
BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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

Volume 98, Nos. 44

November 6, 2013

DIRECTORY

MEENAKSHI SRINIVASAN, *Chair*

CHRISTOPHER COLLINS, *Vice-Chair*

DARA OTTLEY-BROWN

SUSAN M. HINKSON

EILEEN MONTANEZ

Commissioners

Jeffrey Mulligan, *Executive Director*

Becca Kelly, *Counsel*

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

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

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292-13-BZ

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293-13-BZ

78-04 Conduit Avenue, Westside South Conduit Avenue between Linden Boulevard, and Sapphire Avenue, Block 11358, Lot(s) 1, Borough of **Brooklyn, Community Board: 10**. Special Permit (§73-36) to permit the operation of a (PCE) physical culture establishment. C2-2/R4 zoning district. C2-2R/4 district.

294-13-BZ

220 Lafayette Street, West side of Lafayette Street between Spring Street and Broome Street., Block 482, Lot(s) 26, Borough of **Manhattan, Community Board: 2**. Variance (§72-21) to allow for the development of a residential building (Use Group 2) with ground floor commercial use Group 6) based on the conditions peculiar to the property. M1-5B zoning district. M1-5B district.

295-13-BZY

1137 Dean Street, on the northerly side of Dean Street, 141 feet 8 inches form the corner formed by the intersection of Dean St. And easterly side of Bedford avenue, Block 1206, Lot(s) 73, Borough of **Brooklyn, Community Board: 8**. BUILDING PERMIT RENEWQL 11-332: Extension time to complete construction R6B district.

296-13-A

280 Bond Street, Block 423, Lot(s) 35, Borough of **Brooklyn, Community Board: 3**. DETERMINATION: that the two permits issued for this property be revoked by the Building Department. district.

297-13-BZ

308 Cooper Avenue, located on the east side of Cooper Street at the corner of Cooper Street and Irving Avenue., Block 3443, Lot(s) 37, Borough of **Brooklyn, Community Board: 4**. Variance (§72-21):to permit the development of a residential building contrary to §42-10. M1-1 zoning district. M1-1 district.

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

CALENDAR

NOVEMBER 26, 2013, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, November 26, 2013, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

182-69-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 227 East 19th Street Owner LCL, owner.

SUBJECT – Application September 4, 2013 – ADMENDMENT 23-633: with regard to height and setback, yards distance between buildings and floor area proposed residential conversion and alterations of existing hospital parking pre-1961 is subject to ZR 23-145, ZR-23-711 and ZR23-89 zoning resolution

PREMISES AFFECTED – 211-235 3 East 19th Street aka 224-228 East 20th St & 2nd & 3rd Avenues, midblock portion of block bounded by East 19th and East 20th Street, Block 900, lot 6, Borough of Manhattan.

COMMUNITY BOARD #6M

380-01-BZ

APPLICANT – Law office of Fredrick A. Becker, for 230 West 41st St. LLC, owner;

TSI West 41 LLC dba New York Sports Club, lessee.
SUBJECT – Application April 17, 2013 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a physical culture establishment (*New York Sports Club*), located in portions of the cellar, first floor and second floor of a 21-story commercial office structure, which expired on April 9, 2012; Waiver of the Rules. C6-6.5 M1-6 (Mid) zoning district.

PREMISES AFFECTED – 230 West 41st Street, south side of West 41st Street, 320' west of Seventh Avenue, through block to West 40th Street, Block 1012, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #5M

265-08-BZ

APPLICANT – Herrick, Feinstein LLP by Arthur Huh, for 70 Wyclkoff LLC, owner.

SUBJECT – Application October 23, 2013 – Extension of Time to Obtain a Certificate of Occupancy for a previously granted Variance (72-21) for the legalization of residential units in a manufacturing building which expired on September 27, 2013. M1-1 zoning district.

PREMISES AFFECTED – 70 Wyckoff Avenue, southeast corner of Wyckoff Avenue and Suydam Street, Block 3221, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #4BK

20-12-BZ

APPLICANT – Herrick Feinstein LLP by Arthur Huh, for LNA Realty Holdings LLC, owner; Brookfit Ventures LLC, lessee.

SUBJECT – Application October 21, 2013 – Amendment to the BSA resolution of a previously granted Special Permit (73-36) for the legalization of a Physical Culture Establishment (*Retro Fitness*) to obtain additional time to Obtain a Public Assembly license which expired on January 10, 2013. M1-2/R6B Special MX-8 zoning district.

PREMISES AFFECTED – 203 Berry Street, northeast corner of N. 3rd Street and Berry Street, Block 2351, Lot 1087, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEALS CALENDAR

166-12-A

APPLICANT – NYC Department of Buildings,
OWNER- Sky East LLC c/o Magnum Real Estate Group, owner.

SUBJECT – Application June 4, 2012 – Application filed by the Department of Buildings seeking to revoke the Certificate of Occupancy that was issued in error. R8B zoning district.

PREMISES AFFECTED – 638 East 11th Street, south side of East 11th Street, between Avenue B and Avenue C, Block 393, Lot 26, Borough of Manhattan.

COMMUNITY BOARD #3M

107-13-A

APPLICANT – Law Office of Marvin B. Mitzner LLC, for Sky East LLC, owner.

SUBJECT – Application April 18, 2013 – An appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior R7- 2 zoning district regulations. R7B zoning district.

PREMISES AFFECTED – PREMISES AFFECTED – 638 East 11th Street, south side of East 11th Street, between Avenue B and Avenue C, Block 393, Lot 25, 26 & 27, Borough of Manhattan.

COMMUNITY BOARD #3M

191-13-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for McAllister Maritime Holdings, LLC, owner.

SUBJECT – Application June 28, 2013 – Proposed construction of a three story office building within the bed of a mapped street pursuant to Article 3 of General City Law 35. M3-1 zoning district.

CALENDAR

PREMISES AFFECTED – 3161 Richmond Terrace, north side of Richmond Terrace at intersection of Richmond Terrace and Grandview Avenue, Block 1208, Lot 15, Borough of Staten Island.

COMMUNITY BOARD #1SI

ZONING CALENDAR

171-13-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 1034 East 26th Street, LLC, owner.

SUBJECT – Application June 6, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space (ZR 23-141); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R2 zoning district.

PREMISES AFFECTED – 1034 East 26th Street, west side of East 26th Street between Avenue J and Avenue K, Block 7607, Lot 63, Borough of Brooklyn.

COMMUNITY BOARD #14BK

192-13-BZ

APPLICANT – Jesse Masyr, Esq., Fox Rothschild, LLP, for AP-ISC Leroy, LLC, Authorized Representative, owner.

SUBJECT – Application July 2, 2013 – Variance (§72-21) to permit the construction of a mixed use primarily residential building for a 12 story residential and accessory parking contrary to §42-10. M1-5 zoning district.

PREMISES AFFECTED – 354/361 West Street aka 156/162 Leroy Street and 75 Clarkson Street, West street between Clarkson and Leroy Streets, Block 601, Lot 1, 4, 5, 8, 10, Borough of Manhattan.

COMMUNITY BOARD #2M

223-13-BZ

APPLICANT – Stroock & Stroock & Lavan LLP by Ross F. Moskowitz, for NYC Department of Citywide Administrative Services, owner.

SUBJECT – Application July 24, 2013 – Special Permit (§73-36) to permit the operation of a physical culture of health establishment (*Kingsbridge Nat'l Ice Wellness Center*) in an existing building. C4-4/R6 zoning district.

PREMISES AFFECTED – 29 West Kingsbridge Road aka Kingsbridge Armory Building, Block 3247, Lot 10 part of 2, Borough of Bronx.

COMMUNITY BOARD #7BX

228-13-BZ

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

SUBJECT – Application August 1, 2013 – Special Permit

(§73-36) to allow a physical culture establishment (*Cross Fit*) located in the cellar level of an existing 31-story condominium building. C4-7 zoning district.

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

COMMUNITY BOARD #7M

243-13-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Henry II Thames LP c/o of Fisher Brothers, owners.

SUBJECT – Application August 21, 2013 – Variance (§72-21) to permit construction of a mixed use building that does not comply with the setback requirements §91-32. C5-5 (LM) zoning district.

PREMISES AFFECTED – 22 Thames Street, 125-129 Greenwich Street, southeast corner of Greenwich Street and Thames Street, Block 51, Lot 13, 14, Borough of Manhattan.

COMMUNITY BOARD #1M

249-13-BZ

APPLICANT – Eric Palatnik, P.C., for Reva Holding Corporation, owner; Crunch LLC, lessee.

SUBJECT – Application August 26, 2013 – Special Permit (§73-36) to permit a physical cultural establishment (*Crunch Fitness*) within portions of existing commercial building. C4-3 zoning district.

PREMISES AFFECTED – 747 Broadway, northeast corner of intersection of Graham Avenue, Broadway and Flushing Avenue, Borough of Brooklyn.

COMMUNITY BOARD #1BK

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, OCTOBER 29, 2013
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

163-04-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Mylaw Realty Corporation, owner; Crunch Fitness, lessee. SUBJECT – Application July 26, 2013 – Extension of time to obtain a certificate of occupancy for a previously granted physical culture establishment (*Crunch Fitness*) which expired on July 17, 2013. C2-4/R7A zoning district. PREMISES AFFECTED – 671/99 Fulton Street, northwest corner of intersection of Fulton Street and S. Felix Street, Block 2096, Lot 66, 99, Borough of Brooklyn.

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to obtain certificates of occupancy, which expired on July 17, 2013; and

WHEREAS, a public hearing was held on this application on October 8, 2013, after due notice by publication in *The City Record*, and then to decision on October 29, 2013; and

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

WHEREAS, the subject site is located on the northwest corner of Fulton Street and St. Felix Street and is located within a C2-4 (R7A) zoning district; and

WHEREAS, the site is occupied by a two-story commercial building at 677-691 Fulton Street (Lot 69) and an adjacent one-story commercial building at 693-699 Fulton Street (Lot 66); and

WHEREAS, the PCE occupies a portion of the first floor of both buildings and the mezzanine of the two-story building; and

WHEREAS, on July 12, 2005, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-36, to permit the operation of the PCE within a portion of the existing two-story building for a term of ten years to expire on July 12, 2015; and

WHEREAS, on April 24, 2007, the Board granted an

amendment to permit the enlargement of the first floor by adding 2,775 sq. ft. of floor area on the first floor within the adjacent one-story building, and to extend the hours of operation to 24 hours, daily; and

WHEREAS, pursuant to the April 24, 2007 grant, substantial construction was to be completed by April 24, 2011, in accordance with ZR § 73-70; and

WHEREAS, the applicant states that subsequent to the April 24, 2007 grant, the permit applications related to the PCE underwent a series of audits and the applicant experienced disputes with its contractors, which delayed the completion of construction and the issuance of the certificates of occupancy; and

WHEREAS, accordingly, on July 17, 2012, the applicant sought and the Board granted an one-year extension of time to obtain certificates of occupancy, to expire on July 17, 2013; and

WHEREAS, the applicant now requests an additional extension of time to obtain certificates of occupancy; and

WHEREAS, the applicant states that, although work is substantially completed, certificates of occupancy have not been obtained (despite the resolution of the audits) because the buildings have open Department of Buildings and Environmental Control Board violations; and

WHEREAS, the applicant represents that the requested extension of time will enable to the applicant to resolve the open violations related to the PCE and obtain certificates of occupancy; and

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

Therefore it is Resolved, that the Board of Standards and Appeals *reopens*, and *amends* the resolution, dated July 12, 2005, so that as amended the resolution shall read: “to grant an extension of time to obtain certificates of occupancy for one year from the date of this resolution, to expire on October 29, 2014; *on condition* that the use and operation of the PCE shall substantially conform to BSA-approved plans associated with the prior grant; and *on further condition*:

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

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

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

THAT certificates of occupancy must be obtained by October 29, 2014;

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

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); and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant

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laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application Nos. 301441296 and 302207403)

Adopted by the Board of Standards and Appeals, October 29, 2013.

177-07-BZ

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

SUBJECT – Application July 23, 2013 – Extension of time to complete construction of a previously approved variance (§72-21) which permitted the construction of a two-story, two-family residential building, which expired on June 23, 2013. R5 zoning district.

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

COMMUNITY BOARD #5BK

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 an extension of time to complete construction of a two-story residential building (Use Group 2); and

WHEREAS, a public hearing was held on this application on October 8, 2013, after due notice by publication in *The City Record*, and then to decision on October 29, 2013; and

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

WHEREAS, the subject site is located on the southeast corner of the intersection of Glenmore Avenue and Milford Street, within an R5 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 23, 2009 when, under the subject calendar number, the Board granted a variance to permit the construction of a two-story, two-family residential building (Use Group 2) that did not comply with the front yard requirement; and

WHEREAS, substantial construction was to be completed by June 23, 2013, in accordance with ZR § 72-23; and

WHEREAS, the applicant states that construction has not yet commenced due to financing issues arising out of the recession; and

WHEREAS, thus, the applicant 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 *reopens* and *amends* the resolution, dated June 23, 2009, so that as amended the resolution will read: “to grant an extension of time to complete construction for a term of two years from the date of the grant, to expire on October 29, 2015; *on condition* that the use and operation of the site will comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT substantial construction will be completed by October 29, 2015;

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

THAT the approved plans will 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); 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. 302233189)

Adopted by the Board of Standards and Appeals, October 29, 2013.

74-49-BZ

APPLICANT – Sheldon Lobel, P.C., for 515 Seventh Avenue, LLC, owner.

SUBJECT – Application August 26, 2013 – Extension of Time to obtain a Certificate of Occupancy for an existing parking garage, which expired on January 11, 2012; Waiver of the Rules. M1-6 (*Garment Center*) zoning district.

PREMISES AFFECTED – 515 Seventh Avenue, southeast corner of 7th Avenue and West 38th Street, Block 813, Lot 64, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Laid over to November 26, 2013, at 10 A.M., for continued hearing.

360-65-BZ

APPLICANT – Greenberg Traurig, LLP by Jay A. Segal, Esq., for Dalton Schools, Inc., owner.

SUBJECT – Application July 19, 2013 – Amendment of previously approved Variance (§72-21) and Special Permit (§73-64) which allowed the enlargement of a school (*Dalton School*). Amendment seeks to allow a two-story addition to the school building, contrary to an increase in floor area (§24-11) and height, base height and front setback (§24-522, §24-522)(b)) regulations. R8B zoning district.

PREMISES AFFECTED – 108-114 East 89th Street, midblock between Park and Lexington Avenues, Block 1517, Lot 62, Borough of Manhattan.

COMMUNITY BOARD #8M

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THE VOTE TO CLOSE HEARING –

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

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

647-70-BZ

APPLICANT – Jeffrey A. Chester Esq/GSHLLP, for Channel Holding Company, Inc., owner; Cain Management II Inc., lessee.

SUBJECT – Application August 1, 2013 – Amendment of a previously approved Special Permit (§73-211) which permitted the operation an automotive service station and auto laundry (UG 16B). Amendment seeks to convert accessory space into an accessory convenience store. C2-3/R5 zoning district.

PREMISES AFFECTED – 59-14 Beach Channel Drive, Beach Channel Drive corner of Beach 59th Street, Block 16011, Lot 105, Borough of Queens.

COMMUNITY BOARD

ACTION OF THE BOARD – Laid over to November 26, 2013, at 10 A.M., for continued hearing.

605-84-BZ

APPLICANT – Sheldon Lobel, P.C., for Order Sons of Italy in America Housing Development Fund Company, Inc., owners.

SUBJECT – Application March 26, 2013 – Amendment of a previously granted variance (§72-21) to an existing seven-story senior citizen multiple dwelling to legalize the installation of an emergency generator, contrary to front yard requirements (§23-45). R5 zoning district.

PREMISES AFFECTED – 2629 Cropsey Avenue, Cropsey Avenue between Bay 43rd Street and Bay 44th Street, Block 6911, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #13BK

THE VOTE TO CLOSE HEARING –

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

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

239-02-BZ

APPLICANT – Greenberg Traurig, LLP by Deirdre A. Carson, Esq., for Babbo Realty LLC, owner.

SUBJECT – Application November 9, 2012 – Extension of Term of a previously-granted Variance (§72-21) for the continued operation of a Use Group 6A eating and drinking establishment (*Babbo*) located at the cellar level, ground

floor, and second floor of the subject premises, which expired on December 17, 2012. R7-2 zoning district.

PREMISES AFFECTED – 110 Waverly Place, south side of Waverly Place, between Sixth Avenue and Washington Square West/MacDougal Street, Block 552, Lot 53, Borough of Manhattan.

COMMUNITY BOARD #2M

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

APPEALS CALENDAR

66-13-A

APPLICANT – OTR Media Group, Inc., for Wall & Associates, owner; OTR 161 Street, LLC, lessee.

SUBJECT – Application February 13, 2013 – Appeal challenging Department of Buildings’ determination that pursuant to §122-20 advertising signs are not permitted regardless of non-conforming use status. R8/C1-4 Grand Concourse Preservation zoning district.

PREMISES AFFECTED – 111 E. 161 Street, between Gerard and Walton Avenues, Block 2476, Lot 57, Borough of Bronx.

COMMUNITY BOARD #4BX

ACTION OF THE BOARD – Application withdrawn.

Adopted by the Board of Standards and Appeals, October 29, 2013.

247-13-A

APPLICANT – Sheldon Lobel, P.C., for Castle Hill Equities, LLC, owners.

SUBJECT – Application August 22, 2013 – Common Law Vested Right to continue development of proposed six-story residential building under prior R6 zoning district. R5A zoning district.

PREMISES AFFECTED – 123 Beach 93rd Street, western side of Beach 93rd Street with frontage on Shore Front Parkway and Cross Bay Parkway, Block 16139, Lot 11, Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Application 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 application requesting a Board determination that the owner of the premises has obtained the right to complete construction of a six-story residential building under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on October 8, 2013, after due notice by publication in *The City Record*, and then to decision on

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October 29, 2013; and

WHEREAS, the subject site is located on the west side of Beach 93rd Street, approximately 211 feet south of Holland Avenue in Rockaway Beach, in an R5A zoning district; and

WHEREAS, the site has 175 feet of frontage along Beach 93rd Street, 157.13 feet of frontage along Beach 94th Street, 107.01 feet of frontage along Shore Front Boulevard, and a total lot area of 18,488 sq. ft.; and

WHEREAS, the site is proposed to be developed with a six-story residential building with 57 dwelling units and 36 accessory parking spaces (the "Building"); and

WHEREAS, the applicant represents that the Building complies with the parameters of the former R6 zoning district; and

WHEREAS, on January 8, 2007, New Building Permit No. 402483013-01-NB (hereinafter, the "New Building Permit") was issued by the Department of Buildings ("DOB") permitting construction of the Building; and

WHEREAS, however, on August 14, 2008 (hereinafter, the "Enactment Date"), the City Council voted to adopt the Rockaway Neighborhoods Rezoning, which rezoned the site from R6 to R5A; and

WHEREAS, the Building, which is a multiple dwelling with a floor area ratio in excess of 1.10 and a height in excess of 35 feet, does not comply with the current zoning; and

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

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

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

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

WHEREAS, on October 19, 2010, pursuant to ZR § 11-30 *et seq.*, the Board granted, under BSA Cal. No. 110-10-BZY, a two-year extension of time to complete construction and obtain a certificate of occupancy under the subject calendar number; and

WHEREAS, accordingly, the applicant had until October 19, 2012 to complete construction and obtain a certificate of occupancy; and

WHEREAS, as of October 19, 2012, construction had not been completed; and

WHEREAS, accordingly, on March 19, 2013, pursuant to ZR § 11-30 *et seq.*, the Board granted, under BSA Cal. No. 110-10-BZY, an additional two-year extension to complete construction and obtain a certificate of occupancy under the subject calendar number; and

WHEREAS, pursuant to the Board's March 19, 2013 grant, the New Building Permit does not lapse until March 19,

2015; and

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

WHEREAS, the applicant states that it seeks a four-year extension because construction will be delayed as a result of the applicant's seeking public financing for the Building from the New York City Housing Development Corporation ("HDC") and the New York City Department of Housing Preservation and Development ("HPD"), which may dictate a change in the number of dwelling units proposed under the New Building Permit; and

WHEREAS, the Board notes that changes to the New Building Permit are subject to DOB approval; and

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

WHEREAS, by letter dated August 17, 2010, DOB stated that the New Building Permit was lawfully issued, authorizing construction of the proposed Building prior to the Enactment Date; and

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

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

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

WHEREAS, as to substantial construction, the applicant states that the work on the Building subsequent to the issuance of the permits includes: 100 percent of the excavation; 100 percent of the foundation (including the installation of over 300 driven piles); and the installation of a complex drainage system; and

WHEREAS, in support of this statement, the applicant has submitted the following: a breakdown of the construction costs by line item; a foundation survey; copies of cancelled checks; invoices; and photographs of the site; and

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

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

WHEREAS, the applicant represents that the total expenditure paid for the development is \$3,011,614 (including \$1,474,974 in hard costs), or 17 percent, out of the \$17,610,614 cost to complete; and

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

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

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

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

WHEREAS, the applicant notes that the R5A use regulations are significantly more restrictive than the R6 regulations; specifically, whereas any type of residence is permitted within an R6 district, however, an R5A district is limited to one- and two-family detached residences; and

WHEREAS, the applicant states that if the owner is not permitted to vest the Building under the former R6 district regulations, more than half of the floor area (34,696 sq. ft.) of the Building would be lost, the height of the building would have to be reduced from 65 feet to 35 feet, twice as many accessory parking spaces would be required, and a front yard with a minimum depth of ten feet will be required (no front yard is required in an R6 district), all of which will reduce the livable space within the Building; and

WHEREAS, the applicant also notes that its foundation—which is 100 percent complete—would be useless for any complying and conforming development because it was designed and built for a six-story multiple dwelling; and

WHEREAS, the applicant represents that individually and collectively, the changes to the Building required under the R5A district regulations would significantly decrease the market value of the Building, causing a serious economic loss to the applicant; and

WHEREAS, the Board agrees that complying with the

R5A district regulations would result in a substantial reduction of the market value of the site and cause the applicant a serious economic loss; and

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

Therefore it is Resolved, that this application made pursuant to the common law doctrine of vested rights requesting a reinstatement of Permit No. 402483013-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for four years from the date of this grant.

Adopted by the Board of Standards and Appeals, October 29, 2013.

41-11-A

APPLICANT – Eric Palatnik, P.C., for Sheryl Fayena, owner.

SUBJECT – Application April 12, 2011 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development under the prior R-6 zoning district. R4 Zoning District.

PREMISES AFFECTED – 1314 Avenue S, between East 13th and East 14th Streets, Block 7292, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to November 26, 2013, at 10 A.M., for adjourned hearing.

143-11-A thru 146-11-A

APPLICANT – Philip L. Rampulla, for Joseph LiBassi, owner.

SUBJECT – Application September 16, 2011 – Appeal challenging the Fire Department's determination that the grade of the fire apparatus road shall not exceed 10 percent, per NYC Fire Code Section FC 503.2.7. R2 zoning district.

PREMISES AFFECTED – 20, 25, 35, 40 Harborlights Court, east side of Harborlights Court, east of Howard Avenue, Block 615, Lot 36, 25, 35, 40, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to January 14, 2014, at 10 A.M., for continued hearing.

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90-12-A

APPLICANT – New York City Board of Standards and Appeals

SUBJECT – Application September 11, 2013 – Reopening by court remand for supplemental review of whether the subject wall was occupied by an art installation or an advertising sign. M1-6 zoning district.

PREMISES AFFECTED – 111 Varick Street, Varick Street between Broome and Dominick Street, Block 578, Lot 71, 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 December 17, 2013, at 10 A.M., for decision, hearing closed.

221-13-A

APPLICANT – Law Office of Jay Goldstein, PLLC, for Naseem Ali, owner.

SUBJECT – Application July 22, 2013 – Appeal seeking a determination that the owner has a common law vested right to continue construction under the prior R3A zoning district. R2A zoning district.

PREMISES AFFECTED – 239-26 87th Avenue, south side of 87th Avenue between 241st Street and 239th Street, Block 7966, Lot 54, Borough of Queens.

COMMUNITY BOARD #13Q

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 November 19, 2013, at 10 A.M., for decision, hearing closed.

237-13-A thru 242-13-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for RLP LLC, owners.

SUBJECT – Application August 12, 2013 – Construction of six buildings not fronting on a legally mapped street, contrary to General City Law Section 36. R3X (SSRD) zoning district.

PREMISES AFFECTED – 11, 12, 15, 16, 19, 20 Nino Court, 128.75 ft. south of intersection of Bedell Avenue and Hylan Boulevard, Block 7780, Lot 22, 30, 24, 32, 26, 34, Borough of Staten Island.

COMMUNITY BOARD #3SI

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to November 19, 2013, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

ZONING CALENDAR

259-12-BZ

APPLICANT – Davidoff Hutcher & Citron LLP, for 5239 LLC, owner.

SUBJECT – Application August 29, 2012 – Reopening of a variance (§72-21) to permit the development of a single-family house, contrary to lot width requirement (§23-32), to allow admission of the Certificate of Appropriateness into the record. R1-1, NA-2 zoning district.

PREMISES AFFECTED – 5241 Independence Avenue, west side of Independence Avenue between West 252nd and 254th Streets, Block 5939, Lot 458, Borough of Bronx.

COMMUNITY BOARD #8BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated August 29, 2012, acting on Department of Buildings Application No. 220179376, reads, in pertinent part:

Proposed lot width is contrary to Zoning Resolution Section 23-32; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R1-1 zoning district mapped within a Special Natural Area District (NA-2) within the Riverdale Historic District, the construction of a single-family home on a zoning lot that does not comply with minimum lot width requirements, contrary to ZR § 23-32; and

WHEREAS, a public hearing was held on this application on June 15, 2013, after due notice by publication in *The City Record*, with continued hearings on July 23, 2013, and September 10, 2013, and then to decision on October 8, 2013, which was re-opened and re-adopted on October 29, 2013; and

WHEREAS, the Board notes that it initially voted to approve the variance on October 8, 2013, but that it did so without having a Certificate of Appropriateness from the Landmarks Preservation Commission in the record; accordingly, the Board re-opened the hearing on October 29, 2013 to admit the Certificate of Appropriateness into the

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record and to re-adopt its vote to grant; 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, Bronx, recommends disapproval of this application; and

WHEREAS, City Council Member G. Oliver Koppell provided written testimony in opposition to the application, citing concerns about any building which does not comply with the R1-1 rezoning, neighborhood character, and the effect on the sewer system; and

WHEREAS, certain neighbors, on behalf of themselves, and represented by counsel, appeared in opposition to the proposal, citing concerns about the incompatibility of the home with the surrounding area, the applicant's failure to satisfy the variance findings including that there is not any hardship, the home disturbs the public welfare through the effect it would have on the sewer system, and specific bulk concerns related to the front yard, lot coverage, the perspective from Sycamore Avenue, and lot frontage are not compatible with neighborhood character; and

WHEREAS, the subject site is an interior lot located on the west side of Independence Avenue, between Blackstone Avenue and West 252nd Street, within an R1-1 zoning district within a Special Natural Area District (NA-2) within the Riverdale Historic District; and

WHEREAS, the site, which is vacant, has 92.85 feet of frontage along Independence Avenue and a lot area of 15,877 sq. ft.; and

WHEREAS, the applicant seeks to construct a single-family home on the site with the following bulk parameters: three stories, 4,549 sq. ft. of floor area (0.28 FAR), a front yard depth of 20'-0", side yards with widths of 21'-1" and 15'-11", a rear yard depth of 97'-6", and two accessory off-street parking spaces; and

WHEREAS, the applicant notes that the proposal complies in all respects with the bulk regulations applicable in the subject zoning district, except that the proposed lot width of 92.85 feet is less than the minimum required lot width pursuant to ZR § 23-32 (100 feet is the minimum required); accordingly, the applicant seeks a variance of that requirement; and

WHEREAS, the applicant notes that the site was formerly located within an R2-1 zoning district and fully compliant with all zoning regulations, but was rezoned in 2005 to R1-1, which has a minimum required lot width of 100 feet; and

WHEREAS, the applicant states that the following are unique physical conditions inherent to the zoning lot, which create practical difficulties and unnecessary hardship in developing the site in strict conformance with underlying zoning regulations, per ZR § 72-21(a): (1) disproportionate lot depth in relation to width; (2) extreme slope; (3) vacancy; and (4) historic configuration and zoning; and

WHEREAS, as to the depth/width ratio, the applicant notes that the lot has an average width of 92.9 feet, with 92.85

feet of frontage on Independence Avenue and a width of 92.94 feet at its rear lot line, in contrast to its depth of 171 feet, which results in a lot area of 15,877 sq. ft. (well in excess of the minimum required lot area of 9,500 sq. ft. pursuant to ZR § 23-32), but none of the floor area can be realized due to the approximately seven-ft. insufficiency of the width for residential development; and

WHEREAS, the applicant notes that the width requirement for residential development does not apply to community facility development; and

WHEREAS, however, the existing terrain poses a significant hardship in accommodating a complying community facility development with efficient floor plates; and

WHEREAS, specifically, the applicant notes that the area of the lot that is affected by steep sloping sections measures approximately 3,635 sq. ft., which is approximately 22.9 percent of the total lot area, and another 2,593.33 sq. ft. of lot area is steep slope buffer (approximately 16.3 percent); two areas of steep slope are at the extreme west end of the site and the other is in the middle, which leaves only the eastern end of the site closest to Independence Avenue viable for construction; and

WHEREAS, the applicant asserts that the extreme slope requires that the footprint be kept to a minimum and moved as close as possible to the street; and

WHEREAS, the applicant analyzed the feasibility of an as of right community facility use, which is not subject to minimum lot width requirements and concluded that the extreme slope and Special Natural Area District (SNAD) regulations prohibit such use; and

WHEREAS, specifically, the applicant's analysis concluded that the natural topography would have to be greatly modified to accommodate the necessary accessory parking for a community facility use and that such contouring would not be consistent with SNAD requirements to minimize topographic modifications; and

WHEREAS, additionally, the applicant asserts that the site's slope limits the building footprint, which cannot accommodate a community facility building given that the maximum lot coverage on the site would be 12.5 percent or 1,984 sq. ft. and as such a 1,984 sq. ft. footprint would not be sufficient for a community facility building; and

WHEREAS, the applicant asserts that the standard footprint associated with community facility buildings within the surrounding area is substantially greater than the 1,984 sq. ft. that would be possible at the site; and

WHEREAS, specifically, the average footprint for a community facility building in the area measures 19,673 sq. ft.; and

WHEREAS, further, the applicant notes that 43 percent of the ground floor of a community facility would be dedicated to Code-compliant restrooms, stairwells, an elevator, and accessory space; and

WHEREAS, as to vacancy, the applicant notes that the lot is one of three within a 600-ft. radius that is not developed; all of the three have lot widths of less than 100 feet, but the

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other two lots are either so small or irregularly-shaped that no development would be feasible; and

WHEREAS, further, the applicant states that of the 21 other lots located within the 600-ft. radius, with widths less than 100 feet, all are developed with single family homes; and

WHEREAS, accordingly, the applicant notes that lots with widths of less than 100 feet are not unique in the immediate area and are, in fact, developed with single-family homes; however, a vacant lot with a width of less than 100 feet is unique; and

WHEREAS, as to the history of the lot, at the Board's direction, the applicant reviewed the ownership history of the adjoining lots and found that on December 15, 1961, it was in common ownership with the adjacent lots and, thus, the ZR § 23-33 exception for small lots is not available; and

WHEREAS, the applicant states that on December 15, 1961, Tax Lot 458 was part of the former larger Lot 350 (which included Lots 350, 374, 450, and 463); the tax lot subdivision appears to have occurred between 1971 and 1974 and the first deed of record that references Tax Lot 458 as apportioned from Lot 350 was April 4, 1978; and

WHEREAS, accordingly, the applicant asserts that the zoning lot has been owned separately and individually from all adjoining zoning lots since 1978; and

WHEREAS, the applicant states that in 1978 and until 2005, the site was within an R1-2 zoning district which permitted construction of single-family detached homes on lots with widths of at least 60 feet; thus, the insufficient width condition was not self-created as it pre-dates the zoning change; and

WHEREAS, thus, the applicant asserts that until 2005, when the lot had been in existence for approximately 27 years, it could have constructed a single-family home on the lot in full accordance with zoning; and

WHEREAS, the Board notes that the lot dimensions and sloping conditions contribute to a hardship in developing the site with a complying building and that the applicant has submitted evidence in the record to establish that the lot has existed in its current configuration and was owned separately and apart from all adjacent lots at the time of the 2005 adoption of the lot width restriction, and at the time of the subject application; and

WHEREAS, accordingly, the Board finds that the aforementioned unique physical conditions create a practical difficulty in developing the site in compliance with the applicable zoning provisions; and

WHEREAS, the applicant represents that the proposed home 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 proposed home complies with all R1-1 (NA-2) zoning district parameters aside from lot width and that the lot area far exceeds the minimum required within the zoning district; and

WHEREAS, specifically, the applicant notes that there are 21 lots within a 600-ft. radius of the site with widths less

than 100 feet that are occupied by single-family homes, thus, the home is compatible with that context; and

WHEREAS, as to bulk, the applicant states that the home complies with all R1-1 zoning district requirements including its 4,549 sq. ft. of floor area (0.28 FAR), a front yard depth of 20'-0", side yards with widths of 21'-1" and 15'-11", and rear yard depth of 97'-6"; and

WHEREAS, the applicant notes that, in fact, the floor area is just more than half of the maximum permitted floor area of 0.5 FAR; and

WHEREAS, additionally, the applicant notes that the proposed home will have a wall height of 20'-11", while the maximum permitted wall height is 25'-0" (ZR § 23-631); a rear yard measures 97'-6", while the minimum required is 30'-0" (ZR § 23-47); and an open space ratio of 305.6 percent, while a minimum open space ratio of 150 percent is required (ZR § 23-141); and

WHEREAS, the applicant provided responses to the Opposition's concerns about compatibility with the area including the front yard, lot coverage, perspective from Sycamore Avenue, lot frontage, and the sewer system; and

WHEREAS, as to lot coverage, the applicant notes that it proposes 12.5 percent, not the 70 percent that the Opposition alleges and that the open space ratio of 305.6 percent is substantially greater than the minimum required 150 percent; and

WHEREAS, as to the front yard depth of 20'-0", the applicant notes that this meets the underlying zoning regulations and that of the homes at 5225 and 5271 Independence Avenue are located closer to the street; and

WHEREAS, as to the perspective from Sycamore Avenue, the applicant provided a streetscape to reflect the view from the rear of the site at the Board's direction, which reflects that the home is designed to fit within the steep slope while not overwhelming the street below and the applicant notes that the Landmarks Preservation Commission (LPC) and City Planning Commission (CPC) approved the design within the hillside; and

WHEREAS, additionally, the applicant notes that the rear of the home is 97'-6" from the rear property line and 130 feet from the curb on Sycamore Avenue; and

WHEREAS, the applicant proposes additional plantings in the rear yard to buffer the rear of the home and notes that the plantings were approved by the CPC and are required to be planted in accordance with a Notice of Restrictions recorded against the property; and

WHEREAS, as to the lot frontage, the applicant notes that of the 24 lots within the 600-ft. radius of the lot with widths less than 100 feet, the average lot width is 68'-11", significantly less than the subject lot's width; and

WHEREAS, as to the concerns about the impact the home will have on the area's vulnerable sewer system, the applicant states that it has agreed to enter into a written understanding before the sewer investigation work is commenced to enable both the applicant and neighboring property owners to understand the sewer condition and capacity; and

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WHEREAS, further, the applicant has already reviewed a draft agreement concerning the investigatory work to be undertaken and is working with the Opposition's counsel to resolve any concerns; and

WHEREAS, the applicant also notes that after the completion of the sewer investigation, it will be required to submit a permit application to the Department of Environmental Protection for approval of the sewer work plan before commencing any sewer-related construction work, notwithstanding that the connection will be to the private sewer line; and

WHEREAS, by Certificate of Appropriateness, dated October 15, 2013, LPC approved the proposal; and

WHEREAS, by authorization, dated August 19, 2013, CPC approved the proposal as compliant with all relevant SNAD regulations; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the site's unique conditions, which existed in 1978 and at the time of the 2005 adoption of ZR § 23-32's lot width requirement along the street frontage; and

WHEREAS, the applicant notes that it complies with all R1-1 zoning district parameters except for the minimum lot width, of which it is only deficient by approximately seven feet (or seven percent of the required width of 100 feet); and

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

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

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.13, §§ 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 § 72-21, to permit, within an R1-1 zoning district mapped within a Special

Natural Area District (NA-2) within the Riverdale Historic District, the construction of a single-family home on a zoning lot that does not comply with minimum lot width requirements, contrary to ZR § 23-32; *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received May 29, 2013"– (9) sheets; and *on further condition*:

THAT the bulk will be limited to 4,549 sq. ft. of floor area (0.28 FAR), a front yard depth of 20'-0", side yards with widths of 21'-1" and 15'-11", a rear yard depth of 97'-6", and two accessory off-street parking spaces, as reflected on the BSA-approved plans;

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

THAT construction will be in strict conformance with Landmarks Preservation Commission and City Planning Commission approvals;

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

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

THAT the Department of Buildings must ensure compliance with all 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, October 29, 2013.

77-13-BZ

CEQR #13-BSA-102M

APPLICANT – Friedman & Gotbaum, LLP by Shelly S. Friedman, Esq., for 45 Great Jones Street LLC, for Joseph Lauto, owner.

SUBJECT – Application February 22, 2013 – Variance (§72-21) to permit residential use, contrary to ZR 42-00 and ground floor commercial use contrary to ZR§42-14(D)(2)(b). M1-5B zoning district.

PREMISES AFFECTED – 45 Great Jones Street, between Lafayette and Bowery Streets, on the south side of Great Jones Street, Block 530, Lot 29, 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, the decision of the Executive Zoning Specialist of the Department of Buildings, dated July 15, 2013, acting on Department of Buildings Application No. 121329026, reads, in pertinent part:

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Proposed UG 2 residential use is not permitted in an M1-5B and is contrary to ZR 42-10;

Proposed UG 6 retail use is not permitted in M1-5B below the floor level of the second story and is contrary to ZR 42-14(D)(2)(b); and

WHEREAS, this is an application under ZR § 72-21, to permit, within an M1-5B zoning district within the NoHo Historic District Extension, the construction of an eight-story mixed residential and commercial building (Use Groups 2 and 6) with ground floor retail, contrary to ZR §§ 42-10 and 42-14; and

WHEREAS, a public hearing was held on this application on August 13, 2013, after due notice by publication in the *City Record*, and then to decision on October 29, 2013; and

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

WHEREAS, Community Board 2, Manhattan, recommends approval of the application on condition that the ground floor not be used as an eating and drinking establishment; and

WHEREAS, the subject site is an interior lot located on the south side of Great Jones Street between Lafayette Street and Bowery, within an M1-5B zoning district within the NoHo Historic District Extension; and

WHEREAS, the site has 27 feet of frontage along Great Jones Street, a lot depth of 100 feet, and a lot area of 2,700 sq. ft.; and

WHEREAS, the site is occupied by a three-story building that was built in 1915 and has historically been occupied by commercial and light industrial uses; the applicant represents that the building has been vacant since 2008 and its most recent use was as a lumber yard; and

WHEREAS, the applicant represents that the proposed mixed residential (Use Group 2) and commercial (Use Group 6) building, which will incorporate the existing building façade and certain existing structural elements, will have a total floor area of 13,500 sq. ft. (5.0 FAR), a residential floor area of 11,697 sq. ft. (4.33 FAR), a commercial floor area of 1,803 sq. ft. (0.67 FAR), a street wall height of 91.75 feet, a building height of 100 feet, and a rear yard depth of 30 feet beginning at the second story; the applicant notes that the cellar will include retail space, mechanical rooms, and accessory storage for the residences; the first story will be occupied by retail space and the residential lobby; and the second through eighth stories will be occupied by a total of six dwelling units; and

WHEREAS, because Use Group 2 is not permitted and Use Group 6 is not permitted below the floor level of the second story within the subject M1-5B zoning district, the applicant seeks use variances; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the site has a small lot area,

narrow lot width, and is occupied by an underdeveloped building, which is classified by the Landmarks Preservation Commission (“LPC”) as contributing to the character of the NoHo Historic District Extension; and (2); the site is surrounded on all three sides by significantly overbuilt buildings, creating a “canyon effect” that reduces the lots marketability for conforming uses; and

WHEREAS, the applicant states that the site’s lot area of 2,700 sq. ft., lot width of 27 feet, and underdevelopment (2.7 FAR) make it unique in the M1-5B district; and

WHEREAS, in support of this statement, the applicant submitted its analysis of the 157 tax lots within the M1-5B district north of Houston Street to Astor Place and between Broadway and Bowery; based on the analysis, the applicant states that while there are 23 lots that share the site’s small lot area (2,700 sq. ft. or less), narrow lot width (27 feet or less), and underutilization (3.0 FAR or less where the maximum permitted FAR is 5.0 for commercial and manufacturing uses and 6.5 for community facility uses), only ten such lots are not already occupied by residential or mixed uses; further, when vacant lots, lots that are clearly part of a larger development assemblage, and inherently unbuildable lots are eliminated from consideration, only five lots (six including the subject site) remain; and

WHEREAS, the applicant distinguishes the remaining five lots from the subject site based on various factors, including: location on a corner, already-transferred development rights, and shared historic characteristics with neighbors that make independent development unlikely; and

WHEREAS, further, the applicant notes that even if the other five lots are considered uniquely burdened by the same factors affecting the subject lot, six lots out of the 157 lots within the study area represents only approximately four percent of the lots; and

WHEREAS, the applicant also contends that the site is further constrained by being occupied by a building designated as contributing to the NoHo Historic District Extension; as such, it cannot demolish the building and replace it with a new building that is better suited to modern conforming uses; and

WHEREAS, as to the “canyon effect,” the applicant asserts that the existence of a seven-story building to the east, a six-story building to the west, and seven-story building to the south, each with a rear yard depth of significantly less than 30 feet, further constrain conforming development on the site; and

WHEREAS, specifically, the applicant states that although a rear yard would not be required for certain conforming uses, the canyon effect would compel it to provide one in order to supply natural light to the rear windows of the buildings (an essential, in terms of marketability, for certain uses such as offices); and

WHEREAS, consequently, the applicant states that the site’s small lot area, narrow lot width, and overbuilt neighbors leave it with the following as-of-right scenarios, which it deems equally undesirable: (1) it could create a full lot coverage building by demolishing the rear wall, which would

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yield floorplates of approximately 2,700 sq. ft., a building depth of 100 feet, and limited windows for light and ventilation except along Great Jones Street; or (2) it could preserve the existing rear yard and enlarge vertically, which would provide more windows, but would result in floorplates of 2,423 sq. ft. (which is essentially what the site offers now and cannot rent); and

WHEREAS, the Board notes that it is not persuaded that the “canyon effect” is a unique condition; on the contrary, the Board finds that such condition is characteristic of numerous lots within the district; and

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

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

WHEREAS, in particular, in addition to the proposal, the applicant examined the economic feasibility of: (1) an as-of-right 5.0 FAR commercial scenario (offices); (2) an as-of-right 5.0 FAR hotel scenario (22 hotel rooms); and (3) a lesser variance scenario (mixed residential and commercial within the existing building); and

WHEREAS, the applicant concluded that both as-of-right scenarios and the lesser variance scenario resulted in negative rates of return after capitalization; in contrast, the applicant represents that the proposal results in a positive rate of return, making it the only economically viable scenario; and

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

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

WHEREAS, the applicant states that the immediate area is characterized by a mix of medium-density residential and commercial uses, with some remaining manufacturing/industrial uses; and

WHEREAS, the applicant represents that 43.2 percent of the 535 tax lots within the subject M1-5B district are either residential or mixed residential and commercial; thus, the applicant asserts that the existing context includes a significant amount of residential use; and

WHEREAS, similarly, the applicant states that the street-level residential lobby and retail facade will enhance the Great Jones Street frontage, which today, with the exception of the few remaining underutilized sites and parking lots, consists of small retail shops, restaurants and residential lobby

entrances; and

WHEREAS, the applicant also notes that the proposal will be a natural complement to several recently approved LPC and BSA applications on Great Jones Street and Bond Street, and has the support of the community, which has historically shown an aversion to certain as-of-right uses such as hotels; and

WHEREAS, similarly, the community has, both historically and in this case, been opposed to the creation of eating and drinking establishments in the area; accordingly, the applicant has agreed not to allow an eating or drinking establishment to occupy the ground floor of the proposed building; and

WHEREAS, the Board agrees that the character of the area is mixed-use, and finds that the introduction of six dwelling units and ground floor retail will not impact nearby conforming uses; and

WHEREAS, the Board notes that some ground floor Use Group 6 is contemplated in the M1-5B district, as evidenced by the existence of ZR § 74-781, a City Planning Commission special permit, which allows modification of the use regulations set forth in ZR § 42-14 upon a finding that the owner has made a good faith effort to rent the space to a conforming use at fair market rentals; and

WHEREAS, the applicant represents that one part-owner of the site has operated industrial businesses on the subject block for more than 50 years and is intimately knowledgeable regarding the real estate trends and availability of commercial and manufacturing space in the vicinity, and the other part-owner is a real estate development company that has had offices on Great Jones Street for more than ten years and maintains a database of conveyances and leases in the neighborhood; the owners have held the site for many years and have been unable to rent for conforming uses; and

WHEREAS, as to bulk, the applicant states that the building’s street wall height of 91.75 feet and building height of 100 feet are comparable to buildings in the immediate vicinity; and

WHEREAS, LPC has approved the proposal by Certificate of Appropriateness, dated January 8, 2013; and

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

WHEREAS, the Board finds that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the site’s size and narrowness, the limited economic potential of conforming uses on the lot, and the fact the site is occupied by a building designated as contributing to the NoHo Historic District Extension; and

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

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the findings required to be

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made under ZR § 72-21; and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617 and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 13BSA102M, dated February 19, 2013; and

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

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

WHEREAS, DEP reviewed and accepted the October 2013 Remedial Action Work Plan and 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, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, within an M1-5B zoning district within the NoHo Historic District Extension, the construction of an eight-story mixed residential and commercial building (Use Groups 2 and 6) with ground floor retail, contrary to ZR §§ 42-10 and 42-14, *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 17, 2013"- eighteen (18) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a total floor area of 13,500 sq. ft. (5.0 FAR), a residential floor area of 11,697 sq. ft. (4.33 FAR), a commercial floor area of 1,803 sq. ft. (0.67 FAR), eight stories, a street wall height of 91.75 feet, a building height of 100 feet, and a rear yard depth of 30 feet beginning at the second story;

THAT an eating and drinking establishment (Use Group 6) will not be permitted at the site;

THAT substantial construction will be completed in accordance with ZR § 72-23;

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

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

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

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

Adopted by the Board of Standards and Appeals, October 29, 2013.

158-13-BZ CEQR #13-BSA-141M

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Golf & Body NYC, owners.

SUBJECT – Application May 20, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Golf & Body*). C6-6(MID) zoning district.

PREMISES AFFECTED – 883 Avenue of the Americas, southwest corner of the Avenue of the Americas and west 32nd Street, Block 807, Lot 1102, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....5
THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated August 6, 2013, acting on Department of Buildings Application No. 121115881, reads in pertinent part:

Proposed physical culture establishment use is not permitted as-of-right in a C6-6 district, per ZR Section 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within a C6-6 zoning district within the Special Midtown District, the operation of a physical culture establishment ("PCE") located in portions of the third story and third story mezzanine of a 48-story mixed residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on October 8, 2013, after due notice by publication in *The City Record*, and then to decision on

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October 29, 2013; 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 5, Manhattan, recommends approval of the application; and

WHEREAS, the subject site is an irregular lot located at the southwest corner of the intersection of Avenue of the Americas and West 32nd Street, with 98.75 feet of frontage along Avenue of the Americas, 141.67 feet of frontage along West 32nd Street, and 41.67 feet of frontage along West 31st Street; and

WHEREAS, the site has a lot area of approximately 18,104 sq. ft., and is occupied by a 48-story mixed residential and commercial building with approximately 422,255 sq. ft. of floor area (13.87 FAR); and

WHEREAS, the PCE will occupy 17,586 sq. ft. of floor area on portions of the third story and third-story mezzanine; and

WHEREAS, the PCE will be operated as Golf & Body; and

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

WHEREAS, the hours of operation for the PCE are Monday through Friday, from 6:00 a.m. to 10:00 p.m., Saturday, from 8:00 a.m. to 8:00 p.m., and Sunday, from 8:00 a.m. to 6:00 p.m.; and

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

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

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

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

WHEREAS, the Board also finds that the PCE is consistent with the purposes and provisions of the Special Midtown District, in accordance with ZR § 81-13; and

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

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

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

Assessment Statement, CEQR No. 13BSA141M, dated May 10, 2013; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located within a C6-6 zoning district within the Special Midtown District, the operation of a PCE located in portions of the third story and third-story mezzanine of a 48-story mixed residential and commercial building, contrary to ZR § 32-10; *on condition* that all work will substantially conform to drawings filed with this application marked “Received May 20, 2013” – Four (4) sheets and “Received August 29, 2013” – Three (3) sheets and *on further condition*:

THAT the term of this grant will expire on October 29, 2023;

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

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

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

THAT accessibility for persons with certain physical disabilities compliance will be as reviewed and approved by DOB;

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

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

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

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

THAT the Department of Buildings must ensure

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

Adopted by the Board of Standards and Appeals, October 29, 2013.

159-13-BZ

CEQR #13-BSA-142M

APPLICANT – Sheldon Lobel, P.C., for Melvin Friedland & Lawrence Friedland, owners; 3799 Broadway Fitness Group, LLP, lessees.

SUBJECT – Application May 24, 2013 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*Planet Fitness*); Special Permit (§73-52) to allow the extension of the proposed use into 25' feet of the residential portion of the zoning lot. C4-4 and R8 zoning districts.

PREMISES AFFECTED – 3791-3799 Broadway, west side of Broadway between 157th Street and 158th Street, Block 2134, Lot 180, Borough of Manhattan.

COMMUNITY BOARD #12M

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 6, 2013, acting on Department of Buildings (“DOB”) Application No. 121607083, reads in pertinent part:

Proposed use as Physical Culture Establishment, as defined by ZR 12-10, in a C4-4 zoning district, is contrary to ZR 32-10 and must be referred to the Board of Standards and Appeals for approval pursuant to ZR 73-36;

Proposed extension of use as Physical Culture Establishment, as defined by ZR 12-10, into R8 portion of zoning lot is contrary to ZR 77-11 and must be referred to the Board of Standards and Appeals for approval pursuant to ZR 73-52; and

WHEREAS, this is an application under ZR §§ 73-36, 73-03, and 73-52 to permit, on a site located partially within a C4-4 zoning district and partially within an R8 zoning district, the legalization of a physical culture establishment (“PCE”) in portions of the cellar and first floor, and entire second floor, of an existing two-story commercial use building, contrary to ZR § 32-10, and to permit the legalization of an extension of the proposed PCE use within the existing two-story commercial use building into the R8 portion of the zoning lot, contrary to ZR § 77-11; and

WHEREAS, a public hearing was held on this application on October 8, 2013, after due notice by

publication in *The City Record*, and then to decision on October 29, 2013; and

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

WHEREAS, Community Board 12, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is an irregularly-shaped lot located on the west side of Broadway and bordered to the north by West 158th Street, to the south by West 157th Street, and to the west by Edward Morgan Place, partially within a C4-4 zoning district and partially within an R8 zoning district; and

WHEREAS, the site has approximately 200 feet of frontage along Broadway, approximately 33 feet of frontage along West 157th Street, approximately 210 feet of frontage along Edward Morgan Place, and approximately 210 feet of frontage along West 158th Street, with a lot area of 26,713 sq. ft.; and

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

WHEREAS, the PCE occupies approximately 20,376 sq. ft. of floor area in portions of the cellar and first floor, and the entire second floor; and

WHEREAS, the Board has exercised jurisdiction over the site since October 27, 1921, when under BSA Cal. No. 972-21-BZ, the Board granted a variance to permit an extension of a business building from a business district into a residential district; subsequently, on July 1, 1924, under BSA Cal. No. 571-24-BZ, the Board granted a variance to permit an extension of a business building located in both a business district and residential district; lastly, on October 5, 1965, under BSA Cal. No. 757-64-A, the Board granted an appeal from the decision of the fire commissioner requiring installation of a non-automatic sprinkler system in the cellar and installation of an automatic fire alarm with central office connection throughout the building; and

WHEREAS, the applicant notes that the PCE has been in operation since July 8, 2013; and

WHEREAS, the PCE is currently operated as a Planet Fitness; and

WHEREAS, the applicant proposes to: (1) pursuant to ZR § 73-52, extend the use regulations applicable in the C4-4 portion of the lot six feet to the west along the southern lot line, thereby legalizing a six foot sliver of the existing two-story commercial building within the R8 portion of the lot; and (2) pursuant to ZR § 73-36, legalize a PCE in portions of the cellar and first floor, and the entire second floor, of an existing two-story commercial use building; and

WHEREAS, ZR § 73-52 provides that when a zoning lot, in single ownership as of December 15, 1961, is divided by district boundaries in which two or more uses are permitted, the Board may permit a use which is permitted in the district in which more than 50 percent of the lot area of the zoning lot is located to extend not more than 25 feet into the remaining portion of the zoning lot where such use is not permitted, provided that: (1) without any such extension, it

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would not be economically feasible to use or develop the remaining portion of the zoning lot for a permitted use; and (2) such extension will not cause impairment of the essential character or the future use or development of the surrounding area; and

WHEREAS, as to the threshold issues of single ownership and the 50 percent lot area requirement, the applicant submitted deeds showing that the zoning lot was in single ownership prior to December 15, 1961 and continuously from that time onward, as well as a site plan indicating that 19,913 sq. ft. (75 percent) of the site's total lot area of 26,713 sq. ft. is located within the C-4-4 zoning district; and

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

WHEREAS, as to economic feasibility, the applicant represents that it would not be economically feasible to use or develop the R8 portion of the site for a permitted use; specifically, the applicant states that the residential portion of the site is occupied with a portion of the two-story building that is too small—approximately six feet wide—to accommodate a separate residential or community facility tenant; as such, absent the requested extension of the PCE into the residential space, the six foot wide portion would remain vacant; and

WHEREAS, the applicant also asserts that because there is an existing, two-story community facility building on the R8 portion of the lot, redevelopment of the R8 portion is impractical because it would necessitate demolition of the existing building; and

WHEREAS, finally, the applicant states that the small size and triangular shape of the R8 portion of the lot make it unsuitable for residential use; and

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

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

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

WHEREAS, accordingly, the Board finds that the proposed extension of the C4-4 zoning district portion of the lot into the R8 portion will not cause impairment of the essential character or the future use or development of the surrounding area, nor will it be detrimental to the public welfare; and

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

reduction, and aerobics; and

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

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

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

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

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

WHEREAS, the Board, therefore, has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36, 73-03, and 73-52; and

WHEREAS, the Board reduces the term of the grant for the period since the PCE began operation on July 8, 2013 to the date of the grant; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 13BSA142M, dated May 10, 2013; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36, 73-03, and 73-52 to permit, on a site partially

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within a C4-4 zoning district and partially within an R8 zoning district, the legalization of an existing PCE in portions of the cellar and first floor, and entire second floor of an existing two-story commercial use building, contrary to ZR § 32-10, and the legalization of an extension of an existing commercial use within portions of an existing building within the R8 portion of the zoning lot, contrary to ZR § 77-11; *on condition* that all work will substantially conform to drawings filed with this application marked "August 28, 2013" – Five (5) sheets and "Received October 16, 2013" – One (1) sheet; and *on further condition*:

THAT the term of the PCE grant will expire on July 8, 2023;

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

THAT the bulk parameters of the building will be as follows: 6,800 sq. ft. within the R8 portion of the lot and 19,913 sq. ft. within the C4-4 portion of the lot;

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, October 29, 2013.

16-12-BZ

APPLICANT – Eric Palatnik, P.C., for Congregation Adas Yereim, owner.

SUBJECT – Application January 23, 2012 – Special Permit (§73-19) to allow for a school (*Congregation Adas Yereim*) contrary to use regulations (§42-00). M1-2 zoning district. PREMISES AFFECTED – 184 Nostrand Avenue, northwest corner of Nostrand Avenue and Willoughby Avenue, Block 1753, Lot 42, 43, Borough of Brooklyn.

COMMUNITY BOARD #4BK

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 November 26, 2013, at 10 A.M., for decision, hearing

closed.

50-12-BZ

APPLICANT – Gerald J. Caliendo, R.A., AIA, for 177-90 Holding LLC/Donald McLoughlin, owner.

SUBJECT – Application March 5, 2012 – Variance (§72-21) to allow for the construction of a commercial building, contrary to use regulations (§22-00). R3-2 zoning district.

PREMISES AFFECTED – 177-60 South Conduit Avenue, south side of South Conduit Avenue, 229/83' west of corner of South Conduit Avenue and Farmers Boulevard, Block 13312, Lot 146, 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 November 26, 2013, at 10 A.M., for decision, hearing closed.

236-12-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Thomas Savino, owner.

SUBJECT – Application July 31, 2012 – Variance (§72-21) to permit the extension of an existing medical office, contrary to use ((§ 22-10) and side yard regulations (§24-35). R2 zoning district.

PREMISES AFFECTED – 1487 Richmond Road, northwest corner of intersection of Richmond Road and Norden Street, Block 869, Lot 372, Borough of Staten Island.

COMMUNITY BOARD #2SI

THE VOTE TO CLOSE HEARING –

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

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

262-12-BZ

APPLICANT – Patrick W. Jones, P.C., for Canyon & Cie LLC c/o Mileson Corporation, owner; Risingsam Management LLC, lessee.

SUBJECT – Application September 4, 2012 – Variance (§72-21) to permit a hotel (UG 5), contrary to use regulations (§42-00). M2-1 zoning district.

PREMISES AFFECTED – 132-10 149th Avenue aka 132-35 132nd Street, bounded by 132nd Street, 149th Avenue and Nassau Expressway Service Road, Block 11886, Lot 12 and 21, Borough of Queens.

COMMUNITY BOARD #10Q

ACTION OF THE BOARD – Laid over to

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November 26, 2013, at 10 A.M., for continued hearing.

263-12-BZ & 264-12-A

APPLICANT – Sheldon Lobel, P.C., for Luke Company LLC, owner.

SUBJECT – Application September 4, 2012 – Variance (§72-21) to permit senior housing (UG 2), contrary to use regulations (§42-00).

Variance (Appendix G, Section BC G107, NYC Administrative Code) to permit construction in a flood hazard area which does not comply with Appendix G, Section G304.1.2 of the Building Code. M1-1 zoning district.

PREMISES AFFECTED – 232 & 222 City Island Avenue, site bounded by Schofield Street and City Island Avenue, Block 5641, Lots 10, 296, Borough of Bronx.

COMMUNITY BOARD #10 & 13BX

ACTION OF THE BOARD – Laid over to February 4, 2013, at 10 A.M., for continued hearing.

303-12-BZ

APPLICANT – Eric Palatnik, P.C., for Tabernacle of Praise, Inc., owner.

SUBJECT – Application October 25, 2013 – Variance (§72-21) to permit the development of a sub-cellar, cellar and three story church, with accessory educational and social facilities (*Tabernacle of Praise*), contrary to rear yard setback (§33-292), sky exposure plane and wall height (§34-432), and parking (§36-21) regulations. C8-1 zoning district.

PREMISES AFFECTED – 1106-1108 Utica Avenue, between Beverly Road and Clarendon Road, Block 4760, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #17BK

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to December 17, 2013, at 10 A.M., for decision, hearing closed.

339-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Lion Bee Equities, LLC., owner.

SUBJECT – Application December 12, 2012 – Variance (§72-21) to permit accessory commercial parking to be located in a residential portion of a split zoning lot, contrary to §22-10. R2A & C1-2/R3-1 zoning districts.

PREMISES AFFECTED – 252-29 Northern Boulevard, southwest corner of the intersection formed by Northern Boulevard and Little Neck Parkway, Block 8129, Lot p/o 53, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to November 26, 2013, at 10 A.M., for continued hearing.

6-13-BZ

APPLICANT – Sheldon Lobel, P.C., for Yeshiva Ohr Yisrael, owner.

SUBJECT – Application January 11, 2013 – Variance (§72-21) to permit the construction of a synagogue and school, contrary to floor area and lot coverage (§24-11), side yard (§24-35), rear yard (§24-36), sky exposure plane (§24-521), and parking (§25-31) regulations. R3-2 zoning district.

PREMISES AFFECTED – 2899 Nostrand Avenue, east side of Nostrand Avenue, Avenue P and Marine Parkway, Block 7691, Lot 13, Brooklyn of Brooklyn.

COMMUNITY BOARD #18BK

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

13-13-BZ & 14-13-BZ

APPLICANT – Slater & Beckerman, P.C., for The Green Witch Project LLC, owners.

SUBJECT – Application January 25, 2013 – Variance (§72-21) to allow two single-family residential buildings, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 98 & 96 DeGraw Street, north side of DeGraw Street, between Columbia and Van Brunt Streets, Block 329, Lot 23, Borough of Brooklyn.

COMMUNITY BOARD #6BK

THE VOTE TO CLOSE HEARING –

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

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

78-13-BZ

APPLICANT – Sheldon Lobel, P.C., for S.M.H.C. LLC, owner.

SUBJECT – Application February 22, 2013 – Variance (§72-21) to permit a new four-story, four-unit residential building (UG 2), contrary to use regulations, ZR §42-00. M1-1 & R7A/C2-4 zoning districts.

PREMISES AFFECTED – 876 Kent Avenue, located on the west side of Kent Avenue, approximately 91' north of Myrtle Avenue. Block 1897, Lot 56, Borough of Brooklyn.

COMMUNITY BOARD #3BK

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

MINUTES

81-13-BZ

APPLICANT – Nasir J. Khanzada, for Aqeel Klan, owner.
SUBJECT – Application February 28, 2013 – Re-Instatement (§11-411) of a variance which permitted an auto service station (UG16B), with accessory uses, which expired on November 6, 1992; Amendment (§11-413) to permit the change of use from auto service station to auto repair (UG 16B) with accessory auto sales; Waiver of the Rules. R2 zoning district.

PREMISES AFFECTED – 264-12 Hillside Avenue, Block 8794, Lot 22, Borough of Queens.

COMMUNITY BOARD # 13Q

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

106-13-BZ

APPLICANT – Law office of Fredrick A Becker, for Harriet and David Mandalaoui, owners.

SUBJECT – Application April 18, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, lot coverage and open space (§23-141); side yard (§23-461) and perimeter wall height (§23-631); R3-2 zoning district.

PREMISES AFFECTED – 2022 East 21st Street, west side of East 21st Street between Avenue S and Avenue T, Block 7299, Lot 18, Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to November 26, 2013, at 10 A.M., for decision, hearing closed.

129-13-BZ

APPLICANT – Lewis E. Garfinkel, for Tammy Greenwald, owner.

SUBJECT – Application May 7, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141(a)); side yards (§23-461(a)); less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1010 East 22nd Street, west side of East 22nd Street, 264' south of Avenue I, Block 7585, Lot 61, Borough of Brooklyn.

COMMUNITY BOARD #14BK

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to November 26, 2013, at 10 A.M., for decision, hearing

closed.

154-13-BZ

APPLICANT – Sheldon Lobel, P.C., for Ralph Avenue Associates, LLC, owner.

SUBJECT – Application May 14, 2013 – Variance (§72-21) to allow the construction of a retail building (UG 6), contrary to use regulations (§22-10). R5 zoning district.

PREMISES AFFECTED – 1054-1064 Bergen Avenue, bounded by Bergen Avenue to the north, Avenue K to the east, East 73rd Street to the south, and Ralph Avenue to the west, Block 8341, Lot (Tentative lot 135), Borough of Brooklyn.

COMMUNITY BOARD #18BK

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

167-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Michael Calabrese, owner.

SUBJECT – Application June 4, 2013 – Variance (§72-21) to permit the enlargement of an existing one-story automobile sales establishment, contrary to use regulations (§22-10). R5 zoning district.

PREMISES AFFECTED – 1614/26 86th Street and Bay 13 Street, southwest corner of 86th Street and Bay 13 Street, Block 6363, Lot 42, Borough of Brooklyn.

COMMUNITY BOARD #11BK

ACTION OF THE BOARD – Laid over to November 26, 2013, at 10 A.M., for continued hearing.

168-13-BZ

APPLICANT – Lewis E Garfinkel, for Dovie Minzer, owner.

SUBJECT – Application June 4, 2013 – Special Permit (§73-622) to permit the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141(a)); side yard (§23-461(a)); less than the required rear yard; (§23-47) and perimeter wall height (§23-631). R3-2 zoning district.

PREMISES AFFECTED – 1323 East 26th Street, east side of East 26th Street, 180' south of Avenue M, Block 7662, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #14BK

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to November 26, 2013, at 10 A.M., for decision, hearing closed.

MINUTES

173-13-BZ

APPLICANT – Greenberg Traurig, LLP, for 752 UWS, LLC, owner; 752 Paris Gym LLC, lessee.

SUBJECT – Application June 14, 2013 – Variance (§72-21) to legalize the existing Physical culture establishment (*Paris Health Club*), which occupies the cellar, first floor and the first floor mezzanine of a 24-story residential building, contrary to use regulations (§22-00). R10A zoning district. PREMISES AFFECTED – 752-758 West End Avenue aka 260-268 West 97th Street, southeast corner of West End Avenue and West 97th Street, Block 1868, Tentative Lot 1401 (f/k/a part of 61), Borough of Manhattan.

COMMUNITY BOARD #7M

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to November 26, 2013, at 10 A.M., for decision, hearing closed.

229-13-BZ

APPLICANT – Rothkrug Rothrug & Spector LLP, for Country Leasing Limited Partnership, owner; Blink Nostrand Avenue, Inc., lessee.

SUBJECT – Application August 6, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Blink Fitness*) within an existing commercial building. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 3779-3861 Nostrand Avenue, 2928/48 Ave Z, 2502/84 Haring Street, Block bounded by Nostrand Avenue, Avenue Z, Haring Street and Avenue Y, Block 7446, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to November 26, 2013, at 10 A.M., for decision, hearing closed.

232-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for SDF12 Bay Street, LLC, owner; Staten Island Fitness, LLC, lessee.

SUBJECT – Application August 9, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Crunch Fitness*) within portions of proposed commercial building. M1-1 zoning district.

PREMISES AFFECTED – 364 Bay Street, northwest corner of intersection of Bay Street and Grant Street, Block 503, Lot 1 and 19, Borough of Staten Island.

COMMUNITY BOARD #1SI

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

Jeff Mulligan, Executive Director

Adjourned: P.M.