 32nd Street and East 33rd Street were demapped and their beds conveyed to NYU, and the portion of East 30th Street abutting the southern end of the superblock was also demapped and an access easement thereover granted to NYU; the indenture also requires that no building on the zoning lot have a height greater than 25 stories, that lot coverage on the zoning lot not exceed 65 percent, and that at least 235 parking spaces be provided on the zoning lot; and

WHEREAS, the proposed construction would be located on the southeast portion of the zoning lot, bounded by East 30th Street to the south, the FDR Drive Service Road to the east, the Smilow Research Center building to the north, and the Schwartz Lecture Hall to the west (the “Development Site”); and

WHEREAS, the Development Site is currently occupied by the 15-story Rubin Hall, a one-story portion of Schwartz Lecture Hall, and a two-story portion of the Medical Science Building, which are proposed to be demolished; and

WHEREAS, the applicant notes that Rubin Hall is currently vacant and abatement and demolition of that building have already begun independent of the development of the proposed building; and

WHEREAS, the applicant proposes to construct a 16-story biomedical research facility building with a floor area of 296,776 sq. ft. (the “Science Building”); and

WHEREAS, the applicant states that the construction of the Science Building will result in a total floor area for the zoning lot of 2,650,003 sq. ft. (6.5 FAR); the maximum permitted floor area for a community facility in the subject zoning district is 2,650,322 sq. ft. (6.5 FAR); and

WHEREAS, the proposed construction will create the following non-compliances on the site: a small amount of the northeast portion of the Science Building is located within the required rear yard equivalent (a rear yard equivalent with a minimum depth of 60’-0” is required); the front wall of the Science Building fronting on the FDR Drive Service Road has

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a height of approximately 281'-0", and pierces the sky exposure plane (a minimum front wall setback of 15'-0" is required above the height of 85'-0" or nine stories); a lot coverage of 258,962 sq. ft. (66 percent) and a temporary lot coverage of 260,883 sq. ft. (66.5 percent) attributable to the Medical Center's existing loading berths on former East 30th Street, which would not be demolished until after the Science Building is completed (the maximum permitted lot coverage for interior and through lots is 65 percent); and an increase in the degree of non-compliance of the tower coverage of the zoning lot's previously approved towers; and

WHEREAS, because the Science Building does not comply with the underlying zoning district regulations, the applicant seeks the proposed variance; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Medical Center: (1) additional up-to-date laboratory space to accommodate the Medical Center's growing research program; (2) floor plates that are sized and configured for efficient and collaborative research; and (3) functional integration of such space with the Medical Center's existing scientific research facilities; and

WHEREAS, the applicant states that the Medical Center has a programmatic need for additional laboratory space that is optimally configured for efficient and collaborative research and physically and functionally integrated with the Medical Center's existing science research facilities; and

WHEREAS, the applicant submitted a letter from the Medical Center in support of its need for additional research space, which states that the Medical Center's guiding principle of translational medicine requires that its campus have a sufficient amount of up-to-date research space so that its clinical services can continue to be informed by, and its educational programs involved in, scientific advancements; and

WHEREAS, the applicant states that as the Medical Center enhances its clinical and educational programs, it must ensure that its research program is likewise supported by an adequate amount of research space and state-of-the-art facilities; and

WHEREAS, the applicant further states that increasing research and funding activity at the Medical Center also make it crucial for the Medical Center to have sufficient up-to-date research facilities for attracting talent and investment; and

WHEREAS, specifically, the applicant states that the Medical Center's research expenditures have increased by 46 percent over the past five years, with \$255 million in expenditures in 2011, and are expected to increase to approximately \$340 million in 2015 and \$460 million in 2020, with corresponding increases in the number of principal investigators and lab staff; and

WHEREAS, the applicant notes that the Medical Center has leased space in East River Science Park, located on the south side of East 29th Street to the east of First Avenue, and on Varick Street to help satisfy the demand for

research space, but additional on-campus space, integrated with existing Medical Center buildings, is also needed; and

WHEREAS, the applicant represents that, to support the current and projected research activity on campus, the Medical Center needs approximately 350,000 net assignable sq. ft. of new research space, of which 236,000 net assignable sq. ft. would be dedicated to wet bench space; and

WHEREAS, the applicant states that the Science Building would provide approximately 296,776 sq. ft. of total floor area, with approximately 256,000 sq. ft. of floor area, amounting to approximately 186,000 net assignable sq. ft., dedicated to research laboratories and related core labs on the second through 13th floors of the building, bringing the Medical Center significantly closer to attaining its long-term goal; and

WHEREAS, the applicant further states that the multiple conference rooms and multipurpose spaces located on the basement and first floors would facilitate collaborative communications among researchers and thereby foster increased discovery, revenue, and growth for the Medical Center; and

WHEREAS, the applicant states that the Medical Center also has a programmatic need for its new research space to be accommodated on floor plates that are efficient in size and configuration; and

WHEREAS, the applicant notes that the prototypical laboratory floor plate is a systematically repetitive "laboratory module" including open lab benches, lab support spaces, offices, and office support space such as administrative facilities and shared amenities, which results in a flexible, adaptable, and functionally efficient research environment; and

WHEREAS, the applicant states that the floor plates must also be large enough to accommodate a "crucial mass" of principal investigators needed to facilitate collaborative research, and that leading laboratory design consultants have established a standard of eight to 12 principal investigators per floor for this purpose, with a range of 1,400 to 1,700 net assignable sq. ft. per principal investigator; and

WHEREAS, the applicant notes that the laboratory floors of the Science Building would have a width of approximately 275 feet and a depth of approximately 89 feet, so as to provide a flexible, adaptable, and functionally efficient research environment with slightly more than 15,500 net assignable sq. ft. of research space (approximately 22,000 gross sq. ft.) to accommodate nine to ten principal investigators on each floor; and

WHEREAS, the applicant represents that, to further the principle of translational medicine, the new research facilities must relate physically and functionally to the Medical Center's educational and clinical facilities; and

WHEREAS, specifically, the applicant states that there must be physical connections between the new research facilities and the existing Berg Institute, the Medical Science Building, and the Smilow Research Center, with an ability to efficiently share core research facilities, as well as links

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from such spaces to the Medical Center's educational and clinical facilities; and

WHEREAS, specifically, the applicant states that the Science Building would connect with the Berg Institute and the Medical Science Building on the cellar, basement, and first floors, with possible connections on the lower laboratory floors above, allowing for contiguities of the buildings' research support spaces and shared access to the buildings' conference facilities and amenity spaces; and

WHEREAS, the applicant further states that the Science Building would connect to the immediately adjacent Smilow Research Center by an exterior pedestrian path across a shared courtyard, completing an efficient circulation network among the Science Building, the Smilow Research Center, the Berg Institute, and the Medical Science Building, and that this circulation network would serve as an extension of the existing Medical Center buildings, providing Medical Center physicians, researchers, staff, and students with access to the research facilities and amenity spaces located at the southern end of the campus; and

WHEREAS, the applicant represents that an on-campus location is critical for the significant percentage of MD/PhD researchers who maintain clinical practices on the main campus, while a location at the southern end of the zoning lot, in particular, also capitalizes on the campus' proximity to the research buildings at East River Science Park, reinforcing the synergistic relationship among the institutions and commercial laboratories comprising the First Avenue biomedical corridor; and

WHEREAS, the applicant submitted plans for a complying scenario consisting of a four-story building with 80,860 sq. ft. of floor area, of which 39,500 net assignable sq. ft. (52,775 gross sq. ft.) would be dedicated to research space; and

WHEREAS, the applicant represents that the aforementioned programmatic needs could not be satisfied through the complying scenario; and

WHEREAS, specifically, the applicant states that the complying building would contain only four above-grade floors so as not to exceed the height threshold for tower coverage; and

WHEREAS, the applicant further states that to maximize the amount of research space within this limited building envelope, certain space on the basement floor which would otherwise be used for conference facilities and multipurpose spaces would instead be dedicated to shared research cores; however, even with this programming sacrifice, the complying building would fall well short of the 236,000 net assignable sq. ft. needed by the Medical Center and the 186,000 net assignable sq. ft. provided by the proposed Science Building; and

WHEREAS, the applicant states that, in order to comply with lot coverage, rear yard equivalent, and height and setback regulations, while maintaining physical connections to adjacent research facilities, the portion of the complying building located above the basement level would not extend as far to the east and northeast as that of the

Science Building, resulting in smaller floor plates with fewer bench modules, procedure rooms, alcoves, researcher offices, and corresponding office support space, and capable of accommodating two to three fewer principal investigators per floor; and

WHEREAS, the applicant represents that, to maximize the amount of research space within the complying building's limited building envelope, all floors above the basement would be dedicated to laboratory facilities and would be designed with centralized vertical circulation to minimize the circulation distances within the floor plate; however, because this plan arrangement is not conducive to connections between the complying building, the Berg Institute, and the Medical Science Building, such connections would be limited to the cellar and basement floors; and

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

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

WHEREAS, in addition to the programmatic needs of the Medical Center, the applicant states that the variance request is also necessitated by unique conditions of the site that create a hardship, specifically: the existing built conditions of the zoning lot; and

WHEREAS, as to the surrounding conditions on the zoning lot, the applicant states that the configuration of the Development Site is dictated by the location of existing buildings on the zoning lot which are integral to the Medical Center's mission and cannot be demolished and/or which must be physically connected with the Science Building so that the Medical Center may continue to operate efficiently; and

WHEREAS, the applicant states that the existing Berg Institute, Medical Science Building, and the Smilow Research Building, with which the Science Building must be physically and functionally integrated to satisfy the Medical Center's programmatic needs, dictate the configuration of the Science Building's floor plates, which are further limited by the 65 percent lot coverage limitation applicable to the zoning lot, and as a result of these constraints, the amount of dedicated laboratory space that can be provided in the Science Building is severely limited unless the building is able to exceed the applicable threshold or tower coverage; and

WHEREAS, the applicant further states that the existing Berg Institute requires that the Science Building be located as far to the north on the Development Site as possible so as to create appropriate alignments for an

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efficient shared circulation system, and shifting the Science Building's laboratory floors to the south to comply with rear yard equivalent and height and setback regulations would compromise the ability to make critical physical and functional connections between the lower floors of the Science Building and the lower floors of the adjacent Berg Institute; in particular, the applicant states that connections to the Berg Institute are restricted by existing shafts located to the immediate west of the Development Site, which contain extensive mechanical and other infrastructure services serving the Berg Institute, and locating the Science Building at the northern end of the Development Site allows for a critical overlap between the Science Building and the Berg Institute so that connections can be made to the Berg Institute's existing circulation paths; and

WHEREAS, the applicant represents that complying with the applicable rear yard equivalent, height and setback, and lot coverage regulations while providing efficient connections to the existing research facilities would also require offsets in building infrastructure at the upper laboratory levels, including stairs and MEP system distribution, which would further burden the Science Building's efficiency; and

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

WHEREAS, since the Medical Center is a non-profit institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

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

WHEREAS, the applicant states that the Science Building would be in keeping with the character of the surrounding neighborhood, which is defined by numerous medical and other institutional uses; and

WHEREAS, specifically, the applicant notes that the New Buildings would be located among a multitude of medical institutions comprising the First Avenue "biomedical corridor," including other buildings within the Medical Center, the Bellevue Hospital Center, the Veterans Affairs Medical Center, and the Hunter College School of Medical Professions; and

WHEREAS, the applicant further notes that the 197-a Plan for the Eastern Section of Community District 6 recommended that the area including the Medical Center be rezoned from residential to a Special Hospital Use District, indicating that the community recognizes this area as an appropriate location for specialized hospital uses; and

WHEREAS, the applicant notes that the Development

Site is located on a superblock largely occupied by the many mid-rise and high-rise buildings of the Medical Center, and the waiver of the rear yard equivalent, height and setback, lot coverage, and tower coverage regulations would have no discernible impact on the surrounding neighborhood; and

WHEREAS, the applicant further notes that the Science Building would only be slightly taller than the Smilow Research Center with a height of 249'-0" to the immediate north, and would be shorter than the Kimmel Pavilion hospital building to be developed on the northeast corner of the zoning lot; and

WHEREAS, the applicant states that First Avenue is a wide, heavily-trafficked northbound thoroughfare which divides the major health care facilities on the east side of the avenue from the neighborhood to the west, which has a mix of residential and institutional uses, and the Science Building would be located on the southeast corner of the zoning lot, away from such uses and in alignment with the medical uses that comprise the First Avenue biomedical corridor to the north and south; and

WHEREAS, the applicant notes that the portion of the Science Building for which waivers of rear yard equivalent and height and setback are required fronts the FDR Drive Service Road, which is bounded to the east by the FDR Drive, and farther east, the East River Esplanade and the East River, such that these non-compliances would not have any impacts on other buildings or uses; and

WHEREAS, the applicant represents that the Science Building will actually improve the visual quality of the Development Site and the surrounding neighborhood, as it would replace aging buildings on the Development Site with a development of contemporary design that visually connects with other buildings on the Medical Center campus; and

WHEREAS, the applicant further represents that the Science Building will also create a more uniform street wall along former East 30th Street, and will provide a prominent gateway to the NYU School of Medicine at the southern end of the campus, helping to establish a visual identity for the institution and to orient the significant number of visitors that the Medical Center campus receives every day; and

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

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Medical Center could occur on the existing site; 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 represents that the requested waivers are the minimum relief necessary to accommodate the projected programmatic needs; and

WHEREAS, the Board has reviewed the applicant's

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program needs and assertions as to the insufficiency of a complying scenario and has determined that the requested relief is the minimum necessary to allow the Medical Center to fulfill 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 a Type I action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement (“EAS”) CEQR No. 12BSA141M, dated December 7, 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, the New York City Department of Environmental Protection’s (DEP) Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials, air quality and noise impacts; and

WHEREAS, there is an existing Restrictive Declaration for hazardous materials (CRFN 2011030100673001001EF581) associated with the approved BSA New York University Kimmel Pavilion variance project (CEQR Number 11BSA029M); and

WHEREAS, since the project site is subject to an existing Restrictive Declaration, the DEP has requested that a Phase II Investigative Protocol and any other relevant or necessary supporting documents should be submitted to the New York City Office of Environmental Remediation (“OER”) for review and approval prior to any field sampling activities; and

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

WHEREAS, DEP reviewed the results of noise monitoring and determined that a minimum of 31 dBA window-wall noise attenuation is required on the north and east facades of the proposed building and an alternate means of ventilation should be provided in order to achieve an interior noise level of 45 dBA; and

WHEREAS, DEP determined that, with these noise measures, the proposed project is not anticipated to result in significant noise impacts; 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 Type I 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 the Board of Standards and Appeals makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, within an R8 zoning district, the construction of a new biomedical research facility on the main campus of the New York University Langone Medical Center that does not comply with zoning regulations for rear yard equivalent, height and setback, lot coverage, and tower coverage, contrary to ZR §§ 24-382, 24-522, 24-11, and 24-54, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received December 10, 2012” – sixteen (16) sheets; and *on further condition*:

THAT the parameters of the proposed buildings will be in accordance with the approved plans;

THAT prior to the issuance of any building permit that would result in grading, excavation, foundation, alteration, building or other permit respecting the subject site which permits soil disturbance for the proposed project, the applicant or successor will obtain from OER a Notice to Proceed;

THAT DOB will not issue a Certificate of Occupancy until the applicant has provided it with a Notice of Satisfaction from OER;

THAT the proposed building’s windows on the north and east facades will have a noise attenuation rating of 31 dBA OITC and that an alternate means of ventilation (central heating and air-conditioning) will be provided throughout the building;

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

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

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

Adopted by the Board of Standards and Appeals, December 11, 2012.

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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 February 12, 2013, at 1:30 P.M., for continued hearing.

35-11-BZ

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

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

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

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to February 26, 2013, 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

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 1:30 P.M., for decision, hearing closed.

190-11-BZ

APPLICANT – Sheldon Lobel, P.C., for 1197 Bryant Avenue Corp., owner.

SUBJECT – Application December 15, 2011 – Variance (§72-21) to legalize Use Group 6 retail stores, contrary to use regulations (§22-10). R7-1 zoning district.

Community Board #3BX

PREMISES AFFECTED – 1197 Bryant Avenue, northwest corner of the intersection formed by Bryant Avenue and Home Street. Block 2993, Lot 27, 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 January 15, 2013, at 1:30 P.M., for decision, hearing closed.

30-12-BZ

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

SUBJECT – Application February 8, 2012 – Special Permit (§73-49) to permit accessory parking on the roof of an existing one-story supermarket, contrary to §36-11. R6/C2-2 zoning district.

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

COMMUNITY BOARD #7Q

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 1:30 P.M., for decision, hearing closed.

57-12-BZ

APPLICANT – Eric Palatnik, P.C., for Mykola Volynsky, owner.

SUBJECT – Application March 13, 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); side yards (§23-461); less than the required rear yard (§23-37). R4 zoning district.

PREMISES AFFECTED – 2670 East 12th Street, between Shore Parkway and Gilmore Court, Block 7455, Lot 85, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to January 15, 2013, at 1:30 P.M., for continued hearing.

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209-12-BZ

APPLICANT – The Law Offices of Stuart Klein, for 910 Manhattan Avenue Realty Corp., owner.

SUBJECT – Application July 6, 2012 – Special Permit (§73-36) to permit the operation of a physical culture establishment. C4-3A zoning district.

PREMISES AFFECTED – 910 Manhattan Avenue, north east corner of Greenpoint and Manhattan Avenues, Block 2559, Lot 4, Borough of Brooklyn.

COMMUNITY BOARD #1BK

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 8, 2013, at 1:30 P.M., for decision, hearing closed.

212-12-BZ

APPLICANT – Gerald J. Caliendo, R.A., AIA, for Conver Realty/Pat Pescatore, owners; Sun Star Services, LLC, lessee.

SUBJECT – Application July 9, 2012 – Special Permit (§73-36) to permit a physical culture establishment (*Massage Envy*) in the cellar and first floor of the existing commercial building. C2-2/R6B zoning district.

PREMISES AFFECTED – 38-03 Bell Boulevard, east side of Bell Boulevard, 50.58’ south of intersection formed by Bell Boulevard and 38th Avenue, Block 6238, Lot 18, Borough of Queens.

COMMUNITY BOARD #11Q

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to January 8, 2013, at 1:30 P.M., for decision, hearing closed.

241-12-BZ

APPLICANT – Greenberg Traurig, LLP by Deidre A. Carson, Esq., for 8-12 Development Partners, owners; 10-12 Bond Street, lessee.

SUBJECT – Application August 2, 2012 – Variance (§72-21) to permit the construction of a new mixed residential and retail building, contrary to use regulations (§42-10 and 42-14D(2)(b)). M1-5B zoning district.

PREMISES AFFECTED – 8-12 Bond Street aka 358-364 Lafayette Street, northwest corner of the intersection of Bond and Lafayette Streets, Block 530, Lot 62, 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 8, 2013, at 1:30 P.M., for decision, hearing closed.

275-12-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Fayge Hirsch and Abraham Hirsch, owners.

SUBJECT – Application September 6, 2012 – Special Permit (§73-622) for the enlargement of an existing single family residence, contrary to floor area and open space (§23-141), and side yard (§23-461) regulations. R2 zoning district.

PREMISES AFFECTED – 2122 Avenue N, southwest corner of Avenue N and East 22nd Street, Block 7675, Lot 61, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to January 15, 2013, at 1:30 P.M., for continued hearing.

283-12-BZ

APPLICANT – Sheldon Lobel, P.C., for 440 Broadway Realty Associates, LLC, owner.

SUBJECT – Application September 24, 2012 – Variance (§72-21) to permit a UG 6 retail use on the first floor and cellar of the existing building, contrary to Section 42-14D(2)(b). M1-5B zoning district.

PREMISES AFFECTED – 440 Broadway, between Howard Street and Grand Street, Block 232, Lot 3, 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 8, 2013, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.