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# BULLETIN

## OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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December 18, 2009

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### DIRECTORY

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1715-61-BZ	129-02 Guy R. Brewer Boulevard, aka 129-02 New York Boulevard, Queens
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**Affecting Calendar Numbers:**

100-08-BZ & 101-08-A	205 Wolverine Street, Staten Island
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279-09-BZ	2709 Avenue M, Brooklyn
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264-09-BZ	927 Flatbush Avenue, Brooklyn
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292-09-BZ	9310-9333 Third Avenue, Brooklyn
293-09-BZ	2501 Avenue M, Brooklyn

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# DOCKET

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New Case Filed Up to December 8, 2009  
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**324-09-A**

50 Gansevoort Street, South side of Gansevoort at the West Corner of Greenwich., Block 643, Lot(s) 54, Borough of **Manhattan, Community Board: 2**. Appeal challenging the revocation of the certificate of occupancy. M1-5 district.  
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**325-09-BZ**

1364 52nd Street, South side of 52nd Street, 100' west of 14th Avenue., Block 5663, Lot(s) 31,33, Borough of **Brooklyn, Community Board: 12**. Variance to allow proposed community facility use, contrary to bulk regulations. R6 district.  
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**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.**

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# CALENDAR

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**JANUARY 12, 2010, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, January 12, 2010, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **SPECIAL ORDER CALENDAR**

### **223-98-BZ**

APPLICANT – Andrea Claire/Peter Hirshman for Jilda Realty Corporation, owner.

SUBJECT – Application October 29, 2009 – Extension of Term (§§72-01 & 72-22) of a previous variance that permits the operation of an automotive service station (UG 16B) which will expire on February 1, 2010; Amendment to allow used car sales (UG 16B); Extension of Time to obtain a Certificate of Occupancy which expired on June 10, 2003; Waiver of the Rules. R6B zoning district.

PREMISES AFFECTED – 51-59 Maujer Street aka 451-459 Lorimer Street, northeast corner of the intersection of Maujer Street and Lorimer Street, Block 2785, Lot 31 & 32, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

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### **163-99-BZ**

APPLICANT – The Law Office of Fredrick A. Becker, for 503 Broadway LLC, owner; TSI Soho LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application September 16, 2009 – Extension of Term for a special permit (§73-36) which will expire on June 28, 2010 for the operation of a Physical Culture Establishment (*New York Sports Club*); Waiver of the Rules. M1-5B zoning district.

PREMISES AFFECTED – 503 Broadway, westerly side of Broadway between Broome Street and Spring Street, Block 484, Lot 17, Borough of Manhattan.

**COMMUNITY BOARD #2M**

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### **405-01-BZ**

APPLICANT – Eric Palatnik, P.C., for United Talmudical Academy, owner.

SUBJECT – Application November 24, 2009 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) to construct a five-story school and synagogue (UG 3 & 4) which expired on November 12, 2006. R5/C2-3 zoning district.

PREMISES AFFECTED – 1275 36<sup>th</sup> Street, between Clara Street and Louisa Street, Block 5310, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

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### **26-02-BZ**

APPLICANT – Walter T. Gorman, P.E., for ExxonMobil Corporation, owner; A & A Automotive Corporation, lessee. SUBJECT – Application November 23, 2009 – Extension of Time to obtain a Certificate of Occupancy for a Gasoline Service Station (*Mobil*) which expires on January 28, 2010. C1-2/R3X zoning district.

PREMISES AFFECTED – 1680 Richmond Avenue, north west corner of Victory Boulevard, Block 2160, Lot 1, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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### **265-08-BZ**

APPLICANT – Richard Bass, Herrick, Feinstein LLP, for 70 Wyckoff LLC, owner.

SUBJECT – Application December 8, 2009 – Extension of Time to obtain a Certificate of Occupancy of a previously granted Variance (§72-21) for the legalization of residential units in a manufacturing building which expired on December 23, 2009. M1-1 zoning district.

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

**COMMUNITY BOARD #4BK**

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## **APPEALS CALENDAR**

### **249-09-A**

APPLICANT – Bryan Cave LLP, for 363 Lafayette Street, LLC, owner.

SUBJECT – Application August 27, 2009 – Appeal challenging Department of Building's determination under the Title 28 Section 28-105.9 of the Administrative Code that the permit for the subject premises expired and became invalid because the permitted work or use was not commenced within 12 months from the date of issuance.

PREMISES AFFECTED – 363 Lafayette (371 Lafayette Street, 21 Great Jones Street) east side of Lafayette Street, between Bond and Great Jones Streets, Block 530, Lot 17, Borough of Manhattan.

**COMMUNITY BOARD #2M**

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### **262-09-A**

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Maria Larkin, lessee.

SUBJECT – Application September 14, 2009 – Reconstruction and enlargement of an existing single family home not fronting on a mapped street contrary to General City Law Section 36 and also the home and private disposal system located within the bed of a mapped street B204th contrary to General City Law Section 35 and Department of Buildings Policy. R4 Zoning District.

PREMISES AFFECTED – 711 Bayside Drive, north side of mapped 204<sup>th</sup> Street, 28.63' south of Bayside Drive, Block

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# CALENDAR

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16350, Lot 300, Borough of Queens.  
**COMMUNITY BOARD #14Q**

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**263-09-A**

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative, owner; Michael & Christine Salica, lessees.  
SUBJECT – Application September 14, 2009 – Reconstruction and enlargement of an existing single family home not fronting on a mapped street contrary to General City Law Section 36 and also located within the bed of a mapped street (B216th) contrary to General City Law Section 35. R4 Zoning District.  
PREMISES AFFECTED – 28 Tioga Walk, west side of Tioga Walk, 18.32' south of paved Oceanside Avenue, Block 16350, Lot 400, Borough of Queens.  
**COMMUNITY BOARD #14Q**

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**265-09-A**

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Incorporated, owner; John Strong, lessee.  
SUBJECT – Application September 15, 2009 – Reconstruction and enlargement of an existing single family home and the upgrade of a private disposal system located within the bed of a mapped street contrary to General City Law Section 35 and Department of Buildings Policy. R4 zoning district.  
PREMISES AFFECTED – 165 Ocean Avenue, east side of Ocean Avenue, 130' south of Oceanside Avenue, Block 16350, Lot 400, Borough of Queens.  
**COMMUNITY BOARD #14Q**

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Lot 19, Borough of Queens.  
**COMMUNITY BOARD #9Q**

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**302-09-BZ**

APPLICANT – Harold Weinberg, P.E., for Yi Fu Rong, owner.  
SUBJECT – Application October 30, 2009 – Special Permit pursuant (ZR §73-50) to permit a building to encroach within the 30 foot open area required at a rear lot line coincident with a residential zoning district boundary line (ZR §43-302). M1-2 zone.  
PREMISES AFFECTED – 820 39th Street, south side, 150'0" east of 8th Avenue between 8<sup>th</sup> Avenue and 9<sup>th</sup> Avenue, Block 916, Lot 12, Borough of Brooklyn.  
**COMMUNITY BOARD #12BK**

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**307-09-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Zahava Hurwitz and Steven Hurwitz, owner.  
SUBJECT – Application November 9, 2009 – Special Permit (§73-622) for the enlargement of existing single family home, contrary to open space and floor area (§23-141); side yard (23-461) and less than the required rear yard (§23-47). R-2 zoning district.  
PREMISES AFFECTED – 1358-1360 East 28th Street, West side of East 28th Street between Avenue M and Avenue N. Block 7663, Lot 73 & 75, Borough of Brooklyn.  
**COMMUNITY BOARD #14BK**

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*Jeff Mulligan, Executive Director*

**JANUARY 12, 2010, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, January 12, 2010, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**ZONING CALENDAR**

**271-09-BZ**

APPLICANT – Sheldon Lobel, P.C., for 132-40 Metropolitan Realty, LLC, owner; Jamaica Fitness Group, LLC d/b/a Planet Fitness, lessee.  
SUBJECT – Application September 21, 2009 – Special Permit (§73-36) to legalize the operation of an existing physical culture establishment (Planet Fitness) on the first, second, and third floors of an existing three-story building. The proposal is contrary to ZR §32-10. C2-3 zoning district.  
PREMISES AFFECTED – 132-40 Metropolitan Avenue, between Metropolitan Avenue and Jamaica Avenue, approximately 300 feet east of 132nd Street. Block 9284,

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, DECEMBER 8, 2009  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**115-53-BZ**

APPLICANT – Eric Palatnik, P.C., for Theodoras Zorbas, owner.

SUBJECT – Application July 8, 2009 – Extension of Term and Waiver of the Rules for the continued use of a Gasoline Service Station (*Mobil*) which expired on July 11, 2008. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 252-02 Union Turnpike, southwest corner of Little Neck Parkway, Block 8565, Lot 1, Borough of Queens.

**COMMUNITY BOARD #13Q**

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term for the continued use of a gasoline service station, which expired on July 11, 2008; and

WHEREAS, a public hearing was held on this application on September 22, 2009, after due notice by publication in *The City Record*, with continued hearings on October 20, 2009 and November 17, 2009, and then to decision on December 8, 2009; 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 13, Queens, recommends approval of this application; and

WHEREAS, the site is located on the southwest corner of Union Turnpike and Little Neck Parkway, in a C2-2 (R3-2) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 7, 1953 when, under the subject calendar number, the Board granted a variance to permit the premises to be occupied by a gasoline service station with accessory uses for a term of 15 years; and

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

WHEREAS, most recently, on April 20, 1999, the Board granted an extension of term for ten years from the expiration of the prior grant, and permitted the replacement of two existing pump islands and dispensers with four new pump islands, the installation of two new canopies over the dispensers, the addition of a 30'-0" curb cut on Union Turnpike, a 30'-0" curb cut on 80<sup>th</sup> Avenue, and two 30'-0" curb cuts on Little Neck Parkway, and the removal of two existing curb cuts, one located on Union Turnpike and the other on Little Neck Parkway, to expire on July 11, 2008; and

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

WHEREAS, at hearing, the Board requested that the applicant confirm that the signage on the site is compliant with C2 district regulations, and clarify the functionality and purpose for the previously-approved curb cuts; and

WHEREAS, in response, the applicant submitted revised plans and a revised sign analysis confirming that the signage complies with C2 district regulations, and provided a circulation drawing and letter from an engineer establishing that the previously-approved curb cuts are necessary to improve circulation at the site; and

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated July 7, 1953, so that as amended this portion of the resolution shall read: "to extend the term for ten years from July 11, 2008, to expire on July 11, 2018; *on condition* that all use and operations shall substantially conform to plans filed with this application marked "Received October 6, 2009"–(5) sheets; and *on further condition*:

THAT the term of the grant shall expire on July 11, 2018;

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

THAT a new certificate of occupancy shall be obtained by June 8, 2010;

THAT signage shall comply with C2-2 zoning district regulations;

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

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. 420022790)

Adopted by the Board of Standards and Appeals December 8, 2009.

# MINUTES

## 240-55-BZ

APPLICANT – Joseph P. Morsellino, Esq., for DLC Properties LLC, owner; Helms Brother's, lessee.

SUBJECT – Application September 18, 2009 – Extension of Term (§11-411) for the continued operation of a UG16 auto repair shop with sales, exchange of vehicles and products which expired on November 3, 2008. C2-2(R6B) & R-4 zoning district.

PREMISES AFFECTED – 207-22 Northern Boulevard, Northern Boulevard and 208<sup>th</sup> Street, Block 7305, Lot 19, Borough of Queens.

## COMMUNITY BOARD #11Q

### APPEARANCES –

For Applicant: Joseph P. Morsellino.

**ACTION OF THE BOARD** – Application granted on condition.

### THE VOTE TO GRANT –

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

### THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term for the continued use of an auto repair shop with sales, exchange of vehicles and products (Use Group 16), which expired on November 3, 2008; and

WHEREAS, a public hearing was held on this application on November 17, 2009 after due notice by publication in *The City Record*, and then to decision on December 8, 2009; and

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

WHEREAS, Community Board 11, Queens, recommends approval of this application, on condition that the applicant complies with the conditions from the previous grant; and

WHEREAS, Councilman Tony Avella provided written testimony in support of this application, on the condition that the applicant comply with the recommendations of the Community Board; and

WHEREAS, the subject site is located on the south side of Northern Boulevard between 208<sup>th</sup> Street and Oceania Street, partially within a C2-2 (R6B) zoning district and partially within an R4 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 13, 1955 when, under the subject calendar number, the Board granted a variance to permit the reconstruction of an automotive repair facility in a residential zoning district; and

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

WHEREAS, on May 25, 1999, the Board granted an extension of term for ten years from the expiration of the previous grant, and amended the grant to permit the existing opening in the fence between the parking area of the subject site and the owner's property to the east, to expire on

November 3, 2008; and

WHEREAS, on March 6, 2001, the Board granted a special permit to allow the construction of a second floor to the existing commercial building to be occupied by office and storage space; and

WHEREAS, subsequent grants extended the amount of time to complete construction and obtain a certificate of occupancy; and

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

WHEREAS, at hearing, the Board requested that the applicant clarify whether it complies with certain conditions on the Certificate of Occupancy and from the prior grant, specifically the hours of operation, the maintenance of landscaping in accordance with the BSA-approved plans, and the operation of a ventilation system; and

WHEREAS, additionally, the Board asked the applicant to clarify whether the gate was maintained closed; and

WHEREAS, in response, the applicant states that: (1) the hours of operation are Monday through Friday, from 8:00 a.m. to 6:00 p.m., and closed on the weekends; (2) there is no landscaping reflected on the BSA-approved plans and there has never been any landscaping on the site; and (3) the condition for a ventilation system was associated with the prior use of the site, which included body work and paint spraying; and

WHEREAS, the applicant provided a letter from the lessee stating that no body and fender work or painting of vehicles is performed at the site; and

WHEREAS, the applicant confirmed that the gate would remain closed and, as reflected on the plans, the site will not provide access to 45<sup>th</sup> Road; and

WHEREAS, the Board has determined that the noted modifications to conditions, including a change in the hours from 8:30 a.m. to 5:00 p.m. to the proposed, are appropriate; and

WHEREAS, the Board directed the applicant to obtain a new certificate of occupancy reflecting the current site conditions; and

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated December 13, 1955, so that as amended this portion of the resolution shall read: “to extend the term for ten years from November 3, 2008, to expire on November 3, 2018; *on condition* that all use and operations shall substantially conform to plans filed with this application marked “Received September 18, 2009” – (4) sheets; and *on further condition*:

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

THAT no spray-painting shall be performed on site;

THAT the gate shall remain closed and no access shall be provided from the site to 45<sup>th</sup> Road;

THAT no vehicles shall be parked on the sidewalk;

# MINUTES

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

THAT all lighting shall be directed away from residential uses;

THAT the hours of operation shall be Monday through Friday, from 8:00 a.m. to 6:00 p.m., and closed on weekends;

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

THAT a new certificate of occupancy shall be obtained by June 8, 2010;

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

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

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

(DOBApplication No. 420055184)

Adopted by the Board of Standards and Appeals, December 8, 2009.

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## 1715-61-BZ

APPLICANT – Mitchell S. Ross, for 21st Century Cleaners Corporation, owner.

SUBJECT – Application July 17, 2009 – Extension of Term (§11-411) for a dry cleaning establishment (UG 6A), which expired on June 5, 2007; Extension of Time to obtain a certificate of occupancy, which expired on December 14, 2000; Waiver of the Rules. R3X zoning district.

PREMISES AFFECTED – 129-02 Guy R. Brewer Boulevard, a/k/a 129-02 New York Boulevard, south west corner of 129<sup>th</sup> Avenue and Guy R. Brewer Boulevard, Block 2276, Lot 59, Borough of Queens.

## COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Mitchell Ross.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term for the continued use of a dry cleaning establishment (Use Group 6A) which expired on June 5, 2007, and an extension of time to obtain a certificate of occupancy, which expired on December 14, 2000; and

WHEREAS, a public hearing was held on this application on October 20, 2009 after due notice by publication in *The City Record*, with a continued hearing on November 17, 2009, and then to decision on December 8,

2009; and

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

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

WHEREAS, the subject site is located on the southwest corner of 129<sup>th</sup> Avenue and Guy R. Brewer Boulevard, within an R3X zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 5, 1962 when, under the subject calendar number, the Board granted a variance to permit the change in use of an existing one-story five-car garage located in a residence use district to retail stores, for a term of 25 years; and

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

WHEREAS, most recently, on December 14, 1999, the Board granted an extension of the term for ten years from the expiration of the previous grant, to expire on June 5, 2007; a condition of the grant was that a certificate of occupancy be obtained by December 14, 2000; and

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

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

WHEREAS, the applicant states that a new certificate of occupancy was not obtained due to an administrative oversight; and

WHEREAS, at hearing, the Board requested that the non-complying signage on the site be removed, and that the 35-ft. curb cut on 129<sup>th</sup> Avenue be reduced in size; and

WHEREAS, in response, the applicant submitted photographs reflecting the removal of the non-complying signage on the site and provided a revised site plan reflecting that the 35-ft. curb cut on 129<sup>th</sup> Avenue will be reduced to a width of 20 feet; and

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated June 5, 1962, so that as amended this portion of the resolution shall read: “to extend the term for ten years from June 5, 2007, to expire on June 5, 2017, and to permit an extension of time to obtain a certificate of occupancy, to expire on June 8, 2010; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received July 17, 2009”–(1) sheets and “November 16, 2009”–(1) sheet; and *on further condition*:

THAT the term of the grant shall expire on June 5, 2017;

THAT signage shall comply with C1 district regulations;

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

# MINUTES

THAT a new certificate of occupancy shall be obtained by June 8, 2010;

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

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

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

(DOB Application No. 402636849)

Adopted by the Board of Standards and Appeals, December 8, 2009.

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## 1016-86-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Opera Owner Incorporated, owner; TSI West 76 LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application August 13, 2009 – Extension of Term for a special permit (§73-36) which expired on May 5, 2007 for the operation of a Physical Culture Establishment (*New York Sports Club*); Extension of Time to obtain a Certificate of Occupancy which expired on October 26, 2000; and Waiver of the Rules. C4-6A zoning district.

PREMISES AFFECTED – 2162-2166 Broadway, easterly side of Broadway 26 feet north of West 76<sup>th</sup> Street, Block 1168, Lot 22, Borough of Manhattan.

## COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Fredrick A. Becker.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term of a previously granted special permit for a physical culture establishment (PCE), which expired on May 5, 2007, and an extension of time to obtain a certificate of occupancy, which expired on October 26, 2000; and

WHEREAS, a public hearing was held on this application on October 20, 2009, after due notice by publication in *The City Record*, with a continued hearing on November 17, 2009, and then to decision on December 8, 2009; and

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

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

WHEREAS, the PCE is located on the east side of Broadway, between West 76<sup>th</sup> Street and West 77<sup>th</sup> Street, within a C4-6A zoning district; and

WHEREAS, the site is occupied by a 23-story mixed-use commercial/residential building; and

WHEREAS, the PCE use is located in a portion of the cellar with an entrance on the first floor, and occupies a total floor area of 88 sq. ft. with an additional 5,593 sq. ft. of floor space in the cellar; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 5, 1987 when, under the subject calendar number, the Board granted a special permit for a PCE in the subject building for a term of ten years, to expire on May 5, 1997; and

WHEREAS, on October 26, 1999, the Board granted an extension of the term for ten years from the expiration of the previous grant, to expire on May 5, 2007, and permitted a 731 sq. ft. enlargement of the PCE; a condition of the grant was that a certificate of occupancy be obtained by October 26, 2000; and

WHEREAS, the applicant now seeks to extend the term of the special permit for ten years; and

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

WHEREAS, the applicant states that a new certificate of occupancy was not obtained after the most recent extension of term, due in part to the fact that there are open DOB applications within the building, unrelated to the PCE, which preclude the building as a whole from being able to obtain a certificate of occupancy; and

WHEREAS, accordingly, given the outstanding applications in the building, the applicant seeks two years for the resolution of these matters and to obtain a certificate of occupancy; and

WHEREAS, the Board has determined that this request is appropriate but directs the applicant to secure a temporary certificate of occupancy as soon as possible; and

WHEREAS, at hearing, the Board requested that the applicant clarify the hours of operation for the PCE; and

WHEREAS, in response, the applicant states that the PCE’s hours of operation are Monday through Thursday, from 6:00 a.m. to 9:00 p.m., Friday, from 6:00 a.m. to 7:00 p.m., and Saturday and Sunday, from 8:00 a.m. to 3:00 p.m.; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of term and extension of time to obtain a certificate of occupancy is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, as adopted on May 5, 1987, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from May 5, 2007, to expire on May 5, 2017, and to permit an extension of time to obtain a certificate of occupancy to December 8, 2011; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received August 13, 2009”-(2) sheets; and *on further condition*:

# MINUTES

THAT the term of this grant shall expire on May 5, 2017;  
THAT the above condition shall appear on the certificate of occupancy;

THAT a new certificate of occupancy shall be obtained by December 8, 2011;

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

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

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

(DOB Application No. 120122287)

Adopted by the Board of Standards and Appeals, December 8, 2009.

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## 826-86-BZ, 827-86-BZ and 828-86-BZ

APPLICANT – Eric Palatnik, P.C. for North Shore Tower Apartments, Incorporated, owner; Continental Communications, lessee.

SUBJECT – Application April 3, 2009 – Extension of Term for a Special Permit (§73-11) to allow non-accessory radio towers and transmitting equipment on the roof of a 33-story multiple dwelling (*North Shore Towers*) which expired on March 28, 2008; Extension of Time to obtain a Certificate of Occupancy which expired on March 6, 2003; an Amendment to eliminate the condition that a new Certificate of Occupancy be obtained; and Waiver of the Rules. R3-2 zoning district.

PREMISES AFFECTED – 269-10, 270-10, 271-10 Grand Central Parkway, Northeast corner of 26<sup>th</sup> Street. Block 8489, Lot 1, Borough of Queens.

## COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Barbara Leonardi and Dianne Stromfeld.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 26, 2010, at 10 A.M., for decision, hearing closed.

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## 603-86-BZ

APPLICANT – H. Irving Sigman, P.E., for 8826 Parsons LLC, owner.

SUBJECT – Application September 3, 2009 – Extension of Term for a Variance (§72-21) allowing the construction of retail stores (UG 6), which expired on September 8, 2007; Amendment to the accessory open parking area and refuse area and request to eliminate the term; Waiver of the Rules. R7A (Downtown Jamaica Special District) zoning district.

PREMISES AFFECTED - 88-34 Parsons Boulevard, a/k/a 88-26/34 Parsons Boulevard. North west corner of Parsons Boulevard and 89<sup>th</sup> Avenue, Block 9762, Lot 41, Borough of Queens.

## COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: H. Irving Sigman and Barney Sigman.

**ACTION OF THE BOARD** – Laid over to January 26, 2010, at 10 A.M., for continued hearing.

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## 813-87-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Gwynne Five LLC, owner; TSI Cobble Hill LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application October 8, 2009 – Extension of Term for a special permit (§73-36) which expired on April 12, 2008 for the operation of a Physical Culture Establishment (*New York Sports Club*); Waiver of the Rules. C2-3 (R6) zoning district.

PREMISES AFFECTED – 110 Boerum Place, Westerly side of Boerum Place 0 feet northerly of Dean Street, Block 279, Lot 1, Borough of Brooklyn

## COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Fredrick A. Becker.

**ACTION OF THE BOARD** – Laid over to January 26, 2010, at 10 A.M., for continued hearing.

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## 21-91-BZ

APPLICANT – Sheldon Lobel, P.C., for Hadarth Latchininarain, owner.

SUBJECT – Application September 21, 2009 – Extension of Term (§72-01 & §72-22) of a previous variance that permits the operation of an automotive glass and mirror repair establishment (UG 7D) and used car sales (UG 16B) which expired on July 24, 2009; Waiver of the Rules. R5 zoning district.

PREMISES AFFECTED – 2407-2417 Linden Boulevard, located on the northern corner corner of Linden Boulevard and Montauk Avenue, Block 4478, Lot 24, Borough of Brooklyn.

## COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Josh Rhinesmith.

For Opposition: Ronald J. Dillon.

**ACTION OF THE BOARD** – Laid over to January 26, 2010, at 10 A.M., for continued hearing.

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## 75-95-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for The Ruprert Yorkville Towers Condominium, owner; TSI East 91 d/b/a New York Sports Club, lessee.

SUBJECT – Application October 8, 2009 – Extension of Term for a special permit (§73-36) which expired on January 28, 2006 for the operation of a Physical Culture

# MINUTES

Establishment (*New York Sports Club*); Waiver of the Rules. C2-8 zoning district.

PREMISES AFFECTED – 1635 Third Avenue, Easterly side of Third Avenue between East 91st Street and East 92nd Street. Block 1537, Lot 7501, Borough of Manhattan.

## COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Fredrick A. Becker.

**ACTION OF THE BOARD** – Laid over to January 12, 2010, at 10 A.M., for continued hearing.

## 217-96-BZ

APPLICANT – Joseph P. Morsellino, for Silverbell Investments, owner; Enterprise Rent a Car, lessee.

SUBJECT – Application September 15, 2009 – Extension of Term of a previously granted Variance (§72-21) for the continued use of an existing car rental facility (*Enterprise*) with accessory outdoor storage of rental cars (UG 8) which expired on October 7, 2007; Extension of Time to obtain a Certificate of Occupancy which expired on October 7, 1998; and Waiver of the Rules. C1-2/R-2 zoning district.

PREMISES AFFECTED – 165-01 Northern Boulevard, northeast corner 165<sup>th</sup> Street and Northern Boulevard, Block 53340, Lot 8, Borough of Queens.

## COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Joseph P. Morsellino.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 12, 2010, at 10 A.M., for decision, hearing closed.

## 136-01-BZ

APPLICANT – Eric Palatnik, P.C., for Cel-Net Holding, Incorporated, owner.

SUBJECT – Application April 25, 2008 – Extension of Time to complete construction and obtain a Certificate of Occupancy for a Variance (§72-21) which permitted non-compliance in commercial floor area and rear yard requirements; Amendment to reduce amount of commercial floor area; Waiver of the Rules. M1-4/R7A (Hunters Point Subdistrict) zoning district.

PREMISES AFFECTED – 11-11 44<sup>th</sup> Drive, Northside between 11th and 21st Streets. Block 447, Lot 13, Borough of Queens.

## COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 12, 2010, at 10 A.M., for decision, hearing closed.

## APPEALS CALENDAR

### 241-09-BZY

APPLICANT – Gouranga Kundu, for 170-22 93<sup>rd</sup> Property LLC, owner.

SUBJECT – Application August 12, 2009 – Extension of time to complete construction of a minor development (§11-332) commenced under the prior R6 Zoning district. R4-1 Zoning District.

PREMISES AFFECTED – 87-26 175<sup>th</sup> Street, (aka 88-04 175<sup>th</sup> Street) west side of 175<sup>th</sup> Street, 100' north of corner of 89<sup>th</sup> Avenue and 175<sup>th</sup> Street, Block 9830, Lot 41, Borough of Queens.

### COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Gouranga Kundu.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time to complete construction and obtain a certificate of occupancy for a minor development; and

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

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

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

WHEREAS, the subject site is located on the west side of 175<sup>th</sup> Street, between 89<sup>th</sup> Avenue and Warwick Crescent, in an R4-1 zoning district; and

WHEREAS, the subject site has 60 feet of frontage along 175<sup>th</sup> Street, a depth of 140 feet, and a total lot area of 8,400 sq. ft.; and

WHEREAS, the site is proposed to be developed with a seven-story mixed-use residential/community facility building (the "Building"); and

WHEREAS, the Building is proposed to have a total floor area of 27,141 sq. ft. (3.2 FAR); and

WHEREAS, the development complies with the former R6 zoning district parameters; and

WHEREAS, however, on September 10, 2007 (hereinafter, the "Enactment Date"), the City Council voted to adopt The Jamaica Plan Rezoning, which rezoned the site from R6 to R4-1; and

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# MINUTES

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WHEREAS, on June 28, 2007, New Building Permit No. 402592191-01-NB (hereinafter, the "New Building Permit") was issued by the Department of Buildings ("DOB") permitting construction of the Building; 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, accordingly, because the two-year time limit has expired and construction is still ongoing, the applicant seeks relief pursuant to ZR § 11-30 *et seq.*, which sets forth the regulations that apply to a reinstatement of a permit that lapses due to a zoning change; and

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

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

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

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

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

WHEREAS, by letter dated October 22, 2009, 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 has reviewed the record and agrees that the New Building Permit was lawfully issued to the owner of the subject premises prior to the Enactment Date and was timely renewed until the expiration of the two-year term for construction; and

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

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

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

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

WHEREAS, the Board further notes that any work performed after the two-year time limit to complete construction and obtain a certificate of occupancy cannot be considered for vesting purposes; accordingly, only the work performed as of September 10, 2009 has been considered; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the New Building Permit, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permit includes: 100 percent of the superstructure; 100 percent of the water main and sewer work; 87 percent of steel work, balconies and stairs; 85 percent of the masonry; 40 percent of the rough framing; 24 percent of the plumbing work; and two percent of the electrical work; and

WHEREAS, in support of this statement, the applicant has submitted the following: a construction schedule detailing the work completed since the issuance of the New Building Permit; a breakdown of the construction costs by line item and percent complete; an affidavit from the general contractor enumerating the completed work; copies of cancelled checks; invoices; and photographs of the building's interior and exterior; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the aforementioned work was completed subsequent to the issuance of the valid permit and before September 10, 2009; and

WHEREAS, the Board notes that, based on visual inspections, a substantial amount of physical construction has been completed; and

WHEREAS, as to costs, the applicant represents that

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the total expenditures paid for the development are \$1,414,183, or approximately 46 percent of the \$3,074,374 cost to complete; and

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

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

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

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

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a two-year extension of time to complete construction, pursuant to ZR § 11-332; and *Therefore it is Resolved* that this application made pursuant to ZR § 11-332 to renew Building Permit No. 402592191-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on December 8, 2011.

Adopted by the Board of Standards and Appeals, December 8, 2009.

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## 243-09-BZY

APPLICANT – Gouranga C. Kundu, for Azharul Islam, owner.

SUBJECT – Application August 19, 2009 – Application to complete construction of a minor development (§11-332) commenced under the prior R6 zoning district. R4-1 zoning district.

PREMISES AFFECTED – 87-12 175<sup>th</sup> Street, corner of 175<sup>th</sup> Street and Warwick, Block 9830, Lot 32, Borough of Queens.

## COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Gouranga C. Kundu.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time to complete construction and obtain a certificate of occupancy for a minor development; and

WHEREAS, a public hearing was held on this

application on November 11, 2009, after due notice by publication in *The City Record*, and then to decision on December 8, 2009; and

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

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

WHEREAS, the subject site is located on the southwest corner of 175<sup>th</sup> Street and Warwick Crescent, in an R4-1 zoning district; and

WHEREAS, the subject site has 39 feet of frontage along 175<sup>th</sup> Street, a depth of 110 feet, and a total lot area of 5,427 sq. ft.; and

WHEREAS, the site is proposed to be developed with a seven-story mixed-use residential/community facility building (the “Building”); and

WHEREAS, the Building is proposed to have a total floor area of 20,394 sq. ft. (3.75 FAR); and

WHEREAS, the development complies with the former R6 zoning district parameters; and

WHEREAS, however, on September 10, 2007 (hereinafter, the “Enactment Date”), the City Council voted to adopt The Jamaica Plan Rezoning, which rezoned the site from R6 to R4-1; and

WHEREAS, on April 25, 2007, New Building Permit No. 402527262-01-NB (hereinafter, the “New Building Permit”) was issued by the Department of Buildings (“DOB”) permitting construction of the Building; 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, accordingly, because the two-year time limit has expired and construction is still ongoing, the applicant seeks relief pursuant to ZR § 11-30 *et seq.*, which sets forth the regulations that apply to a reinstatement of a permit that lapses due to a zoning change; and

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

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

WHEREAS, ZR § 11-332 reads, in pertinent part: “[I]n the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment . . . the building

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# MINUTES

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permit shall automatically lapse and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew such building permit for two terms of not more than two years each for a minor development . . . In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit.”; and

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

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

WHEREAS, by letter dated September 2, 2009, 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 has reviewed the record and agrees that the New Building Permit was lawfully issued to the owner of the subject premises prior to the Enactment Date and was timely renewed until the expiration of the two-year term for construction; and

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

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

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

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

WHEREAS, the Board further notes that any work performed after the two-year time limit to complete construction and obtain a certificate of occupancy cannot be considered for vesting purposes; accordingly, only the work performed as of September 10, 2009 has been considered; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the New

Building Permit, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permit includes: 30 percent of the superstructure; 20 percent of the steel work and stairs; 15 percent of the masonry; and three percent of the plumbing work; and

WHEREAS, in support of this statement, the applicant has submitted the following: a construction schedule detailing the work completed since the issuance of the New Building Permit; a breakdown of the construction costs by line item and percent complete; an affidavit from the general contractor enumerating the completed work; copies of cancelled checks; invoices; and photographs of the building’s interior and exterior; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the aforementioned work was completed subsequent to the issuance of the valid permit and before September 10, 2009; and

WHEREAS, the Board notes that, based on visual inspections, a substantial amount of physical construction has been completed; and

WHEREAS, as to costs, the applicant represents that the total expenditures paid for the development are \$352,315, or 15 percent, of the \$2,336,238 cost to complete; and

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

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

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

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

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a two-year extension of time to complete construction, pursuant to ZR § 11-332; and *Therefore it is Resolved* that this application made pursuant to ZR § 11-332 to renew Building Permit No. 402527262-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on December 8, 2011.

Adopted by the Board of Standards and Appeals, December 8, 2009.

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# MINUTES

## 301-09-BZY

APPLICANT – Nelson A. Padilla, for Nelson A. Padilla, owner.

SUBJECT – Application October 29, 2009 – Extension of time (§ 11-332) to complete construction of an enlargement commenced prior to the text amendment on September 30, 2009. R6B Zoning district.

PREMISES AFFECTED – 539 59<sup>th</sup> Street, 320' north from 5<sup>th</sup> Avenue, Block 856, Lot 60, Borough of Brooklyn.

## COMMUNITY BOARD #7BK

### APPEARANCES –

For Applicant: Nelson A. Padilla.

**ACTION OF THE BOARD** – Application granted on condition.

### THE VOTE TO GRANT –

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

Negative:.....0

### THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-332, to renew a building permit and extend the time for the completion of a one-story enlargement to an existing three-story residential building; and

WHEREAS, a public hearing was held on this application on November 24, 2009, after due notice by publication in *The City Record*, and then to decision on December 8, 2009; and

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

WHEREAS, Community Board 7, Brooklyn, provided written testimony stating that in the absence of its public hearing and vote, it cannot take an official position, yet it requests that the Board consider the applicant's hardship when making a determination; and

WHEREAS, the subject site is located on the north side of 59<sup>th</sup> Street, between Fifth Avenue and Sixth Avenue, within an R6B zoning district; and

WHEREAS, the subject site has 20 feet of frontage along 59<sup>th</sup> Street, a depth of approximately 100 feet, and a total lot area of 2,004 sq. ft.; and

WHEREAS, the subject site is currently occupied by a three-story residential building with a floor area of 2,900 sq. ft. (1.45 FAR); and

WHEREAS, the applicant proposes to construct a one-story enlargement which will result in a total building floor area of 3,800 sq. ft. (1.9 FAR) and a maximum base height of 45 feet (the post-enlargement building is the "Building"); and

WHEREAS, the enlargement complies with the former R6B zoning district parameters; and

WHEREAS, on May 28, 2009, Alteration Permit No. 310217903-01-AL (hereinafter, the "A1 Permit") was issued by the Department of Buildings ("DOB") permitting construction of the proposed enlargement; and

WHEREAS, however, on September 30, 2009 (hereinafter, the "Enactment Date"), the City Council voted to

adopt the subject zoning text amendment (the "Text Amendment"), which restricts the maximum base height to 40 feet; and

WHEREAS, the applicant represents that the Building complies with the former R6B zoning district parameters; specifically, the proposed maximum base height of 45'-0"; and

WHEREAS, applicant states that the Building would not comply with the provision of the R6B regulations limiting the base height to a maximum of 40'-0"; and

WHEREAS, because the Building violated this provision of the R6B zoning district as of the Enactment Date, the A1 Permit lapsed by operation of law; and

WHEREAS, additionally, DOB issued a Stop Work Order on October 7, 2009 halting work on the Building; and

WHEREAS, the applicant now applies to the Board to reinstate the A1 Permit pursuant to ZR § 11-332, so that the proposed enlargement may be fully constructed under the prior R6B zoning district parameters; and

WHEREAS, ZR § 11-30 et seq. sets forth the regulations that apply to the subject application for a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, ZR § 11-31(c)(3) defines construction such as the proposed enlargement as "other construction"; and

WHEREAS, for "other construction," an extension of time to complete construction may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: "[F]or other construction if construction has not been completed on the effective date of any applicable amendment, the building permit shall automatically lapse and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew such building permit for...one term of not more than three months for other construction. In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit"; and

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

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

WHEREAS, by letter dated November 13, 2009, DOB

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stated that the A1 Permit was lawfully issued, authorizing construction of the proposed enlargement prior to the Enactment Date; and

WHEREAS, the Board has reviewed the record and agrees that the A1 Permit was lawfully issued to the owner of the subject premises prior to the Enactment Date; and

WHEREAS, accordingly, the Board finds that the record contains sufficient evidence to satisfy the findings set forth in ZR § 11-31(a) and that a decision may be rendered provided the other findings are met; and

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

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

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

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

WHEREAS, work performed subsequent to the Enactment Date and prior to the issuance of the Stop Work Order on October 7, 2009, cannot be considered; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the A1 Permit, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed enlargement subsequent to the issuance of the A1 Permit includes: 100 percent of structural steel, exterior framing, plumbing, windows, doors, and chimney; and 95 percent of masonry, roofing, and stairs; and

WHEREAS, in support of this statement the applicant has submitted the following: approved building plans; a construction timeline and breakdown of the percentage completed; invoices; copies of cancelled checks; and photographs of the interior and exterior of the site, reflecting that the building envelope and much of the interior work is complete; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the aforementioned work was completed subsequent to the issuance of the valid permit and before September 30, 2009; and

WHEREAS, the Board notes that, based on visual inspections, a substantial amount of physical construction has been completed; and

WHEREAS, the applicant represents that construction can be completed within one or two days; and

WHEREAS, as to costs, the applicant states that from the date of the issuance of the A1 Permit to the Enactment Date, the total expenditures for the enlargement represent approximately \$127,870 or 80 percent of the \$160,000 cost to complete; and

WHEREAS, the applicant asserts that this percentage

constitutes a substantial expenditure sufficient to satisfy the finding in ZR § 11-332; and

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

WHEREAS, based upon its review of all the submitted evidence, the Board finds that this percentage of expenditure is substantial and meets the finding set forth at ZR § 11-332; and

WHEREAS, additionally, based upon its consideration of the arguments made by the applicant, as well as its consideration of the entire record, the Board finds that substantial construction was completed and substantial expenditures were made since the issuance of the permit; and

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

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

*Therefore it is Resolved* that this application made pursuant to ZR § 11-332 to renew Permit No. 310217903-01-AL, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed enlargement and obtain a certificate of occupancy for one term of three months from the date of this resolution, to expire on March 8, 2010.

Adopted by the Board of Standards and Appeals, December 8, 2009.

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## **199-09-A thru 213-09-A**

APPLICANT – Eric Palatnik, P.C., for Gino Savo, owner.  
SUBJECT – Application June 29, 2009 – Proposed construction of 15, two-story, one family homes not fronting on a mapped street, contrary to General City Law Section 36. R3A /R3-2 Zoning District.

PREMISES AFFECTED – 165, 161, 159, 155, 153, 151, 149, 145, 143, 141, 137, 135, 131, 129, 127, Roswell Avenue, Block 2641, Lot 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, Borough of Queens.

## **COMMUNITY BOARD #2Q**

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to January 12, 2010, at 10 A.M., for continued hearing.

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## **257-09-BZY & 258-09-BZY**

APPLICANT – Gouranga C. Kundu, for Isteak Rum, owner.  
SUBJECT – Application September 9, 2009 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6 Zoning District. R5 Zoning District.

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PREMISES AFFECTED – 88-36 & 88-38 144<sup>th</sup> Street, 86.63' from corner of 88<sup>th</sup> Road and 144<sup>th</sup> Street, Block 9683, Lot 15 & 16, Borough of Queens.

**COMMUNITY BOARD #12Q**

APPEARANCES –

For Applicant: Gouranga Kundu.

**ACTION OF THE BOARD** – Laid over to January 26, 2010, at 10 A.M., for continued hearing.

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**259-09-BZY & 261-09-BZY**

APPLICANT – Gouranga C. Kundu, for Isteak Rum, owner.  
SUBJECT – Application September 9, 2009 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6 Zoning district. R5 Zoning District.

PREMISES AFFECTED – 139-48 88<sup>th</sup> Road, 88-30 144<sup>th</sup> Street and 88-34 144<sup>th</sup> Street, corner of 88<sup>th</sup> Road and 144<sup>th</sup> Street, Block 9683, Lot 13 & 14, Borough of Queens.

**COMMUNITY BOARD #12Q**

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to January 26, 2010, at 10 A.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

# MINUTES

**REGULAR MEETING  
TUESDAY AFTERNOON, DECEMBER 8, 2009  
1:30 P.M.**

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

**ZONING CALENDAR**

**100-08-BZ**

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Cee Jay Real Estate Development Company, owner.

SUBJECT – Application April 21, 2008 – Variance (§72-21) for the construction of a two-story with basement single family residence, contrary to front yard regulations (§23-45) and within the bed of a mapped, un-built street, contrary to General City Law Section 35. R2 zoning district.

PREMISES AFFECTED – 205 Wolverine Street, northwest of intersection of Wolverine Street and Thomas Street, Block 4421, Lot 167, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Staten Island Borough Commissioner, dated March 19, 2008, acting on Department of Buildings Application No. 510016304, reads in pertinent part:

“Front yard is deficient as per New York City Zoning Resolution section 23-45. Therefore Board of Standards and Appeals approval is required for the variance;” and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R2 zoning district, the proposed construction of a two-story single-family home that does not provide the required front yards, contrary to ZR § 23-45; and

WHEREAS, the applicant filed a companion case under BSA Calendar No. 101-08-A pursuant to Section 35 of the General City Law, to allow the proposed building to be constructed within the bed of a mapped street; this application was granted on the date hereof and is addressed within a separate resolution; and

WHEREAS, a public hearing was held on this application on May 19, 2009 after due notice by publication in *The City Record*, with continued hearings on July 14, 2009, August 18, 2009, October 6, 2009, and October 27, 2009, and then to decision on December 8, 2009; and

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

Commissioner Montanez; and

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

WHEREAS, City Councilmember James S. Oddo provided testimony in opposition to this application; and

WHEREAS, the Richmondtown and Clarke Avenue Civic Association provided testimony in opposition to this application; and

WHEREAS, certain members of the community testified in opposition to this application; and

WHEREAS, collectively, the parties who provided testimony in opposition to the proposal are the “Opposition;” and

WHEREAS, specifically, the Opposition raised the following primary concerns: (1) the proposed home is not compatible with neighborhood character; (2) the site should remain vacant for common open space; and (3) the claimed hardship was self-created based on the purchase of the lot; and

WHEREAS, the site is located on the southwest corner of Wolverine Street and Thomas Street, within an R2 zoning district; and

WHEREAS, the site has 30’-6” of frontage on Wolverine Street, 101’-9” on Thomas Street, and a total lot area of 3,080.5 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a two-story single-family home; and

WHEREAS, the proposed home will have the following complying parameters: 1,502 sq. ft. of floor area (0.49 FAR); an open space ratio of 154 percent; a side yard with a width of 5’-0” along the southern lot line; a front yard with a depth of 20’-0” along the eastern lot line; a rear yard with a depth of 35’-5” along the western lot line; a wall height of 23’-9”; and a total height of 33’-6”; and

WHEREAS, however, the applicant proposes to provide a front yard with a depth of 5’-0” along the northern lot line (two front yards with minimum depths of 15’-0” each are required); and

WHEREAS, the applicant has provided documentation establishing that the subject lot is an undersized lot pursuant to ZR § 23-32; and

WHEREAS, the Board notes that ZR § 23-33 eliminates lot area and width requirements for single-family homes where the zoning lot was owned separately and individually from all adjoining tracts of land both on December 15, 1961 and on the date of the application for a building permit; and

WHEREAS, the applicant provided a title search and deeds reflecting that the site has existed in its current configuration since before December 15, 1961 and its ownership has been independent of the ownership of the adjoining lot; and

WHEREAS, the Board notes that ZR § 23-33 would eliminate a lot area and width requirement for a single-family dwelling, but not the front yard objection; and

WHEREAS, the applicant states that front yard relief is necessary for reasons stated below; thus, the instant application was filed; and

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WHEREAS, the applicant states that the following is a unique physical condition, which creates practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: the narrowness of the subject site; and

WHEREAS, the applicant represents that the requested front yard waiver is necessary to develop the site with a habitable home; and

WHEREAS, specifically, the applicant represents that the pre-existing lot width of 30'-6" cannot feasibly accommodate a complying development; and

WHEREAS, the applicant states that the subject site is a corner lot, which requires two front yards of 15 feet each; and

WHEREAS, the applicant further states that the building would be left with an exterior width of approximately 10'-0" if front yard regulations were complied with fully; and

WHEREAS, the applicant represents that a complying home would therefore have unreasonably narrow rooms and no interior corridors; and

WHEREAS, accordingly, the applicant represents that the front yard waiver is necessary to create a home of a reasonable width; and

WHEREAS, the applicant submitted a radius diagram reflecting that every developed lot within a 400-ft. radius of the subject site has a lot width of at least 40 feet, and the subject site is one of only two vacant lots within that radius; and

WHEREAS, based upon the above, the Board finds that the cited unique physical condition creates practical difficulties in developing the site in strict compliance with the applicable front yard regulations; and

WHEREAS, the Board has determined that because of the subject lot's unique physical condition, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, or impact adjacent uses; and

WHEREAS, the applicant submitted a 400-ft. radius diagram reflecting that the surrounding neighborhood is characterized by single-family detached homes; and

WHEREAS, the applicant notes that the proposed bulk is compatible with nearby residential development and that that it complies with all relevant bulk regulations; and

WHEREAS, specifically, the applicant notes that the proposed home complies with the R2 zoning district regulations for use, FAR, side yards, rear yards, open space ratio, height, and parking; and

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

WHEREAS, the applicant states that the unnecessary hardship encountered by compliance with the zoning regulations is inherent to the site's narrow width; and

WHEREAS, the Opposition contended that the applicant's hardship was instead created by its purchase of the subject lot, which requires the requested variance to build a habitable home; and

WHEREAS, the Board notes that the (d) finding under ZR § 72-21 specifies that the purchase of a zoning lot subject to the cited hardship shall not constitute a self-created hardship; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is a result of the historic lot dimensions; and

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type II Declaration 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 R2 zoning district, a two-story single-family home that does not provide the required front yards, contrary to ZR § 23-45; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received February 6, 2009"- (5) sheets and "August 11, 2009"-(6) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: a maximum floor area of 1,502 sq. ft. (0.49 FAR), an open space ratio of 154 percent, a side yard with a width of 5'-0" along the southern lot line; a front yard with a depth of 20'-0" along the eastern lot line; a front yard with a depth of 5'-0" along the northern lot line; a rear yard with a depth of 35'-5" along the western lot line; a wall height of 23'-9"; a total height of 33'-6"; and parking for a minimum of two cars, as per the BSA-approved plans;

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

THAT there shall be no habitable room in the cellar;

THAT if required, a Builder's Pavement Plan shall be filed and approved by DOT prior to the issuance of a building permit;

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

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

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

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

Adopted by the Board of Standards and Appeals, December 8, 2009.

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# MINUTES

## 101-08-A

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Cee Jay Real Estate Development Company, owner.

SUBJECT – Application April 21, 2008 – Variance (§72-21) for the construction of a two-story with basement single family residence, contrary to front yard regulations (§23-45) and within the bed of a mapped, un-built street, contrary to General City Law Section 35. R2 zoning district.

PREMISES AFFECTED – 205 Wolverine Street, northwest of intersection of Wolverine Street and Thomas Street, Block 4421, Lot 167, Borough of Staten Island.

### COMMUNITY BOARD #3SI

#### APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

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

Negative:.....0

#### THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated March 19, 2008, acting on Department of Buildings Application No. 510016304, reads in pertinent part:

“Proposed construction is located within the bed of a mapped street contrary to Section 35 of the General City Law. Therefore Board of Standards and Appeals approval is required;” and

WHEREAS, this is an application to permit the proposed construction of a single-family home located within the bed of a mapped street, Thomas Street, contrary to Section 35 of the General City Law; and

WHEREAS, the applicant filed a companion case under BSA Calendar No. 100-08-BZ pursuant to ZR § 72-21 to permit the proposed building, contrary to ZR § 23-45; this application was granted the date hereof and is addressed within a separate resolution; and

WHEREAS, a public hearing was held on this application on May 19, 2009, after due notice by publication in the *City Record*, with continued hearings on July 14, 2009, August 18, 2009, October 6, 2009 and October 27, 2009, and then to decision on December 8, 2009; and

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

WHEREAS, Community Board 3, Staten Island, recommends disapproval of this application; and

WHEREAS, City Councilmember James S. Oddo provided testimony in opposition to this application; and

WHEREAS, the Richmondtown and Clarke Avenue Civic Association provided testimony in opposition to this application; and

WHEREAS, certain members of the community testified in opposition to this application; and

WHEREAS, collectively, the parties who provided testimony in opposition to the proposal are the “Opposition;” and

WHEREAS, specifically, the Opposition raised the following primary concerns: (1) the proposed home is not compatible with neighborhood character; (2) the site should remain vacant for common open space; and (3) the claimed hardship was self-created based on the purchase of the lot; and

WHEREAS, by letter dated August 5, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated June 16, 2008, the Department of Environmental Protection (“DEP”) states that there is an existing ten-inch diameter sanitary sewer and an eight-inch diameter water main in the bed of Thomas Street between Wolverine Street and Amber Street, and an existing manhole on ten-inch diameter sanitary sewer at the southwest corner of Thomas Street and Wolverine Street; and

WHEREAS, DEP further states that as per Drainage Plan No. D-3(S-2), sheet 2 of 2, dated November 25, 1979, there is a future ten-inch diameter sanitary sewer and 12-inch diameter storm sewer in Thomas Street between Wolverine Street and Amber Street; and

WHEREAS, DEP further states that it requires the applicant to submit a survey/plan showing the following: (i) the mapped width of Thomas Street between Wolverine Street and Amber Street and the remaining width of the street; and (ii) the distance from the terminal manholes on the ten-inch diameter sanitary sewers in Thomas Street from the end caps of the eight-inch diameter city water main in Thomas Street to the lot lines of Lot 167; and

WHEREAS, in response, the applicant submitted a revised survey reflecting a 60’-0” wide mapped street and a 30’-0” width of the property in the bed of Thomas Street, with the remaining 30’-0” width of the traveled portion of the street accessible for the construction, maintenance and/or reconstruction of the existing ten-inch diameter sanitary sewer, the eight-inch diameter city water main and the 12-inch diameter future storm sewer; and

WHEREAS, by letter dated March 10, 2009, DEP states that it has reviewed the revised survey and has no further objections; and

WHEREAS, by letter dated November 6, 2008, the Department of Transportation (“DOT”) states that Thomas Street between Wolverine Street and Amber Street is mapped to a 60’-0” width, that a Corporation Council Opinion of Dedication for approximately 220’-0” from the intersection of Thomas Street and Amber Street was issued on May 5, 1992, and that the City does not have title for the remaining portion of Thomas Street; and

WHEREAS, DOT further states that it requires that a cul-de-sac be constructed at the dead end of Thomas Street per American Association of State Highway and Transportation Officials (“AASHTO”) standards for dead-end streets, because this street is more than 200’-0” from dead end to the closest intersection, which is Amber Street; and

WHEREAS, in response, the applicant contends that constructing a cul-de-sac at this location is not feasible due to a significant change in grade in the vicinity of the retaining wall at the northwest corner of the subject site; and

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WHEREAS, by letter dated June 15, 2009, DOT reiterated that a cul-de-sac or alley should be constructed based on safety and guidelines for dead-end streets; and

WHEREAS, in response, the applicant submitted two alternate Builders Pavement Plans which indicate that a cul-de-sac constructed according to AASHTO standards would extend into the neighboring properties along Thomas Street, requiring the City to acquire a portion of these properties to accommodate the turn around; and

WHEREAS, the Builders Pavement Plans further indicate that the existing elevations at the dead-end of Thomas Street result in a pavement surface gradient of 11 percent, which is greater than the ten percent maximum accepted by DOT and the five percent maximum slope along a residential street pursuant to AASHTO standards; and

WHEREAS, the applicant states that a cul-de-sac at the subject location is further unwarranted because all of the existing adjacent homes front upon open roadways and have vehicular access from a paved street; thus, the installation of a cul-de-sac would serve no functional purpose for any of the surrounding homes; and

WHEREAS, by letter dated December 3, 2009, DOT states that it has no objections to the proposal provided the development plan for the proposed site meets the requirements of the Builder's Pavement Plan for the remaining 30-ft. portion of Thomas Street between Wolverine Street and Amber Street; and

WHEREAS, DOT further states that the applicant's property is not included in the agency's ten-year capital plan; and

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

*Therefore it is Resolved* that the decision of the Staten Island Borough Commissioner, dated March 19, 2008, acting on Department of Buildings Application No. 510016304, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received August 11, 2009" – (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT if required, a Builder's Pavement Plan shall be filed and approved by DOT prior to the issuance of a building permit;

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

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

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

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

laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 8, 2009.

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## 171-08-BZ

APPLICANT – Law Offices of Howard Goldman, LLC, for York Prep Realty, LLC., owner.

SUBJECT – Application June 26, 2008 – Variance (§72-21) to allow the enlargement of an existing school (*York Prep*) contrary to ZR §74-95 (City Planning Commission Housing Quality Special Permit). R8 zoning district.

PREMISES AFFECTED – 40 West 68<sup>th</sup> Street, between Central Park West and Columbus Avenue, Block 1120, Lot 48, Borough of Manhattan.

## COMMUNITY BOARD #7M

### APPEARANCES –

For Applicant: Howard Goldman.

**ACTION OF THE BOARD** – Application granted on condition.

### THE VOTE TO GRANT –

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

### THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated June 8, 2009, acting on Department of Buildings Application No. 103217573, reads, in pertinent part:

"Property is subject to City Planning Commission Housing Quality Special Permit (C840206ZSM, approved 2/1/84). Proposed plans are not permitted pursuant to ZR 74-95 and require a variance from the Board of Standards and Appeals"; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site in an R8 zoning district within the Upper West Side-Central Park West Historic District, the enlargement of a five-story and cellar educational facility (Use Group 3), which is contrary to ZR § 74-95; and

WHEREAS, a public hearing was held on this application on October 6, 2009, after due notice by publication in the *City Record*, with a continued hearing on November 10, 2009, and then to decision on December 8, 2009; and

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

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

WHEREAS, residents of the adjacent building to the rear of the site, represented by counsel, provided written testimony in opposition to the original proposal (the "Opposition"), citing concerns with the effect of the original proposal on the light and air of the adjacent building to the rear; and

WHEREAS, the applicant revised its plans to reduce the bulk of the enlargement, in response to the Opposition's concerns; and

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WHEREAS, this application is brought on behalf of the York Preparatory School (the "School"); and

WHEREAS, the site is located on the south side of West 68<sup>th</sup> Street between Columbus Avenue and Central Park West; and

WHEREAS, the applicant notes that the site is a single zoning lot consisting of two separate tax lots: (1) Tax Lot 48 is situated on the eastern portion of the site, where the subject five-story and cellar school building is located; and (2) Tax Lot 51 is situated on the western portion of the site, where an 11-story residential building (the "Residential Building") is located; and

WHEREAS, the zoning lot has a rectangular shape with approximately 154 feet of frontage on West 68<sup>th</sup> Street, a depth of 100 feet, and a total lot area of 15,464 sq. ft.; Tax Lot 48, the subject tax lot, has approximately 77'-3" of frontage on West 68<sup>th</sup> Street, a depth of 100 feet, and a total lot area of 7,757 sq. ft.; and

WHEREAS, the applicant states that in 1984, the City Planning Commission ("CPC") approved a special permit pursuant to ZR § 74-95 ("Housing Quality Developments") to modify the requirements for building height and setback, open space, and distance between buildings in connection with the development of the Residential Building on the subject zoning lot (the "Special Permit"); and

WHEREAS, the applicant further states that the Special Permit limited development of both Lot 48 and Lot 51 to the approved plans and required that any alteration to the plans be approved by the CPC; and

WHEREAS, however, Housing Quality was eliminated from the Zoning Resolution and replaced by Quality Housing in 1987, and ZR § 74-95 was amended to permit modification of Housing Quality special permits granted before August 14, 1987, but excludes certain kinds of modifications, including: an increase in floor area, the extension of the location of exterior walls, or an increase in the portion of the zoning lot covered by the building; and

WHEREAS, the applicant notes that, although the proposed enlargement creates an additional 855 sq. ft. of floor area, a waiver of the Special Permit's prohibition on increasing floor area is not required due to the reduction in floor area that resulted from the removal of the first floor auditorium for the creation of a two-story cellar gymnasium pursuant to a 1997 alteration to the School; thus, the proposed floor area is actually less than what was approved pursuant to the Special Permit; and

WHEREAS, however, the applicant proposes to extend the location of the exterior walls and increase the portion of the zoning lot covered by the building; and

WHEREAS, the applicant initially sought relief from the Department of City Planning ("DCP"); and

WHEREAS, by letter to the applicant dated July 23, 2007, DCP states that the findings of ZR § 74-95 would not be met by the proposed enlargement, and therefore a variance would be required in order to develop the proposed enlargement; and

WHEREAS, by letter to the Opposition dated December 23, 2008, DCP added that its determination that a variance is

the appropriate means of modifying the Special Permit does not set improper precedent because the provision allowing modification of the Special Permit specifically prohibits the CPC from permitting the proposed modifications; and

WHEREAS, further, DCP states that since no relief is available from CPC, the applicant should not be precluded from seeking relief elsewhere; and

WHEREAS, DCP distinguishes the subject application from those where the CPC may modify a special permit condition as proposed and thus relief from the Board is not necessary or appropriate; and

WHEREAS, the Board agrees with DCP that this case, involving a discontinued program and an amended special permit is a rare example of when a variance is an appropriate means of modifying a special permit under CPC's jurisdiction and there is limited applicability of such practice; and

WHEREAS, further, the Board notes that the proposed enlargement, which does not create any new non-compliance, is within the spirit of the Special Permit; and

WHEREAS, because the site is also located within the Upper West Side-Central Park West Historic District, the applicant has obtained a Certificate of Appropriateness from the Landmarks Preservation Commission ("LPC") for the proposed development, dated October 5, 2009; and

WHEREAS, the School proposes to construct a side and rear enlargement to the cellar and first floor; and

WHEREAS, the School currently occupies 25,799 sq. ft. of floor area; the proposed enlargement will add 855 sq. ft. of floor area at the first floor and an additional 1,510 sq. ft. of floor space at the cellar, for a total floor area of 26,654 sq. ft.; and

WHEREAS, the applicant initially proposed to construct an enlargement with a floor area of 2,424 sq. ft., for a total floor area of 28,226 sq. ft.; and

WHEREAS, in response to concerns raised by the Opposition, the applicant revised its plans to eliminate the second floor of the enlargement on the west side of the building and set back the first floor of the enlargement on both sides of the building a distance of ten feet from the rear lot line, thereby reducing the floor area of the enlargement to 855 sq. ft.; and

WHEREAS, the enlargement will be occupied by (1) a classroom, office, health care office, seating area, and circulation space at the cellar; and (2) a classroom and circulation space on the first floor; and

WHEREAS, the applicant states that the following are the programmatic needs of the School: (1) additional classroom space for Jump Start, the School's special education program; (2) a health care office to support health care services for the faculty, students and parents; and (3) additional seating within the gymnasium; and

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

WHEREAS, the applicant states that the School is a member of the Middle States Association of Colleges and Schools ("Middle States"), a non-governmental, voluntary organization of educational institutions that establishes criteria, evaluates, and accredits member institutions; and

WHEREAS, the applicant further states that in 2003,

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Middle States evaluated the School's program and reviewed every component of the School to be utilized in the accreditation process; and

WHEREAS, the Middle States report identified a lack of classroom space for the School's special education program, the need for a health office, and insufficient seating in the gymnasium; and

WHEREAS, as to the need for classroom space, the applicant states that approximately 25 percent of students receive special education through the School's Jump Start program, which assists students with specific learning disabilities in language processing, reading, writing, math, time management skills and organizational skills; and

WHEREAS, the applicant further states that 11 faculty members provide assistance to approximately 100 students in the Jump Start program, and that due to a lack of classrooms the services are provided in small shared settings; and

WHEREAS, the applicant represents that there is a programmatic need for additional classroom space so that teachers do not have to share a room with other teachers while working with students in the Jump Start program; and

WHEREAS, as to the need for a health care office, the applicant states that the School does not have a dedicated health care office, and health care services are currently provided in a portion of the gym; and

WHEREAS, the applicant further states that the current design does not afford an appropriate degree of privacy for students; and

WHEREAS, the applicant represents that the proposed enlargement would satisfy the programmatic need for a health office with the materials and resources needed to support health care services for the faculty, students, and parents; and

WHEREAS, as to the need for additional seating in the gymnasium, the applicant represents that the current number of seats within the gymnasium is inadequate, and the Middle States evaluation identified a need for additional seating; and

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

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

WHEREAS, however, the applicant represents that the unique configuration of the existing building and the existence of a special permit under a discontinued program that cannot be modified create an unnecessary hardship in developing the site in compliance with applicable regulations; and

WHEREAS, as to the configuration of the existing building, the applicant states that the unique shape of the building results in two trapezoidal open areas beginning approximately one-third of the distance from the street on each side lot line and wrapping around the corners of the rear yard,

resulting in a combination of triangle and L-shaped open space; and

WHEREAS, the applicant represents that an architectural analysis identified these side and rear open areas as the only feasible expansion option; and

WHEREAS, the applicant further represents that filling in this irregularly shaped area with viable education space presents a significant architectural challenge, and that the building's location within the historic district further constrains the ability to enlarge the building; and

WHEREAS, the applicant states that there is no as-of-right alternative to enlarge this building because ZR § 74-95 does not permit any modification of the Special Permit that would increase floor area, expand the exterior walls or increase the portion of the zoning lot covered by a building; and

WHEREAS, the applicant represents that an as-of-right enlargement is not possible under these limitations; and

WHEREAS, the applicant states that, but for the existence of the Special Permit, the proposed enlargement would be as-of-right; and

WHEREAS, the applicant represents that the requested waivers of the Special Permit's lot coverage and open space restrictions are necessary in order to satisfy the programmatic needs of the School; and

WHEREAS, the Board finds that the School's programmatic needs are legitimate, and agrees that the proposed enlargement is necessary to address its needs, given the current limitations; and

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

WHEREAS, since the School is not a non-profit educational institution, the finding set forth at ZR § 72-21(b) must be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that the subject variance is necessary to ensure the continuation and future academic success of the School and to remain competitive with similar institutions; and

WHEREAS, specifically, the applicant states the requested variance is needed to provide additional classroom space to the Jump Start program, which accounts for \$2.8 million, or approximately 30 percent, of the School's annual revenue; and

WHEREAS, the applicant represents that the inability to meet the Jump Start program's programmatic need for additional classroom space would threaten the long-term viability of the Jump Start program and the revenues it generates; and

WHEREAS, the applicant further represents that the School's annual income is approximately \$8.4 million and its operating expenses, including salaries and scholarships, are more than \$7.5 million per year; and

WHEREAS, the applicant notes that without the Jump Start program, the School's annual income would be reduced to

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approximately \$5.6 million; thus, any significant loss of tuition revenues associated with Jump Start would threaten the School's financial viability; and

WHEREAS, based upon the above, the Board has determined that there is no reasonable possibility that development in strict conformance with zoning will provide a reasonable return; and

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

WHEREAS, the applicant represents that the land uses surrounding the site are characterized by a mix of residential, commercial, and community facility uses; and

WHEREAS, the applicant states that the proposed enlargement consists of a small expansion of an existing school, with no increase in height, which will be located behind the street wall and therefore not visible from the street; and

WHEREAS, the applicant further states that the Residential Building does not have any windows on its western wall facing the portion of the subject site where the proposed enlargement will be located, and the height of the enlargement was reduced to one-story adjacent to the Residential Building; and

WHEREAS, the applicant also reduced the enlargement from two stories to one-story adjacent to the synagogue to the east so as not to obstruct a stained glass window; and

WHEREAS, additionally, the applicant has agreed to backlight the synagogue's affected lower level window; and

WHEREAS, as discussed above, the applicant notes that the proposed enlargement would be permitted as-of-right if not for the Special Permit which prohibits the expansion of exterior walls and increase in the portion of the zoning lot covered by the building; and

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

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

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

WHEREAS, as to the minimum variance, as noted above, the applicant revised the proposal to eliminate the second floor of the enlargement on the west side of the building and set back the first floor of the enlargement on both sides of the building a distance of 10'-0", thereby reducing the floor area of the proposed enlargement from 2,424 sq. ft. to 855 sq. ft.; and

WHEREAS, the applicant represents that the requested waivers of the Special Permit, which do not otherwise trigger zoning non-compliances, are the minimum necessary to

accommodate the School's current and projected programmatic needs; and

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

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

WHEREAS, the project is classified as Type II action pursuant to Sections 617.12 (aj) and 617.5 of 6 NYCRR; and

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type II determination, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site in an R8 zoning district within the Upper West Side-Central Park West Historic District, the enlargement of a five-story and cellar educational facility (Use Group 3), which is contrary to ZR § 74-95, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received September 29 , 2009" – two (2) sheets and "Received June 25, 2009" – eight (8) sheets; and *on further condition*:

THAT the parameters of the zoning lot shall be as follows: a total zoning lot floor area of 82,369 sq. ft. (5.32 FAR); and a community facility floor area of 26,654 sq. ft. (1.72 FAR), as reflected on the BSA-approved plans;

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

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

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

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

Adopted by the Board of Standards and Appeals, December 8, 2009.

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## **187-09-BZ CEQR #09-BSA-117K**

APPLICANT – Law Office of Fredrick A. Becker, for Torath Israel Sephardic Congregation, owner.

SUBJECT – Application June 9, 2009 – Variance (§72-21) to permit the construction of a mikvah (ritual bath) in the proposed building (*Torath Israel Sephardic Congregation*), contrary to FAR and lot coverage (§24-11), side yard (§24-35) and rear yard (§24-36). R3-1 zoning district.

PREMISES AFFECTED – 94 Amherst Street, west side of Amherst Street, between Shore Boulevard and Hampton

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Avenues, Block 8726, Lot 43, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

### APPEARANCES –

For Applicant: Lyra Altman.

**ACTION OF THE BOARD** – Application granted on condition.

### THE VOTE TO GRANT –

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

Negative:.....0

### THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 11, 2009, acting on Department of Buildings Application No. 320004357, reads in pertinent part:

“Proposed side yard is contrary to ZR 24-35.

Proposed rear yard is contrary to ZR 24-36;” and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21, to permit, on a site within an R3-1 zoning district, the construction of a two-story mikvah (Use Group 4), which does not comply with side yard and rear yard requirements for community facilities, contrary to ZR §§ 24-35 and 24-36; and

WHEREAS, a public hearing was held on this application on October 20, 2009, after due notice by publication in *The City Record*, with a continued hearing on November 17, 2009, and then to decision on December 8, 2009; and

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

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

WHEREAS, certain community members testified in opposition to this application, citing concerns with the proposal’s impact on neighborhood character and that the applicant did not establish a programmatic need for the facility at this location; and

WHEREAS, this application is being brought on behalf of the Torath Israel Sephardic Congregation, a non-profit religious entity; and

WHEREAS, the subject premises is located on the west side of Amherst Street, between Shore Boulevard and Hampton Avenue, within an R3-1 zoning district; and

WHEREAS, the site has a rectangular shape with 30 feet of frontage on Amherst Street, a depth of 100 feet, and a total lot area of 3,000 sq. ft.; and

WHEREAS, the subject site is currently occupied by a vacant single-family home, which is to be demolished; and

WHEREAS, the applicant proposes to construct a two-story and cellar mikvah on the site (the “Mikvah”); and

WHEREAS, the proposed Mikvah will have the following complying parameters: a floor area of approximately 2,966 sq. ft. (0.99 FAR); a lot coverage of approximately 55 percent; a wall height of 12’-2””; a total height of 35’-0””; and a front yard with a depth of 15’-6””; and

WHEREAS, however, the applicant proposes to provide a side yard with a width of 5’-0” along the northern lot line and a side yard with a width ranging from 5’-0” to 0’-6” along the

southern lot line (two side yards with a width of 8’-0” each are the minimum required for a community facility use); and a rear yard with a depth of 10’-0” (a minimum rear yard depth of 30’-0” is required); and

WHEREAS, the applicant initially proposed a building with a floor area of 3,053 sq. ft. (1.02 FAR) (1.0 FAR is the maximum permitted), a lot coverage of 60 percent (55 percent is the maximum permitted), a side yard with a width of 5’-0” along the northern lot line, a side yard with widths of 3’-6” and 0’-6” along the southern lot line, and a rear yard with a depth of 5’-0””; and

WHEREAS, at the request of the Board, the applicant revised its plans to reduce the width and depth of the proposed Mikvah, thereby eliminating the requested floor area and lot coverage waivers and providing more depth at the rear yard; and

WHEREAS, the proposal provides for the following uses: (1) two ritual pools, three preparation rooms, a drying room, reception area, and waiting room on the first floor; (2) four bathrooms and storage space on the second floor; and (3) a laundry room, utensil ritual bath, accessory office, boiler room, and storage space in the cellar; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Mikvah: (1) a centralized location to better serve the needs of the surrounding area; (2) a sufficient number of preparation rooms and ritual pools to accommodate the approximately 21 women anticipated to patronize the Mikvah on a daily basis; (3) to locate the ritual pools on the ground floor; and (4) privacy for the women who use the Mikvah; and

WHEREAS, the applicant states that the closest existing facility, Mikvah Israel – Brighton Beach, located at 245 Neptune Avenue, is approximately three-quarters of a mile from the proposed mikvah; and

WHEREAS, the applicant represents that, due to the religious requirements of ritual purity, a woman must travel to a mikvah after sundown on a specific day each month, and is not permitted to delay; and

WHEREAS, in addition, the applicant states that Jewish law prohibits congregants from driving on the Sabbath and, therefore, close proximity to patrons’ homes is required; and

WHEREAS, the applicant represents that a mikvah at the subject site will reduce the inconvenience for many women who, due to religious requirements and the distance of their homes from the nearest existing mikvah, must walk approximately three-quarters of a mile at night by themselves when required to visit on the Sabbath; and

WHEREAS, the applicant submitted letters from Congregation Shaarey Torah and the Manhattan Beach Jewish Center, two other congregations that the Mikvah will service, stating their support for the proposal given the community’s need for such a facility; and

WHEREAS, thus, the applicant represents that a mikvah is necessary to better serve areas of the community located furthest from the existing mikvahs in the area; and

WHEREAS, the applicant states that the requested side and rear yard waivers will allow for a building footprint that is large enough to accommodate all of the required Mikvah

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services; and

WHEREAS, specifically, the applicant states that the requested waivers are necessary to provide an adequate number of preparation rooms and ritual baths for the anticipated number of Mikvah patrons; and

WHEREAS, the applicant represents that the requested waivers are also necessary to accommodate two ritual baths at ground level; and

WHEREAS, the applicant further represents that many religious authorities dictate that mikvah baths be located at ground level to minimize vibrations and prevent damage; and

WHEREAS, the applicant states that locating the ritual baths at ground level also allows for quality control to ensure that the baths do not leak; and

WHEREAS, the applicant further states that if a mikvah bath leaks, then it can no longer be used to satisfy the religious requirement; and

WHEREAS, thus, the applicant states that as a result of the need for the ritual baths to be located at ground level, the yard waivers are necessary to meet the Mikvah's programmatic needs; and

WHEREAS, the applicant further represents that the requested waivers are necessary to ensure the privacy of the women who use the Mikvah; and

WHEREAS, the applicant states that modesty and privacy are fundamental aspects of the deeply personal mikvah ritual; and

WHEREAS, the applicant represents that in order to maintain privacy, mikvahs should provide a wet corridor and a dry corridor, and each preparation room should have a door to each corridor; and

WHEREAS, the applicant states that the use of two hallways helps to limit conflicts by permitting fully dressed patrons to enter and exit the preparation rooms through the dry corridor and permitting partially clothed patrons to use the wet corridor to go to and from the mikvah pool; and

WHEREAS, the applicant represents that a complying building would not provide sufficient corridors or the appropriate number of preparation rooms to ensure the privacy of its patrons; and

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

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

WHEREAS, the applicant provided a submission briefing the prevailing New York State case law on religious deference; and

WHEREAS, the Board notes that under established precedents of the courts, "[r]eligious use is conduct with a

religious purpose, the determination of which focuses on the proposed use itself, not the religious nature of the organization" (McGann v. Incorporated Village of Old Westbury, 293 A.D.2d 581 (2d Dep't 2002)), and includes uses ancillary to the function of the house of worship (See Community Synagogue v. Bates, 1 N.Y.2d 445 (1956)); and

WHEREAS, the Board recognizes the role of a mikvah in the religious Jewish community and its significance to Jewish life; accordingly, the Board finds that the Mikvah qualifies as a religious use and is therefore entitled to significant deference under the law of the State of New York as to zoning; and

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

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

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

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

WHEREAS, the applicant further notes that side and rear yard waivers are the only waivers requested and that the FAR and height of the proposed building are permitted in the subject R3-1 zoning district; and

WHEREAS, the applicant states that, given the proximity of the proposed Mikvah to the homes of many of its anticipated users, in conjunction with the fact that Jewish law prohibits driving on the Sabbath, many Mikvah visitors are likely to walk to the proposed facility, thereby reducing any potential traffic impacts; and

WHEREAS, the applicant initially proposed a non-complying FAR of 1.02 and lot coverage of 60 percent, as well as a side yard with a depth ranging from 3'-6" to 0'-6" along the southern lot line, and a rear yard with a depth of 5'-0"; and

WHEREAS, at hearing, the Board directed the applicant to reduce the floor area and lot coverage to comply with zoning district regulations; and

WHEREAS, additionally, the Board directed the applicant to reduce the width of the hallways and the size of the bathrooms in order to provide greater open space; and

WHEREAS, the applicant revised the plans to reflect complying FAR and lot coverage and yards that are more compatible with the neighborhood character; and

WHEREAS the Board notes that side yards with widths of 5'-0" are permitted for residential development in the zoning district; and

WHEREAS, the Board also notes that the pre-existing side yards at the site had widths of less than 5'-0"; and

WHEREAS, the applicant notes that the façade has been designed to resemble a residential building; and

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

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

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

WHEREAS, as to the minimum variance, as noted above, during the hearing process the applicant revised the proposal to eliminate the floor area and lot coverage waivers and to provide a rear yard with a depth of 10'-0" rather than the originally proposed depth of 5'-0"; and

WHEREAS, the applicant represents that any further reduction would prevent it from meeting its programmatic needs; and

WHEREAS, accordingly, the Board finds the requested waivers to be the minimum necessary to afford the Mikvah the relief needed both to meet its programmatic needs and to construct a building that is compatible with the character of the neighborhood; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No.09BSA117K, dated November, 2009; and

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

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each

and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R3-1 zoning district, the construction of a mikvah (Use Group 4), which does not comply with the zoning requirements for side and rear yards for community facilities, contrary to ZR §§ 24-35 and 24-36, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 4, 2009" – Seven (7) sheets and "Received November 17, 2009" – Three (3) sheets and *on further condition*:

THAT the parameters of the proposed building shall be as follows: a maximum of 2,966 sq. ft. of floor area (0.99 FAR); a maximum lot coverage of approximately 55 percent; a maximum wall height of 12'-2"; a maximum total height of 35'-0"; a minimum front yard of 15'-6"; a side yard with a minimum width of 5'-0" along the northern lot line; a side yard with a minimum width of 0'-6" along the southern lot line; and a rear yard with a minimum depth of 10'-0", as reflected on the BSA-approved plans;

THAT the use shall be limited to a mikvah (Use Group 4);

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

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

THAT any required access lift shall be reviewed and approved by the Mayor's Office for People with Disabilities and/or DOB;

THAT any porches shall be reviewed and approved by DOB;

THAT construction shall proceed 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) only;

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

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

Adopted by the Board of Standards and Appeals, December 8, 2009.

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## 225-09-BZ

APPLICANT – Antonio S. Valenziano, AIA, for Beacon Luigi, LLC, owner.

SUBJECT – Application July 14, 2009 – Variance (§72-21) for the construction of a single family residence on a vacant undersized lot, contrary to front yard (§23-45) regulations. R2 (LDGM) zoning district.

PREMISES AFFECTED – 45 Beacon Avenue, Beacon Avenue c/o Luigi Place, Block 948, Lot 27, Borough of Staten Island.

## COMMUNITY BOARD #3SI

APPEARANCES –

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For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated July 8, 2009, acting on Department of Buildings Application No. 520005887, reads in pertinent part:

“ZR 23-45. Proposed front yard is contrary to the section of the zoning resolution and required BSA approval;” and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R2 zoning district within a Lower Density Growth Management Area, the proposed construction of a two-story single-family home that does not provide the required front yard, contrary to ZR § 23-45; and

WHEREAS, a public hearing was held on this application on October 6, 2009 after due notice by publication in *The City Record*, with a continued hearing on November 10, 2009, and then to decision on December 8, 2009; and

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

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

WHEREAS, City Councilmember James S. Oddo provided testimony in opposition to this application; and

WHEREAS, a member of the community testified in opposition to this application, citing the following primary concerns: (1) the proposed home is not compatible with neighborhood character; (2) development of the site would cause a flooding problem; and (3) the claimed hardship was self-created based on the purchase of the lot; and

WHEREAS, collectively, the parties who provided testimony in opposition to the proposal are the “Opposition;” and

WHEREAS, the site is located on the northeast corner of Beacon Avenue and Luigi Place, in an R2 zoning district within a Lower Density Growth Management Area; and

WHEREAS, the site has a width of 25 feet, a depth of 108 feet, and a total lot area of approximately 2,700 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a two-story with attic single-family home; and

WHEREAS, the proposed home will have the following complying parameters: 1,290 sq. ft. of floor area (0.48 FAR); an open space ratio of 150.5 percent; a side yard with a width of 30’-0” along the eastern lot line; a side yard with a width of 5’-0” along the northern lot line; a front yard with a depth of approximately 28’-0” along the western lot line; a wall height of 24’-6”; and a total height of approximately 28’-0”; and

WHEREAS, however, the applicant proposes to provide

a front yard with a depth of 5’-0” along the northern lot line (two front yards with minimum depths of 15’-0” each are required); and

WHEREAS, the applicant has provided documentation establishing that the subject lot is an undersized lot pursuant to ZR § 23-32; and

WHEREAS, the Board notes that ZR § 23-33 eliminates lot area and width requirements for single-family homes in a Lower Density Growth Management Area where the zoning lot was owned separately and individually from all adjoining tracts of land both on December 8, 2005 and on the date of the application for a building permit; and

WHEREAS, a title report submitted by the applicant reflects that the site has existed in its current configuration since before December 8, 2005 and its ownership has been independent of the ownership of the two adjoining lots; and

WHEREAS, the Board notes that ZR § 23-33 would eliminate a lot area and width requirement for a single-family dwelling, but not the front yard objection; and

WHEREAS, the applicant states that front yard relief is necessary, for reasons stated below; thus, the instant application was filed; and

WHEREAS, the applicant states that the following is a unique physical condition, which creates practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: the narrowness of the subject site; and

WHEREAS, the applicant represents that the requested front yard waiver is necessary to develop the site with a habitable home; and

WHEREAS, specifically, the applicant represents that the pre-existing lot width of 25’-0” cannot feasibly accommodate a complying development; and

WHEREAS, the applicant states that the subject site is a corner lot, which requires two front yards of 15 feet each; and

WHEREAS, the applicant states that the building would have an exterior width of only 5’-0” if front yard regulations were complied with fully; and

WHEREAS, accordingly, the applicant represents that the front yard waiver is necessary to create a home of a reasonable width; and

WHEREAS, the applicant submitted a radius diagram indicating that the majority of lots within a 400-ft. radius are at least 40 feet in width, and only one other lot is as narrow as the subject lot; and

WHEREAS, the radius diagram further reflects that the subject site is one of only three vacant lots located wholly within a 400-ft. radius of the site; and

WHEREAS, based upon the above, the Board finds that the cited unique physical condition creates practical difficulties in developing the site in strict compliance with the applicable front yard regulations; and

WHEREAS, the Board has determined that because of the subject site’s unique physical condition, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the

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neighborhood, or impact adjacent uses; and

WHEREAS, the applicant submitted a radius diagram reflecting that the surrounding neighborhood is characterized by single-family detached homes; and

WHEREAS, the applicant notes that the proposed bulk is compatible with nearby residential development and that that it complies with all relevant bulk regulations; and

WHEREAS, specifically, the applicant notes that the proposed home complies with the R2 zoning district regulations for use, FAR, side yards, open space ratio, height, and parking; and

WHEREAS, the applicant represents that the proposed front yard waiver will not impair the light and air of the adjacent home across Luigi Place, as the distance between the proposed home and the home across Luigi Place will be approximately 68 feet; and

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

WHEREAS, the applicant states that the unnecessary hardship encountered by compliance with the zoning regulations is inherent to the site's narrow width; and

WHEREAS, the Opposition contended that the applicant's hardship was instead created by its purchase of the subject lot, which requires the requested variance to build a habitable home; and

WHEREAS, the Board notes that the (d) finding under ZR § 72-21 specifies that the purchase of a zoning lot subject to the cited hardship shall not constitute a self-created hardship; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is a result of the historic lot dimensions; and

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type II Declaration 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, in an R2 zoning district within a Lower Density Growth Management Area, a two-story single-family home that does not provide the required front yards, contrary to ZR § 23-45; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received September 21, 2009"– (1) sheet, "November 10, 2009"–(5) sheets and "December 4, 2009"–(1) sheet; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: a maximum of 1,290 sq. ft. of floor area (0.48 FAR), an open space ratio of 150.5 percent, a side yard with a width of 30'-0" along the eastern lot line; a side yard with a width of 5'-0" along the northern lot line; a front yard with a depth of approximately 28'-0" along the western lot line; a

front yard with a depth of 5'-0" along the southern lot line; a wall height of 24'-6"; a total height of approximately 28'-0"; and parking for a minimum of two cars, as per the BSA-approved plans;

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

THAT there shall be no habitable room in the cellar;

THAT if required, a Builder's Pavement Plan shall be filed and approved by DOT prior to the issuance of a building permit;

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

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

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

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

Adopted by the Board of Standards and Appeals, December 8, 2009.

## 279-09-BZ

APPLICANT – Lewis E. Garfinkel, R.A., for Rifki Zoneshayn, owner.

SUBJECT – Application October 1, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to open space and floor area (§23-141(a)); side yard (§23-461) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED –2709 Avenue M, between East 27<sup>th</sup> and East 28<sup>th</sup> Street, Block 7645, Lot 7, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated September 25, 2009, acting on Department of Buildings Application No. 320051741, reads:

1. Proposed plans are contrary to ZR 23-141(a) in that the proposed floor area ratio (FAR) exceeds the permitted 50 percent.
2. Proposed plans are contrary to ZR 23-141(a) in that the proposed open space ratio (OSR) is less than the required 150 percent.
3. Plans are contrary to ZR 23-461(a) in that the

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existing minimum side yard is less than the required minimum 5'-0".

4. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than 30'-0";" and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR"), open space ratio, and side and rear yards, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on November 17, 2009 after due notice by publication in *The City Record*, and then to decision on December 8, 2009; and

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

WHEREAS, Community Board 14, Brooklyn, recommended disapproval of the applicant's initial proposal, citing concerns about the proximity of the proposed rear enlargement and the existing garage; and

WHEREAS, the Board notes that the applicant has revised its proposal to remove the existing garage; and

WHEREAS, a neighbor testified in opposition to this application, citing concerns about the construction process; and

WHEREAS, the subject site is located on the north side of Avenue M, between East 27<sup>th</sup> Street and East 28<sup>th</sup> Street, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 4,200 sq. ft., and is occupied by a single-family home with a floor area of 2,752 sq. ft. (0.66 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 2,752 sq. ft. (0.66 FAR) to 3,548 sq. ft. (0.85 FAR); the maximum permitted floor area is 2,100 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of approximately 65 percent (150 percent is the minimum required); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yard with a width of 4'-1" along the western lot line (a minimum width of 5'-0" is required) and will provide a complying side yard of 8'-11" along the eastern lot line; and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20'-0" (a minimum rear yard depth of 30'-0" is required); and

WHEREAS, the applicant initially proposed to maintain the existing garage but revised the plans to reflect its demolition; and

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

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

WHEREAS, in response to the neighbor's construction-related concerns, the Board notes that the applicant must comply with all relevant Building Code regulations throughout the construction process; and

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

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

*Therefore it is resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 and 73-03, to permit, within an R2 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space ratio, and side and rear yards, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received October 30, 2009"-(11) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 3,548 sq. ft. (0.85 FAR); an open space ratio of 65 percent; a side yard with a minimum width of 4'-1" along the western lot line; a side yard with a minimum width of 8'-11" along the eastern lot line; a rear yard with a minimum depth of 20'-0"; a maximum perimeter wall height of 22'-11"; and a maximum total height of 30'-6", as illustrated on the BSA-approved plans;

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

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

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

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

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

Adopted by the Board of Standards and Appeals, December 8, 2009.

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## 256-07-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP for Hayden Rester, owner.

SUBJECT – Application November 5, 2007 – Variance (§72-21) to permit a three-story, five-unit residential building, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 1978 Atlantic Avenue, Southern side of Atlantic Avenue, 180 feet west of the intersection of Atlantic and Ralph. Block 1339, Lot 39, Borough of Brooklyn.

### COMMUNITY BOARD # 8BK

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Laid over to January 26, 2010, at 1:30 P.M., for continued hearing.

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## 44-09-BZ

APPLICANT – Philip L. Rampulla, for Tony Chrampanis, owner.

SUBJECT – Application March 11, 2009 – Variance (§72-21) to allow for a two-story commercial building (UG 6) with accessory parking, contrary to use regulations (§22-00). R3-1 district.

PREMISES AFFECTED – 2175 Richmond Avenue, Eastside of Richmond Avenue 39.80' south of Saxon Avenue, Block 2361, Lot 12(tent), 14, 17, 22, Borough of Staten Island.

### COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Philip Rampulla.

**ACTION OF THE BOARD** – Laid over to February 2, 2010, at 1:30 P.M., for continued hearing.

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## 162-09-BZ

APPLICANT – Sheldon Lobel, P.C., for Steinway 30-33, LLC, owner; Steinway Fitness Group, LLC d/b/a Planet Fitness, lessee.

SUBJECT – Application April 27, 2009 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (*Planet Fitness*) in the cellar, first, and second floors in an existing two-story building; Special Permit (§73-52) to extend the C4-2A zoning district regulations 25 feet into the adjacent R5 zoning district. C4-2A/R5 zoning districts.

PREMISES AFFECTED – 30-33 Steinway Street, east side of Steinway Street, south of 30<sup>th</sup> Avenue, Block 680, Lot 32, Borough of Queens.

### COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Elizabeth Safain.

**ACTION OF THE BOARD** – Laid over to January 26, 2010, at 1:30 P.M., for continued hearing.

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## 231-09-BZ

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

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

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

### COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Michael Sillerman.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 12, 2010, at 1:30 P.M., for decision, hearing closed.

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## 264-09-BZ

APPLICANT – Moshe M. Friedman, P.E., for Joseph Ashkenaki, owner; LRHC Flatbush NY, LLC, lessee.

SUBJECT – Application September 15, 2009 – Special Permit (§73-36) to legalize the operation of an existing physical culture establishment (*Lucille Roberts*) on the second and third floors of a three-story commercial building. C4-4A zoning district.

PREMISES AFFECTED – 927 Flatbush Avenue, aka 927-933 Flatbush Avenue, aka 21-33 Snyder Avenue, Block 5103, Lot 8, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Moshe M. Friedman.

**ACTION OF THE BOARD** – Laid over to January 26, 2010, at 1:30 P.M., for continued hearing.

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## 269-09-BZ

APPLICANT – Dennis D. Dell'angelo, R.A., for Jehoshua Cohen, owner.

SUBJECT – Application September 21, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to lot coverage (§23-141); side yard (§23-461) and less than the required rear yard (§23-47) and the legalization of a prior one story enlargement at the front of the existing home. R-5 zoning district.

PREMISES AFFECTED – 1938 East 12<sup>th</sup> Street, west side of East 12<sup>th</sup> Street, between Avenue S and Avenue T, Block 7290, Lot 21, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Dennis D. Dell'angelo.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,

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

**ACTION OF THE BOARD** – Laid over to January  
12, 2010, at 1:30 P.M., for decision, hearing closed.

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## **292-09-BZ**

APPLICANT – Martyn & Don Weston, for Barbara Aal-  
Albar LLC, owner; Third Avenue Auto Corporation, lessee.  
SUBJECT – Application October 15, 2009 – Special Permit  
(§11-411, §11-413 & §73-03) to reinstate previously granted  
variance which expired on December 7, 1999; amendment to  
change use from a gasoline service station (UG16B) to  
automotive repair establishment (UG16B); Waiver of the  
Boards Rules. C1-3/R6A & R5B (Special Bay Ridge  
District).

PREMISES AFFECTED – 9310-9333 Third Avenue, North  
east corner of 94th Street, Block 6107, Lot 1, Borough of  
Brooklyn.

### **COMMUNITY BOARD #10BK**

APPEARANCES –

For Applicant: Don Weston.

**ACTION OF THE BOARD** – Laid over to January  
26, 2010, at 1:30 P.M., for continued hearing.

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## **293-09-BZ**

APPLICANT – Eric Palatnik, Esq., for Rami Esses, owner.  
SUBJECT – Application October 15, 2009 – Special Permit  
(§73-622) for the enlargement of an existing two family  
home to be converted into a single family home contrary to  
open space and floor area (§23-141(a)). R-2 zoning district.  
Special Permit (§73-622) for the enlargement of an existing  
two family home to be converted into a single family home  
contrary to open space and floor area (§23-141(a)). R-2  
zoning district.

PREMISES AFFECTED – 2501 Avenue M, northeast  
corner of Avenue M and Bedford Avenue, Block 7643, Lot  
8, Borough of Brooklyn.

### **COMMUNITY BOARD #8BK**

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to January  
26, 2010, at 1:30 P.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*