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# BULLETIN

OF THE  
NEW YORK CITY BOARD OF STANDARDS  
AND APPEALS

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Volume 95, No. 21

May 26, 2010

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## DIRECTORY

**MEENAKSHI SRINIVASAN**, *Chair*

CHRISTOPHER COLLINS, *Vice-Chair*

DARA OTTLEY-BROWN

SUSAN M. HINKSON

EILEEN MONTANEZ

*Commissioners*

Jeffrey Mulligan, *Executive Director*

Becca Kelly, *Counsel*

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<b>OFFICE -</b>	<b>40 Rector Street, 9th Floor, New York, N.Y. 10006</b>
<b>HEARINGS HELD -</b>	<b>40 Rector Street, 6th Floor, New York, N.Y. 10006</b>
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<b>TELEPHONE - (212) 788-8500</b>
<b>FAX - (212) 788-8769</b>

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58-07-BZ	18-02 Clintonville Queens
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617-80-BZ	770/780 McDonald Avenue, Brooklyn
280-98-BZ	2936 Hylan Boulevard, Staten Island
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**Affecting Calendar Number:**

182-09-BZ	612 West 180 <sup>th</sup> Street, Manhattan
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# DOCKET

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New Case Filed Up to May 18, 2010  
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**85-10-BZ**

309-311 East Fordham Road, Northwest corner of Kingbridge Road and East Fordham Road., Block 3154, Lot(s) 94, Borough of **Bronx, Community Board: 7**. Special Permit (73-36) to allow the operation of a physical culture establishment. C4-4 district.  
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**86-10-BZ**

93-08 95th Avenue, Southern side of 95th Avenue, approximately 50 feet east of 93rd Street., Block 9036, Lot(s) 3, Borough of **Queens, Community Board: 9**. Special Permit (11-411, 11-412) for enlargement of existing building. R5 district.  
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**87-10-BZ**

1333 East 24th Street, East side of East 24th Street, 260 feet south of Avenue M., Block 7660, Lot(s) 31, Borough of **Brooklyn, Community Board: 14**. Special Permit (73-622) for the enlargement of a single family home. R2 district.  
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**88-10-BZ**

1327 East 21st Street, South east corner of east 21st Street and Avenue L., Block 7639, Lot(s) 41, Borough of **Brooklyn, Community Board: 14**. Special Permit (73-622) for the enlargement of a single family home. R2 district.  
-----

**89-10-BZ**

53 Mercer Street, West side between Grand and Broome Streets., Block 474, Lot(s) 14, Borough of **Manhattan, Community Board: 2**. Variance to all the use of the ground floor and cellar for retail use and occupancy. M1-5B district.  
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**90-10-BZ**

58-06 Springfield Boulevard, Corner of the west side of Springfield Boulevard west north side of the Horace Harding Expressway, Block 7471, Lot(s) 7 & 45, Borough of **Queens, Community Board: 11**. Variance to allow a two-story building house of worship, contrary to use regulations. R2-A district.  
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**91-10-BZ**

123 Coleridge Street, South of hampton Street., Block 8735, Lot(s) 35, Borough of **Brooklyn, Community Board: 15**. Special Permit (73-622) for the enlargement of a single family home. R3-1 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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**JUNE 8, 2010, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, June 8, 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**

**589-31-BZ**

APPLICANT – Eric Palatnik, P.C., for Asha Ramnath, owner.

SUBJECT – Application March 5, 2010 – Amendment pursuant to ZR 11-413 to permit the proposed change of use group from UG16 (Gasoline Service Station) to UG16 (Automotive Repair) with accessory used car sales. R3-2 zoning district.

PREMISES AFFECTED – 159-02 Meyer Avenue, intersection of Mayer Avenue, 159<sup>th</sup> Street, Linden Boulevard, Block 12196, Lot 1, Borough of Queens.

**COMMUNITY BOARD #12Q**

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**739-76-BZ**

APPLICANT – Joseph P. Morsellino, Esq., for Cord Meyer Development LLC, owner; Peter Pan Games of Bayside, lessee.

SUBJECT – Application April 28, 2010 – Extension of Term for a UG15 Amusement Arcade (Peter Pan Games) which expired on April 10, 2010 and an Extension of Time to obtain a Certificate of Occupancy which expired on May 18, 2009. C4-1 zoning district.

PREMISES AFFECTED – 212-95 26<sup>th</sup> Avenue, 26<sup>th</sup> Avenue and Bell Boulevard, Block 5900, Lot 2, Borough of Queens.

**COMMUNITY BOARD #7Q**

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**242-02-BZ**

APPLICANT – Joseph Fullam, for Helen Fullam, owner.

SUBJECT – Application March 25, 2010 – Amendment to a previously granted Variance (§72-21) for the construction of a two family residence contrary to parking requirement (ZR 25-21) and (ZR 25-622). R3X/SR zoning district.

PREMISES AFFECTED – 1 North Railroad Street, west side of North Railroad between Belfield Avenue and Burchard Court, Block 6274, Lot 1, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

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**APPEALS CALENDARS**

**49-10-A thru 52-10-A**

APPLICANT – Philip L. Rampulla, for Daniel Master, owner.

SUBJECT – Application April 9, 2010 – Proposed construction of a four single family homes not fronting on a mapped street contrary to General City Law Section 36. R3-1 zoning district. Series: 49-10-A thru 52-10-A

PREMISES AFFECTED – 28, 26, 22, 20 Winchester Avenue, south side of Winchester Avenue, east of Tennyson Drive, Block 5320, Lot 45, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

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**JUNE 8, 2010, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, June 8, 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**

**92-08-BZ**

APPLICANT – Riker Danzig, for Boquen Realty, LLC, owner.

SUBJECT – Application April 14, 2008 – Variance pursuant to 72-21 to allow for UG 6 use below the floor level of the second story, encroach within the required rear yard, and increase the allowable floor area, contrary to ZR 42-14, 43-12 and 43-26. M1-5B zoning district.

PREMISES AFFECTED – 13 Crosby Street, east side of Crosby Street between Grand and Howard Street, Block 233, Lot 4, Borough of Manhattan.

**COMMUNITY BOARD #4M**

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**40-10-BZ**

APPLICANT – Sheldon Lobel, PC, for Campworth LLC, owner.

SUBJECT – Application March 22, 2010 – Variance (§72-21) to allow for an existing building to be converted for commercial use, contrary to ZR 22-10. C4-4A/R5B zoning district.

PREMISES AFFECTED – 150 Kenilworth Place, through-lot between Campus Road and Kenilworth Place, Block 7556, Lot 71, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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# CALENDAR

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**48-10-BZ**

APPLICANT – Rampulla Associates Architects, for Outerbridge Commons, LP, owner; 2965 Veterans Road West, owners.

SUBJECT – Application April 9, 2010 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Retro Fitness*). M1-1 district/Special South Richmond District.

PREMISES AFFECTED – 2965 Veterans Road West, Veterans Road West and Tyrellan Avenue, Block 7511, Lots 1, 75 & 150, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

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**59-10-BZ**

APPLICANT – Sheldon Lobel, P.C., for Kaufman 8<sup>th</sup> Avenue Associates, owner; Bension Salon Inc., lessee.

SUBJECT – Application April 23, 2010 – Special Permit (73-36) to allow a physical culture establishment (*Luxe Den Salon & Spa*). M1-6/C6-4M.

PREMISES AFFECTED – 519 Eighth Avenue, southwest corner of West 36<sup>th</sup> Street and Eighth Avenue, Block 759, Lot 45, Borough of Manhattan.

**COMMUNITY BOARD #4M**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, MAY 18, 2010  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**16-36-BZ**

APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Incorporated, owner.

SUBJECT – Application October 27, 2009 – Extension of Time to obtain a Certificate of Occupancy of an existing Gasoline Service Station (*Gulf*) which expired on March 18, 2009; Waiver of the Rules. C2-2/R5 zoning district.

PREMISES AFFECTED – 1885 Westchester Avenue, southeast corner of the intersection between Westchester Avenue and White Plains Road, Block 3880, Lot 1, Borough of Bronx.

**COMMUNITY BOARD #9BX**

APPEARANCES –

For Applicant: Josh Rinesmith.

**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 time to obtain a certificate of occupancy, which expired on March 18, 2009; and

WHEREAS, a public hearing was held on this application on February 2, 2010 after due notice by publication in *The City Record*, with continued hearings on March 16, 2010, and April 20, 2010, and then to decision on May 18, 2010; 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 9, Bronx, recommends approval of this application; and

WHEREAS, the subject site is located on the northwest corner of Westchester Avenue and White Plains Road, within a C2-2 (R5) zoning district; and

WHEREAS, the site is occupied by a gasoline service station and an accessory convenience store; and

WHEREAS, the site has a total lot area of 13,500 sq. ft.; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 18, 1950 when, under the subject calendar number, the Board granted a variance to permit the

reconstruction of a gasoline service station with accessory uses at the site for a term of 15 years; and

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

WHEREAS, most recently, on March 18, 2008, the Board granted a ten-year extension of the term, to expire on November 1, 2017; and

WHEREAS, a condition of the grant was that a new certificate of occupancy be obtained by March 18, 2009; and

WHEREAS, the applicant now seeks an extension of time to obtain a certificate of occupancy; and

WHEREAS, at hearing, the Board directed the applicant to: (1) close the southern curb cut on White Plains Road, in accordance with the condition from the previous grant; (2) confirm that the signage on the site complies with C2 district signage regulations; and (3) confirm that the lighting at the site complies with the lighting plan that was previously approved by the Board; and

WHEREAS, in response, the applicant submitted: (1) copies of work permits issued by the Department of Buildings and the Department of Transportation related to the closure of the southern curb cut on White Plains Road, and photographs reflecting that the curb cut has been closed; (2) a revised signage analysis reflecting that the site complies with C2 district regulations; and (3) a new lighting plan that substantially complies with the previously-approved lighting plan; and

WHEREAS, based upon the above, the Board finds that the requested 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, dated April 18, 1950, so that as amended this portion of the resolution shall read: “to permit an extension of time to obtain a certificate of occupancy, to expire on May 18, 2011; *on condition* that all use and operations shall substantially conform to BSA-approved plans associated with the prior grant; and *on further condition*:

THAT a certificate of occupancy shall be obtained by May 18, 2011;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 201108078)

Adopted by the Board of Standards and Appeals May 18, 2010.

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## 1045-67-BZ

APPLICANT – Michael A. Cosentino, for Thomas Abruzzi, owner.

SUBJECT – Application October 30, 2009 – Extension of term of a variance (§72-21) for an accessory parking lot to be used for adjoining commercial uses, which expired on June 27, 1998; waiver of the Rules; and an Amendment to eliminate the term. R2 zoning district

PREMISES AFFECTED – 160-10 Crossbay Boulevard, Crossbay Boulevard between 160<sup>th</sup> Avenue and 161<sup>st</sup> Avenue, Block 14030, Lot 6, 20, Borough of Queens.

## COMMUNITY BOARD #10Q

### APPEARANCES –

For Applicant: Michael A. Cosentino and Anthony S. Cosentino.

**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 amendment to eliminate the term of a previously granted variance for the operation of an accessory parking lot for an adjoining commercial use and to remove a condition restricting the hours of operation of the parking lot, which expired on June 27, 1998; and

WHEREAS, a public hearing was held on this application on March 16, 2010, after due notice by publication in *The City Record*, with a continued hearing on April 20, 2010, and then to decision on May 18, 2010; and

WHEREAS, Community Board 10, Queens, recommends approval of this application; and

WHEREAS, Queens Borough President Helen Marshall recommends approval of this application; and

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

WHEREAS, the subject site consists of two zoning lots (Lots 6 and 20), which occupy an entire city block, bounded by 92<sup>nd</sup> Street to the west, 160<sup>th</sup> Avenue to the north, Cross Bay Boulevard to the east, and 161<sup>st</sup> Avenue to the south, partially within an R2 zoning district and partially within a C2-2 zoning district; and

WHEREAS, the site is occupied by a post office, retail stores (Use Group 6), and an open parking lot; and

WHEREAS, the Board has exercised jurisdiction over the site since June 12, 1973 when, under the subject calendar number, the Board granted a variance to permit, in an R2 zoning district, the construction and maintenance of an accessory parking lot for the adjoining commercial establishment, for a term of five years; and

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

WHEREAS, on May 10, 1988, the Board granted a ten-

year extension of term, which expired on June 12, 1998; and

WHEREAS, the applicant now seeks to eliminate the term of the grant; and

WHEREAS, the applicant represents that the elimination of the term is appropriate because the owner has maintained the accessory parking lot at the site continuously since the time of the original grant; and

WHEREAS, additionally, the applicant represents that the elimination of the term helps to ensure stable, long-term tenants, which requires a long lease with the option to renew in order to make a commitment to the site; and

WHEREAS, the applicant also seeks to remove the condition of the previous grant requiring the applicant to close the gates to the parking lot after business hours; and

WHEREAS, the applicant states that the subject parking lot services a 24-hour drug store on the site which is open to the public and receives night-time deliveries, therefore requiring the parking lot to remain open 24 hours per day; and

WHEREAS, at hearing, the Board directed the applicant to provide the total number of parking spaces that are currently located at the site, and raised concerns about the parking layout and the maintenance of the fencing on the site; and

WHEREAS, in response, the applicant submitted a revised site plan with a chart reflecting that there are 21 parking spaces located in the C2-2 district and 127 parking spaces located in the R2 district, for a total of 148 spaces located on the site; the revised site plan also reflected improvements to the parking layout, including the addition of a no parking zone at the entrance of the parking lot from Cross Bay Boulevard; and

WHEREAS, the applicant also provided photographs reflecting the installation of screening to the chain link fence on both 160<sup>th</sup> Avenue and 161<sup>st</sup> Avenue and new entry and exit signs painted on the pavement of the parking lot; and

WHEREAS, based upon its review of the record, the Board finds that the requested amendment to eliminate the term and remove the condition restricting the hours of operation of the parking lot 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 June 12, 1973, so that as amended this portion of the resolution shall read: “to eliminate the term and to remove the specified condition related to the permitted hours of operation of the parking lot from prior approvals; *on condition* that all use and operations shall substantially conform to plans filed with this application marked “Received May 4, 2010”-(1) sheet; and *on further condition*:

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

THAT the landscaping, fencing, and sidewalks shall be adequately maintained in conformance with the approved plans;

THAT there shall be no parking on the sidewalks;

THAT all lighting shall be directed down and away from adjacent residential uses;

THAT the above conditions shall appear on the

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certificate of occupancy;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application Nos. 410227712, 410227721 and 410227730)

Adopted by the Board of Standards and Appeals May 18, 2010.

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## 291-03-BZ

APPLICANT – Stuart A. Klein, Esq., for 6202-6217 Realty LLC, owner.

SUBJECT – Application June 5, 2009 – Extension of term of a variance (§72-21) for construction of a new residential building; amendment to add increase the number of dwelling units, FAR, height and parking spaces. M1-1/R5B zoning districts.

PREMISES AFFECTED – 1380 62<sup>nd</sup> Street, corner of 62<sup>nd</sup> Street and 14<sup>th</sup> Avenue, Block 5733, Lots 35, 36, Borough of Brooklyn.

## COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Jay Goldstein.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a reopening, an extension of time to complete construction, and an amendment to a previously granted variance which permitted the construction of a four-story residential building contrary to use regulations; and

WHEREAS, a public hearing was held on this application on January 26, 2010, after due notice by publication in *The City Record*, with a continued hearing on April 27, 2010, and then to decision on May 18, 2010; and

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

WHEREAS, Community Board 10, Brooklyn, states that it has no objection to this application; and

WHEREAS, the site is located on the southwest corner of 62<sup>nd</sup> Street and 14<sup>th</sup> Avenue, partially within an R5 zoning district and partially within an M1-1 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 19, 2005 when, under the subject calendar number, the Board granted a variance pursuant to ZR § 72-21, to permit the construction of a four-story residential building on the site, contrary to ZR § 42-00; and

WHEREAS, substantial construction was to be completed by April 19, 2009, in accordance with ZR § 72-23; and

WHEREAS, the applicant represents that construction has been delayed due to financing issues; and

WHEREAS, thus, the applicant now requests an extension of time to complete construction; and

WHEREAS, the applicant also requests an amendment to the original grant to permit modifications to the building; and

WHEREAS, the Board notes that the original approval reflected a four-story residential building with a total floor area of 33,463 sq. ft. (2.1 FAR); a total building height of 57'-1"; a streetwall height of 36'-9", with 15'-0" setbacks on both 14<sup>th</sup> Avenue and 62<sup>nd</sup> Street; 26 residential units; and an underground parking area containing 15 spaces; and

WHEREAS, under the current application, the applicant initially sought to amend the grant to permit: a five-story residential building with a total floor area of 42,541 sq. ft. (2.66 FAR); a total building height of 57'-1"; a streetwall height of 29'-0", with setbacks on both 15<sup>th</sup> Avenue and 62<sup>nd</sup> Street of 10'-0" at the fourth floor and 15'-0" at the fifth floor; 40 residential units; and 27 parking spaces; and

WHEREAS, the applicant asserted that the changes were required due to the unforeseen downturn in the economy, which exacerbated the unique physical conditions and unnecessary hardship that was the basis of the original grant, such that the proposed modifications are necessary to realize a reasonable return on the project; and

WHEREAS, in support of the request, the applicant submitted a financial analysis and a letter from a real estate broker; and

WHEREAS, during the hearing process, the Board stated that it did not find the applicant's claim of an increased hardship since the time of the original grant compelling; and

WHEREAS, specifically, the Board found the financial analysis and purported requirement for additional floor area unconvincing, stating that the applicant's request was based on market conditions that have affected many property owners and that the original variance adequately compensated the applicant for the land use-related hardships associated with the site; and

WHEREAS, in response, the applicant revised the proposed plans to reflect a five-story residential building with: (1) no increase in floor area, (2) no increase in the total building height; (3) a reduction in the streetwall height from 36'-9" to 29'-0", with 15'-0" setbacks at both 14<sup>th</sup> Avenue and 62<sup>nd</sup> Street; (4) an increase in the open space from 46 percent to 48.5 percent; (5) a decrease in the lot coverage from 54 percent to 51.5 percent; (6) an increase in the size of the side yard along the northern lot line, from 30'-0" to 45'-0"; (7) an increase in the number of dwelling units from 26 to 33; and (8) an increase in the number of accessory parking spaces from 15 to 20; and

WHEREAS, the applicant states that the proposed reconfiguration of the building, which reduces the average apartment size from approximately 1,097 sq. ft. to approximately 825 sq. ft. and reduces the floor-to-ceiling heights from 11'-0" to between 9'-6" and 10'-0", allows it to build an additional floor and increase the number of dwelling

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units and parking spaces without increasing the building envelope or floor area approved under the original variance; and

WHEREAS, the applicant submitted a revised financial analysis reflecting that the proposed modifications reflect the minimum variance necessary to realize a reasonable return; and

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

WHEREAS, based upon its review of the evidence, the Board finds that the requested amendment does not alter the Board's findings made for the original variance, specifically with regard to its findings pursuant to ZR §§ 72-21(b), (c), and (e); and

WHEREAS, accordingly, the Board finds that the requested extension of time to complete construction and the proposed amendment to the previously-approved plans are appropriate, with certain conditions set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated April 19, 2005, so that as amended this portion of the resolution shall read: "to grant an extension of time to complete construction for a term of four years, to expire on April 19, 2013, and to permit the noted modifications to the approved plans; *on condition* that all work shall substantially conform to drawings filed with this application and marked "Received April 13, 2010"- (10) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: a maximum floor area of 33,463 sq. ft. (2.1 FAR); 33 dwelling units; five stories; an open space ratio of 48.5 percent; a lot coverage of 51.5 percent; a side yard with a width of 30'-0" along the northern lot line; a side yard with a width of 45'-0" along the western lot line; a wall height of 29'-0"; a total height of approximately 57'-1"; setbacks of 15'-0" on 14<sup>th</sup> Avenue and 62<sup>nd</sup> Street; and parking for 20 cars, as per the BSA-approved plans;

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. 301534819)

Adopted by the Board of Standards and Appeals, May 18, 2010.

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## 58-07-BZ

APPLICANT – Eric Palatnik, P.C., for Vito Savino, owner.  
SUBJECT – Application October 27, 2009 – Amendment to previously granted variance for a residential building to include two additional objections: dwelling unit size (§23-23) and side yard regulations (§23-461(a)). R3A zoning district.

PREMISES AFFECTED – 18-02 Clintonville, Clintonville

and 18th Avenue, Block 4731, Lot 9, Borough of Queens.

## COMMUNITY BOARD #7BK

### 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 reopening and an amendment to a previously granted variance for the construction of a two-story two-family home contrary to lot area and floor area ratio ("FAR") regulations, to permit additional waivers for front yard and minimum dwelling unit size, and to permit minor modifications to the previously-approved plans; and

WHEREAS, a public hearing was held on this application on January 26, 2010, after due notice by publication in *The City Record*, with a continued hearing on April 20, 2010, and then to decision on May 18, 2010; and

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

WHEREAS, Community Board 7, Brooklyn, recommends approval of this application, with the following conditions: (1) a 20'-0" side yard be provided; (2) the 10'-0" front yard on 18<sup>th</sup> Avenue be changed to 9'-5"; (3) the FAR remain the same; (4) the dwelling unit size of 810 sq. ft. be approved; and (5) the application be permitted as an amendment; and

WHEREAS, Queens Borough President Helen Marshall recommends approval of this application; and

WHEREAS, the site is located on the northwest corner of 18<sup>th</sup> Avenue and Clintonville Street, within an R3A zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 4, 2007 when, under the subject calendar number, the Board granted a variance pursuant to ZR § 72-21, to permit the construction of a two-story two-family home on a lot that does not comply with the minimum lot area and exceeds the maximum FAR, contrary to ZR §§ 23-32 and 23-141; and

WHEREAS, the applicant represents that subsequent to the approval of the original grant, the owner discovered two additional non-compliances that were not presented in the original filing; and

WHEREAS, the current proposal also includes changes to the originally approved plans; and

WHEREAS, thus, the applicant now requests an amendment to seek waivers for a front yard less than the minimum required depth pursuant to ZR § 23-45, and dwelling units less than the minimum required size pursuant to ZR § 23-23, and also seeks an amendment to permit modifications to the originally approved plans; and

WHEREAS, specifically, the applicant proposes to

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provide a front yard with a minimum depth of 8'-10" (a front yard with a minimum depth of 15'-0" is required), two dwelling units of approximately 810 sq. ft. each (dwelling units with a minimum size of 925 sq. ft. are required), a side yard of 20'-0" along the western lot line, rather than the previously-approved 18'-7" side yard; and interior modifications; and

WHEREAS, the applicant notes that it shifted the building 1'-5" to the east in order to comply with the Community Board's request that a 20'-0" side yard be provided along the western lot line, and that in doing so the front yard at the northeast corner of the building was reduced from a depth of 10'-0" to a depth of 8'-10", but that the remainder of the front yard along 18<sup>th</sup> Avenue remains at the depth noted on the originally approved plans of 10'-0"; and

WHEREAS, the applicant represents that the unique conditions of the subject lot that gave rise to the original variance, namely its small size and irregular shape, also justify the requested waiver of the additional objections; and

WHEREAS, the applicant represents that due to the unique size and shape of the lot, a home with a complying front yard would not allow for floor plates of a sufficient width to provide a habitable and marketable home, and a two-family home with complying dwelling unit sizes could not be constructed on the subject lot; and

WHEREAS, at hearing, the Board directed the applicant to provide an analysis to document the need for a two-family home; and

WHEREAS, in response, the applicant submitted a letter from a real estate broker, a pro forma analysis, and additional financial information indicating that construction of a two-family home rather than a single-family home is necessary to provide a reasonable return on development; and

WHEREAS, specifically, the applicant represents that the surrounding area is predominantly characterized by two- and three-family homes and that a single-family home would not be marketable; and

WHEREAS, in support of this assertion, the applicant submitted photographs and an area map reflecting that the majority of homes in the area immediately surrounding the subject site are two-family or three-family homes and that the adjacent sites are occupied by three-story three-family homes; and

WHEREAS, based upon its review of the evidence, the Board finds the proposed two-story two-family home to be compatible with the surrounding neighborhood; and

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

WHEREAS, the Board finds that the requested amendment does not alter the Board's findings made for the original variance, specifically with regard to its findings pursuant to ZR §§ 72-21(c), and (e); and

WHEREAS, accordingly, the Board finds that the requested amendments to include additional objections and to modify the previously-approved plans are appropriate, with certain conditions set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated December 4, 2007, so that as amended this portion of the resolution shall

read: "to permit the construction of a two-story two-family home that does not comply with zoning requirements for lot area, floor area ratio, dwelling unit size, and front yard, contrary to ZR §§ 23-32, 23-141, 23-23 and 23-45, and to permit the noted modifications to the approved plans; *on condition* that all work shall substantially conform to drawings filed with this application and marked "Received October 27, 2009"- (8) sheets and "Received January 15, 2010"- (1) sheet; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: a maximum floor area of 1,620 sq. ft. (0.74 FAR); a minimum dwelling unit size of approximately 810 sq. ft.; a front yard with a minimum depth of 8'-10"; a side yard with a minimum width of 20'-0" along the western lot line; a total height of 21'-2"; and parking for a minimum of two cars, as per the BSA-approved plans; and

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. 402320332)

Adopted by the Board of Standards and Appeals, May 18, 2010.

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## 74-49-BZ

APPLICANT – Sheldon Lobel, P.C., for 515 Seventh Associates, owners.

SUBJECT – Application January 19, 2010 – Extension of Time to obtain a Certificate of Occupancy for an existing parking garage which expired on September 17, 2009; Waiver of the Rules. M1-6 (Garment Center) zoning district.

PREMISES AFFECTED – 515 Seventh Avenue, southeast corner of the intersection of Seventh Avenue and West 38<sup>th</sup> Street, Block 813, Lot 64, Borough of Manhattan.

## COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Elizabeth Safian.

**ACTION OF THE BOARD** – Laid over to June 22, 2010, at 10 A.M., for continued hearing.

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## 617-80-BZ

APPLICANT – Eric Palatnik, P.C. for J & S Simcha, Incorporated, owner.

SUBJECT – Application February 5, 2010 – Extension of Term of a previously granted Variance (§72-21) of a UG9 catering establishment which expires on December 9, 2010; an Amendment to the interior layout; Extension of Time to Complete Construction and to obtain a Certificate of Occupancy which expires on March 14, 2010 and Waiver of

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the Rules. M1-1 zoning district.  
PREMISES AFFECTED – 770/780 McDonald Avenue,  
West side of McDonald Avenue, 20' south of Ditmas  
Avenue. Block 5394, Lots 1 & 11, Borough of Brooklyn.

## COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to June 22,  
2010, at 10 A.M. for continued hearing.

## 280-98-BZ

APPLICANT – Rampulla Associates Architects, for MARS  
Holding, LLC, owner.

SUBJECT – Application February 13, 2010 – Extension of  
Term of a variance (§72-21) for the continued operation of a  
UG4 Dental Office which expired on February 8, 2010;  
Amendment to convert the basement garage into dental  
office floor area. R-2 zoning district.

PREMISES AFFECTED – 2936 Hylan Boulevard, east side  
of Hylan Boulevard, 100' north of Isabella Avenue, Block  
4015, Lot 14, Borough of Staten Island.

## COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Phillip L. Rampulla.

**ACTION OF THE BOARD** – Laid over to June 8,  
2010, at 10 A.M., for continued hearing.

## 7-00-BZ

APPLICANT – Friedman & Gotbaum, for Trustees of the  
New York City Rescue Mission, owners.

SUBJECT – Application February 18, 2009 – Extension of  
Time to Complete Construction of a previously granted  
Variance (§72-21) for the enlargement of a UG3 non-profit  
homeless shelter (*New York City Rescue Mission*) which  
expired on March 11, 2009; waiver of the rules. C6-2A  
zoning district.

PREMISES AFFECTED – 90 Lafayette Street, northwest  
corner of Lafayette and White Streets, Block 195, Lot 21,  
Borough of Manhattan.

## COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Lori Cuisinier and Pastor Vernhager.

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 June 8,  
2010, at 10 A.M., for decision, hearing closed.

## 200-00-BZ

APPLICANT – Eric Palatnik, P.C., for Blans Development  
Corporation, owner.

SUBJECT – Application February 5, 2010 – Extension of  
Term (§72-01 & §72-22) of a variance (§72-21) to allow a

physical culture establishment (*Squash Fitness Center*) to  
operate in a C1-4 zoning district, which will expire on July  
17, 2011; Extension of Time to obtain a certificate of  
occupancy, which expired on January 28, 2010; Waiver of  
the Rules.

PREMISES AFFECTED – 107-24 37th Avenue aka 37-16  
108th Street, Southwest corner of 37th Avenue and 108th  
Street, Block 1773, Lot 10, Borough of Queens.

## COMMUNITY BOARD #3Q

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 June 8,  
2010, at 10 A.M., for decision, hearing closed.

## 151-05-BZ

APPLICANT – John R. Sore c/o Shalimar Management, for  
100 Varick Street, LLC, owner.

SUBJECT – Application May 10, 2010 – Extension of Time  
to Complete Construction of a previously granted Variance  
(§72-21) for the construction of a 10-story residential  
building which expires on August 8, 2010. M1-6 zoning  
district.

PREMISES AFFECTED – 100 Varick Street, easterly side  
of Varick Street between Broome Street and Watts Street,  
Block 477, Lot 35, 42, Borough of Manhattan.

## COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: John R. Sore.

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 June 8,  
2010, at 10 A.M., for decision, hearing closed.

## APPEALS CALENDAR

### 62-08-A

APPLICANT – Eric Palatnik, P.C. for Benny Ulloa, owner.  
SUBJECT – Application March 27, 2009 – Proposed  
construction not fronting on a legally mapped street,  
contrary to General City Law, Section 36. R1-2 zoning  
district.

PREMISES AFFECTED – 398 Nugent Street, Nugent  
Street, North of Saint George Road, Block 2284, Lot 25,  
Borough of Staten Island.

## COMMUNITY BOARD #2SI

APPEARANCES – None.

**ACTION OF THE BOARD** – Application withdrawn.

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## THE VOTE TO WITHDRAW –

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

Negative:.....0

Adopted by the Board of Standards and Appeals, May 18, 2010.

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## 299-09-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Vincent Kennedy, lessee.

SUBJECT – Application October 23, 2009 – Reconstruction and enlargement of an existing single family home not fronting a legally mapped street, contrary to General City Law Section 36, and partially located within the bed of a mapped street, contrary to General City Law Section 35, and upgrade of a private disposal system in the bed of service road, contrary to Department of Buildings Policy. R4 zoning district.

PREMISES AFFECTED – 4 Lincoln Walk, west side Lincoln Walk, 100’, south of paved Oceanside Avenue, Block 16350, Lot 400, Borough of Queens.

## COMMUNITY BOARD #14Q

### APPEARANCES –

For Applicant: Loretta Papa.

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

## THE VOTE TO GRANT –

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

Negative:.....0

## THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner dated October 6, 2009 acting on Department of Buildings Application No. 420021274, reads in pertinent part:

“A1– The proposed enlargement is on a site located partially in the bed of a mapped street therefore no permit or Certificate of Occupancy can be issued as per Art. 3 Sect. 35 of the General City Law.

A2– The site and building is not fronting on an official mapped street therefore no permit or Certificate can be issued as per Art. 3, Sect. 36 of the General City Law; also no permit can be issued since proposed construction does not have at least 8% of total perimeter of building fronting directly upon a legally mapped street or frontage space and therefore contrary to Section C27-291 (C26-401.1) of the Administrative Code of the City of New York.

A3– The private disposal system being upgraded is in the bed of a private service road contrary to Department of Buildings policy;” and

WHEREAS, a public hearing was held on this application on May 18, 2010 after due notice by publication in the *City Record*, and then to closure and decision on the same

date; and

WHEREAS, by letters dated February 23, 2010 and April 14, 2010, the Fire Department states that it has no objection to the subject proposal, and states that the applicant is not required to provide a sprinkler system under Fire Code § 503.8.2, because the applicant’s alteration and conversion is less than 125 percent of the existing square footage; and

WHEREAS, by letter dated December 1, 2009, the Department of Environmental Protection states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated February 5, 2010, the Department of Transportation (“DOT”) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, DOT 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 Queens Borough Commissioner, dated October 6, 2009, acting on Department of Buildings Application No. 420021274, is modified by the power vested in the Board by Sections 35 and 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received October 23, 2009” - one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

THAT DOB 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, May 18, 2010.

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## 298-09-A

APPLICANT – Breezy Point Cooperative Inc., for Ann Baci, owner.

SUBJECT – Application October 23, 2009 – Reconstruction and enlargement of an existing single family home not fronting a legally mapped street, contrary to General City Law Section 36. R4 zoning district.

PREMISES AFFECTED – 109 Beach 217<sup>th</sup> Street, east side Beach 217<sup>th</sup> Street, 160’ south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

## COMMUNITY BOARD #14Q

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## APPEARANCES –

For Applicant: Loretta Papa.

**ACTION OF THE BOARD** – Laid over to June 8, 2010, at 10 A.M., for continued hearing.

## 53-10-A

APPLICANT – Sheldon Lobel, P.C., for West New York Property Consulting LLC, owner.

SUBJECT – Application April 12, 2010 – Appeal seeking a determination that the owner has acquired a vested right to complete construction under the prior R7-1 zoning district. R5A zoning district.

PREMISES AFFECTED – 2031 Burr Avenue, 157' northwest of the corner of Burr Avenue and Westchester Avenue, Block 4249, Lot 39, Borough of Bronx.

## COMMUNITY BOARD #10BX

### APPEARANCES –

For Applicant: Richard Lobel.

**ACTION OF THE BOARD** – Laid over to June 15, 2010, at 10 A.M., for continued hearing.

*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

## REGULAR MEETING TUESDAY AFTERNOON, MAY 18, 2010 1:30 P.M.

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

## ZONING CALENDAR

### 239-07-BZ

#### CEQR #08-BSA-029Q

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for YHA New York Inc., owner.

SUBJECT – Application October 24, 2007 – Variance (§72-21) to permit a community youth center (UG 4) in the cellar and first floor in a proposed three-story and penthouse mixed-use building, contrary to side yard (§24-35). R5 zoning district.

PREMISES AFFECTED – 57-38 Waldron Street, south side of Waldron Street, 43.71' west of 108<sup>th</sup> Street, east of Otis Avenue, Block 1959, Lot 27, Borough of Queens.

## COMMUNITY BOARD #4Q

### APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Application withdrawn.

### THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Collins,

Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

Adopted by the Board of Standards and Appeals, May 18, 2010.

### 220-08-BZ

#### CEQR #09-BSA-056K

APPLICANT – Moshe M. Friedman, for Samuel Jacobowitz, owner.

SUBJECT – Application August 28, 2008 – Variance (§72-21) to permit the enlargement of a non-conforming one-family dwelling, contrary to §42-10. M1-1 zoning district.

PREMISES AFFECTED – 95 Taaffe Place, east side, 123'-3.5" south of intersection of Taaffe Place and Park Avenue, Block 1897, Lot 23, Borough of Brooklyn.

## COMMUNITY BOARD #3BK

**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 Superintendent, dated August 30, 2007, acting on Department of Buildings Application No. 310020410 reads, in pertinent part:

“Proposed...one (1) family dwelling (UG 2) in the subject M1-1 district is contrary to ZR 42-10, and must be referred to the Board of Standards and Appeals;” and

WHEREAS, this is an application under ZR § 72-21 to permit, within an M1-1 zoning district, the construction of a three-story and basement single-family home, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on August 18, 2009, after due notice by publication in the *City Record*, with continued hearings on December 15, 2009, March 23, 2010 and April 27, 2010, and then to decision on May 18, 2010; and

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

WHEREAS, Council Member Letitia James provided testimony in support of this application; and

WHEREAS, the site is located on the east side of Taaffe Place between Park Avenue and Myrtle Avenue, within an M1-1 zoning district; and

WHEREAS, the subject site has a width of 25 feet, a depth of 87 feet, and a total lot area of 2,129 sq. ft.; and

WHEREAS, the site is occupied by a non-conforming two-story single-family home located at the rear of the property with a floor area of 1,534 sq. ft. (0.72 FAR) (the “Existing Home”), which is proposed to be demolished; and

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WHEREAS, the applicant represents that the current residential use has existed without interruption since approximately 1887, and is therefore a legal non-conforming use; and

WHEREAS, the applicant proposes to build a three-story and basement single-family home with a floor area of 4,678 sq. ft. (2.19 FAR); and

WHEREAS, the applicant initially proposed a two-story and basement home which covered nearly the entire lot, with a floor area of approximately 5,236 sq. ft. (2.46 FAR), a total height of 48'-0", and a rear yard with a depth of 1'-2"; and

WHEREAS, the Board notes that the applicant's original proposal did not include the square footage located in the basement towards the floor area calculations, and listed the floor area as 3,462 sq. ft. (1.63 FAR), but that when the basement is included the proposal had a floor area of 5,236 sq. ft. (2.46 FAR); and

WHEREAS, at hearing, the Board directed the applicant to reduce the size of the proposed home and to include the basement in the floor area calculations; and

WHEREAS, in response, the applicant revised its plans to the current proposal for a three-story and basement home with a floor area of 4,678 sq. ft. (2.19 FAR) including the basement, a total height of 39'-2 1/2", and a rear yard with a depth of 34'-9 3/4"; and

WHEREAS, residential use is not permitted in the M1-1 district; therefore, the applicant seeks a variance to permit the non-conforming use; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the small size of the lot; and (2) the obsolescence of the existing building; and

WHEREAS, as to the lot's size, the applicant states that the lot has a width of 25 feet and a depth of 87 feet; and

WHEREAS, the applicant represents that the 25-ft. width of the subject site is too narrow to accommodate a building with a loading dock or adequately sized floor plates to support a commercial or manufacturing use; and

WHEREAS, as to the uniqueness of this condition, the applicant submitted a land use map indicating that all conforming developments in the surrounding area are located on lots with widths exceeding that of the subject site; and

WHEREAS, the applicant represents that many lots in the area also have a greater depth than the subject site, and that any conforming development on the site would be undersized due to the site's shallow depth in conjunction with its narrow width; and

WHEREAS, the Board notes that while the surrounding area includes several lots of similar size, such lots are primarily occupied by residential uses; and

WHEREAS, however, unlike other such lots occupied by residential buildings, the applicant represents that the Existing Home is obsolete for its intended purpose and therefore must be demolished; and

WHEREAS, as to the functional obsolescence of the Existing Home, the applicant represents that it is no longer suitable for residential use due to its age, construction, floor

plate, floor-to-ceiling heights, size, and structural condition; and

WHEREAS, the applicant further represents that the above-mentioned features of the Existing Home make it similarly unsuitable for any conforming use; and

WHEREAS, the applicant states that the Existing Home was built prior to 1887; and

WHEREAS, the applicant submitted a certificate of occupancy which reflects that the subject site was occupied by a single-family home on July 7, 1961, and states that the single-family home was also recorded on an 1887 Sanborn map; and

WHEREAS, the applicant submitted a report by a consulting engineer (the "Engineer's Report"), which stated that the existing building cannot be renovated or rehabilitated for residential use due to its poor structural condition; and

WHEREAS, specifically, the Engineer's Report found that the Existing Home has the following structural problems: (1) substandard floor-to-ceiling heights, as the second floor of the building has a floor-to-ceiling height of only 7'-3"; and (2) lot line windows which are incapable of providing legal light and ventilation; and

WHEREAS, the Engineer's Report also noted conditions reflecting the general deterioration of the Existing Home, such as damage to the walls and ceiling, portions of the flooring have buckled, the roofing membrane is unsatisfactory, and the wood studs are deteriorated; and

WHEREAS, the Engineer's Report concluded that the Existing Home was built to obsolete standards which are inconsistent with modern building requirements and would necessitate demolition to meet current Building Code requirements; and

WHEREAS, the applicant notes that the existing home is also set back on the lot such that there is an oversized front yard and no rear yard, which is out of context with the other buildings on the subject block, all of which are situated closer to the street line; and

WHEREAS, the Board agrees that the home is obsolete to be re-used, and notes that demolition of the building results in a clear site that nevertheless is unique due to its narrowness and shallow depth; and

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

WHEREAS, the applicant submitted a feasibility study that analyzed a conforming manufacturing building with a total floor area of 2,129 sq. ft.; and

WHEREAS, the feasibility study concluded that the conforming scenario would not realize a reasonable return, and that the requested variance is necessary to develop the site with a habitable home; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with zoning district regulations will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed

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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 represents that the surrounding area is a mix of residential, commercial, and manufacturing uses; and

WHEREAS, the applicant states that the proposed residential use is consistent with the character of the area, which includes many residential buildings; and

WHEREAS, in support of the above statements, the applicant submitted a 400-ft. radius diagram showing the various uses in the vicinity of the site, which indicates that a number of residential buildings are located in the area surrounding the subject site; and

WHEREAS, specifically, the radius diagram reflected that residential buildings are located directly adjacent to the site on both the north and south sides and to the rear of the site; and

WHEREAS, the Board agrees that there is a context for residential use in the area and finds that the introduction of a single-family home will not impact nearby conforming uses; and

WHEREAS, as to bulk, the applicant notes that the proposed 2.19 FAR is within the zoning district parameters of the adjacent R6 district and that no bulk waivers are requested; and

WHEREAS, the applicant submitted a neighborhood study indicating that a number of the smaller residential buildings on the subject block have floor areas larger than the proposed home and FARs ranging between 2.2 and 2.36; and

WHEREAS, the neighborhood study also reflected that at least seven residential buildings on the subject block have heights of 44'-0" or greater; and

WHEREAS, the applicant notes that the proposal also provides a 34'-9 ¾" rear yard, which is consistent with the adjacent R6 zoning district, which requires a rear yard with a minimum depth of 30'-0"; 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, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is due to the unique conditions of the site; and

WHEREAS, as noted above, the applicant initially proposed a two-story and basement home with a floor area of approximately 5,236 sq. ft. (2.46 FAR), a total height of 48'-0", and a rear yard with a depth of 1'-2"; and

WHEREAS, during the course of the hearing process, and at the Board's direction, the applicant revised its plans to provide the current proposal for a three-story and basement home with a floor area of 4,678 sq. ft. (2.19 FAR), a total height of 39'-2 ½", and a rear yard with a depth of 34'-9 ¾"; and

WHEREAS, at hearing, the Board questioned the amount of relief being requested, specifically with regards to the size of the home; and

WHEREAS, in response, the applicant noted that the size

of the home is similar to the size of two-family or multiple dwellings that would be economically feasible; and

WHEREAS, in support of this assertion, the applicant provided additional analysis related to the feasibility of a similarly sized two-family home; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") 09BSA056K, dated June 25, 2008; and

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

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

WHEREAS, DEP has reviewed the April 2008 Phase I Environmental Site Assessment report and May 2009 Construction Health and Safety Plan and finds them acceptable and has concluded that the applicant can proceed with construction; and

WHEREAS, DEP concluded that the proposed project will not result in a significant adverse hazardous materials impact provided that a Remedial Closure Report certified by a professional engineer is submitted to DEP for approval and issuance of a Notice of Satisfaction; and

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, within an M1-1 zoning district, the construction of a two-story single-family home, which is contrary to ZR § 42-10,

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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 April 15, 2010" – (10) sheets; and on further condition:

THAT the following shall be the bulk parameters of the proposed building: two stories, a maximum floor area of 4,678 sq. ft. (2.19 FAR); a total height of 39'-2 1/2"; and a rear yard with a depth of 34'-9 3/4", as shown on the BSA-approved plans;

THAT no temporary or permanent Certificate of Occupancy shall be issued by DOB or accepted by the applicant or successor until DEP has issued a Notice of Satisfaction;

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 this grant is contingent upon final approval from the Department of Environmental Protection before an issuance of construction permits other than permits needed for soil remediation;

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, May 18, 2010.

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## 273-09-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Cornerstone Residence LLC, owner.

SUBJECT – Application September 24, 2010 – Variance (§72-21) for the construction of a two-story, one-family home, contrary to side yards (§23-461). R3-2 zoning district.

PREMISES AFFECTED – 117-40 125<sup>th</sup> Street, west side of 125<sup>th</sup> Street, 360' north of intersection with Sutter Avenue, Block 11746, Lot 64, Borough of Queens.

## COMMUNITY BOARD #10Q

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 Queens Borough Commissioner, dated April 24, 2009, acting on Department of Buildings Application No. 420001410, reads in pertinent part:

"Two proposed side yards are contrary to Section 23-461 of the Zoning Resolution and require a variance

from the Board of Standards and Appeals;" and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R3-2 zoning district, the proposed construction of a two-story single-family home that does not provide the required side yards, contrary to ZR § 23-461; and

WHEREAS, a public hearing was held on this application on February 9, 2010, after due notice by publication in *The City Record*, with continued hearings on March 16, 2010 and April 20, 2010, and then to decision on May 18, 2010; 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 10, Queens, recommends disapproval of this application; and

WHEREAS, certain members of the community testified in opposition to this application, citing the following primary concerns: (1) development of the site would restrict access and create a fire safety concern; (2) the proposed home will be situated too close to adjacent homes; and (3) whether the proposed home would obstruct an existing easement; and

WHEREAS, the site is located on the west side of 125<sup>th</sup> Street, 360 feet north of Sutter Avenue; and

WHEREAS, the site has a width of 20 feet, a depth of 100 feet, and a total lot area of approximately 2,000 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: 1,199 sq. ft. of floor area (0.60 FAR); a front yard with a depth of 15'-0"; a rear yard with a depth of 41'-3"; a wall height of 20'-9"; and a total height of 24'-10"; and

WHEREAS, however, the applicant proposes to provide one side yard with a width of 4'-0", along the southern lot line, and a second side yard with a width of 1'-0", along the northern lot line, (side yards with minimum widths of 8'-0" and 5'-0" each are required); and

WHEREAS, the applicant's floor area calculations rely on ZR § 23-141(b), which allows for an additional 300 sq. ft. of floor area above the .50 FAR generally permitted if the site plan provides for an enclosed parking space within the side lot ribbon; and

WHEREAS, the applicant's plans reflect a detached garage at the rear of the site, within the side lot ribbon; and

WHEREAS, the Board notes that the floor area will be as approved by DOB and no waiver is sought for that condition; and

WHEREAS, the applicant states that side 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

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side yard waivers are necessary to develop the site with a habitable home; and

WHEREAS, specifically, the applicant represents that the pre-existing lot width of 20'-0" cannot feasibly accommodate a complying development; and

WHEREAS, the applicant states that if both required side yards were provided, the building would have an exterior width of only 7'-0"; and

WHEREAS, accordingly, the applicant represents that the side yard waivers are necessary to create a home of a reasonable width; and

WHEREAS, the applicant submitted a 400-ft. radius diagram, which reflects that every other lot with a width of 20 feet is occupied by a home, likely constructed prior to 1961, which do not provide the required yards; and

WHEREAS, the applicant asserts that many of the existing homes within the radius have comparable bulk to the proposed home, and provide a single side yard or one or both side yards with widths narrower than 5'-0" each or 13'-0" total; and

WHEREAS, as to the historic use of the site, the applicant states that building records reflect that a new building was constructed on the site in 1939 and that it was determined to be unsafe in 1979 and was ultimately demolished; and

WHEREAS, the applicant states, based upon building records, that the proposed home and site design are comparable to the prior home on 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 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 other than side yards; and

WHEREAS, specifically, the applicant notes that the proposed home complies with the R3-2 zoning district regulations for FAR, front and side yards, height, and parking; and

WHEREAS, the applicant notes that the site is encumbered by an easement with a width of 4'-0" along the southern lot line in order to provide access along a shared driveway; and

WHEREAS, the applicant provided a survey that reflects the easement; and

WHEREAS, accordingly, the applicant proposes to maintain a side yard with a width of 4'-0" along the southern lot line and no construction will occur within the easement; and

WHEREAS, the applicant's proposed garage will be lined up with the garage to the rear of the adjacent home to the south, where the easement ends; and

WHEREAS, the Board notes that the applicant initially proposed a home with a width of 16'-0" and a lot line condition along the northern lot line, but that the Board directed the applicant to revise the plans to reflect a home with a width of 15'-0" and a side yard of 1'-0" along the northern lot line to provide additional space between the proposed home and the existing home to the north; and

WHEREAS, the applicant provided an analysis that reflects that there are at least 14 homes within a 400-ft. radius of the site with similar widths and that there are three such homes directly across 125<sup>th</sup> Street and two others within 100 feet to the north; 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, at the Board's request, the applicant submitted a title report, which reflects that the site has existed in its current configuration since before December 15, 1961 and its ownership was independent of the ownership of the three adjoining lots on December 15, 1961 and remains so currently; 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 notes that the applicant initially proposed a home with a width of 16'-0" and no side yard along the northern lot line; and

WHEREAS, the Board directed the applicant to document the widths of homes within the surrounding area and the applicant found that many homes have widths of 15'-0"; and

WHEREAS, accordingly, the Board directed the applicant to reduce the width of the home to 15'-0", which reduced the extent of the side yard waiver while resulting in a home with a minimum width that is comparable to homes in the area; and

WHEREAS, the Board finds that this proposal, which complies with all zoning regulations except for side yards 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 R3-2 zoning district, the proposed construction of a two-story single-family home that does not provide the required side yards, contrary to ZR § 23-461; *on condition* that any and all work shall substantially conform to drawings as they apply to

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the objections above noted, filed with this application marked "Received May 11, 2010"– (4) sheet; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: a maximum of 1,199 sq. ft. of floor area (0.60 FAR), a side yard with a width of 4'-0" along the southern lot line; a side yard with a width of 1'-0" along the northern lot line; a front yard with a depth of 15'-0"; a rear yard with a depth of 41'-3"; a wall height of 20'-9"; a total height of 24'-10"; and parking for a minimum of one car, 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 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, May 18, 2010.

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## 14-10-BZ

### CEQR #10-BSA-043M

APPLICANT – Friedman & Gotbaum, LLP, for Cooper Square Associates (LP), owners.

SUBJECT – Application January 29, 2010 – Special Permit (§73-19) to allow a Use Group 3 school (*Grace Church High School*). M1-5B zoning district.

PREMISES AFFECTED – 38-50 Cooper Square, west side of Cooper Square, 326'-9" south of Astor Place, Block 544, p/o 38, Borough of Manhattan.

### COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Lori Cuisiner.

**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 Superintendent, dated March 16, 2010, acting on Department of Buildings Application No. 120232319, reads in pertinent part:

“ZR 42-12. Use Group 3 (educational facility and accessory uses to schools) are not permitted as-of-right in a M1 zoning district.

A BSA special permit per ZR Section 73-19 is

required;” and

WHEREAS, this is an application under ZR §§ 73-19 and 73-03 to permit, on a site in an M1-5B zoning district within the NoHo Historic District, the proposed use of an existing building by a Use Group 3 school, contrary to ZR § 42-12; and

WHEREAS, a public hearing was held on this application on March 23, 2010, after due notice by publication in the *City Record*, with a continued hearing on April 27, 2010, and then to decision on May 18, 2010; and

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

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

WHEREAS, the application is brought on behalf of the Board of Trustees of the Grace Church School (“Grace Church School”), a not-for-profit school; and

WHEREAS, the site is located on the west side of Cooper Square, between East 4<sup>th</sup> Street and Astor Place, within an M1-5B zoning district; and

WHEREAS, the site has a lot area of 19,877 sq. ft.; and

WHEREAS, the applicant states that the site is located on a portion of Lot 38, which also includes the buildings located at 32-36 Cooper Square; and

WHEREAS, the site is currently occupied by a four-story building with Use Group 4A medical offices, a Use Group 9 school for adults with accessory offices, and Use Group 6 offices; and

WHEREAS, the applicant proposes to renovate the existing building for use as a Use Group 3 school, specifically for Grace Church School’s new high school division, with a floor area of 73,212 sq. ft. (the “Proposed High School”); and

WHEREAS, the applicant states that Grace Church School is attended by more than 400 students from pre-kindergarten through eighth grade, in addition to faculty and support staff; and

WHEREAS, the applicant states that Grace Church School currently occupies a building located at 86-92 Fourth Avenue, between East 10<sup>th</sup> Street and East 11<sup>th</sup> Street (the “Lower School”); and

WHEREAS, the applicant states that currently, eighth grade students from the Lower School graduate and enroll in other public and private secondary schools, and that Grace Church School now intends to launch the Proposed High School, which will eventually serve approximately 320 students both from the Lower School and from the surrounding community; and

WHEREAS, the applicant represents that the proposal meets the requirements of the special permit under ZR § 73-19 to permit a school in an M1-5B zoning district; and

WHEREAS, ZR § 73-19 (a) requires an applicant to demonstrate the inability to obtain a site for the development of a school within the neighborhood to be served and with a size sufficient to meet the programmatic needs of the school within a district where the school is permitted as-of-right; and

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WHEREAS, the applicant states that Grace Church School's program requires a building with a footprint between 5,000 sq. ft. and 70,000 sq. ft.; and

WHEREAS, the applicant's program for the Proposed High School includes classrooms, a cafeteria, a library, a resource center, science labs, general purpose rooms, art studios, art workshops, administrative offices, and storage space; and

WHEREAS, the applicant represents that Grace Church School has an additional programmatic need for the Proposed High School to be located proximate to the Lower School, to facilitate the travel of students and faculty between the Lower School and the Proposed High School, and to be located in the midst of the nearby universities, as Grace Church School will institute programs for the high school students to attend courses at NYU, Cooper Union, and the New School; and

WHEREAS, the applicant further represents that it conducted an evaluation of approximately 30 properties located on the blocks bounded by 29<sup>th</sup> Street to the north, Houston Street to the south, Sixth Avenue to the west, and Avenue C to the east, with footprints between 5,000 sq. ft. and 70,000 sq. ft.; and

WHEREAS, the applicant states that all but two of the 30 properties evaluated were found to be occupied by residential buildings, community facility buildings, or ongoing businesses, or were ultimately deemed to be too distant from the Lower School; and

WHEREAS, the applicant states that the first site, 605 East Ninth Street, was a six-story former school building which had stood vacant for more than 30 years since its 1974 decommission and was in such poor condition that the costs required to renovate the building's infrastructure were deemed prohibitive; and

WHEREAS, the second site, 770 Broadway, was a 15-story commercial building which was deemed impracticable because it could not provide a designated student entrance or designated student elevators, and the ceiling heights were too low for an educational facility; and

WHEREAS, the applicant maintains that the site search establishes that there is no practical possibility of obtaining a site of adequate size in a nearby zoning district where a school would be permitted as-of-right; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (a) are met; and

WHEREAS, ZR § 73-19 (b) requires an applicant to demonstrate that the proposed school is located no more than 400 feet from the boundary of a district in which such a school is permitted as of right; and

WHEREAS, the applicant submitted a radius diagram which reflects that the subject site is located 169'-5" south of a C6-2 zoning district, 50'-0" west of a C6-1 zoning district, 161'-2" southwest of a C6-3 zoning district, and 365'-0" east of an R8B zoning district; the proposed use would be permitted as-of-right in all of these zoning districts; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (b) are met; and

WHEREAS, ZR § 73-19 (c) requires an applicant to demonstrate how it will achieve adequate separation from noise, traffic and other adverse effects of the surrounding non-residential district; and

WHEREAS, the applicant states that adequate separation from noise, traffic and other adverse effects of the surrounding M1-5B zoning district will be provided through the building's existing sound-attenuating exterior wall and window construction, which includes single-glazed windows on the first floor and double-glazed windows on the upper floors; and

WHEREAS, the applicant submitted a noise study stating that the existing sound-attenuating wall and window construction maintained an interior noise level below the 45 dBA level stipulated in the CEQR Interior Noise Level guidelines; and

WHEREAS, the applicant represents that adequate separation from noise is further maintained because, although the site is located within an M1-5B zoning district, the presence of nearby manufacturing use is minimal, as the site is predominantly surrounded by low-impact residential, community facility, and commercial uses which provide a noise buffer for the Proposed High School; and

WHEREAS, the Board finds that the conditions surrounding the site and the building's construction will adequately separate the proposed school from noise, traffic and other adverse effects of any of the uses within the surrounding M1-5B zoning district; thus, the Board finds that the requirements of ZR § 73-19 (c) are met; and

WHEREAS, ZR § 73-19 (d) requires an applicant to demonstrate how the movement of traffic through the street on which the school will be located can be controlled so as to protect children traveling to and from the school; and

WHEREAS, the applicant represents that it anticipates approximately five percent of the students at the Proposed High School to arrive by car or taxi, 25 percent to arrive by bus, 30 percent to arrive by subway, and 40 percent to walk to the school; and

WHEREAS, the applicant states that the majority of foot traffic anticipated for the Proposed High School will be accommodated by signalized crossings located at the intersections of Cooper Square and Astor Place to the north, and East Fifth Street to the south, and that the crosswalks at these two intersections connect to the sidewalk along the west side of Cooper Square leading to the subject site; and

WHEREAS, the applicant further states that it hopes to have crosswalk striping installed at four nearby intersections, including Lafayette Street at East Fourth Street, Lafayette Street at Astor Place, Cooper Square/Bowery at East Fourth Street, and Cooper Square at Astor Place, and to have "Yield to Pedestrians" signage installed at select approaches to the intersections; and

WHEREAS, the applicant notes that crossing guards are not anticipated because all of the students travelling to the subject site will be in high school; and

WHEREAS, the Board referred the application to the School Safety Engineering Office of the Department of Transportation ("DOT"); and

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WHEREAS, by letter dated March 25, 2010, DOT states that it has no objection to the proposed school, and states that it will prepare a school safety map with signs and markings upon the approval and completion of the Proposed High School; and

WHEREAS, the Board finds that the above-mentioned measures can control traffic so as to protect children going to and from the proposed school; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (d) are met; and

WHEREAS, the applicant represents that the proposal will not affect the historical integrity of the property; and

WHEREAS, the applicant notes that a Certificate of Appropriateness from the Landmarks Preservation Commission ("LPC") dated February 28, 2001, addressing exterior changes not associated with the current proposal, remains in effect; and

WHEREAS, the applicant states that there are not any changes proposed to the exterior, which would disturb the conditions of the Certificate of Appropriateness; and

WHEREAS, as to proposed interior modifications, by letter dated May 12, 2010, LPC states that the proposed use change does not trigger LPC review but that if any interior modifications do, they will be reviewed and approved accordingly; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-19; and

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

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

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

WHEREAS, the project is classified as an Type I action pursuant to 6 NYCRR, Part 617.4; 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. 10BSA043M, dated May 14, 2010; 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; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

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

hazardous materials impacts; and

WHEREAS, the February 2010 Phase I Environmental Site Assessment identified several on- and off-site potential hazardous materials conditions that may have affected the subject building; and

WHEREAS, the applicant has submitted a Vapor Intrusion Sampling Protocol ("Sampling Protocol") and a Health and Safety Plan prepared by a qualified consultant, which has been approved by DEP, and the applicant proposes to test and identify any potential soil vapor intrusion pursuant to the approved Sampling Protocol and, if such soil vapor intrusion is found, to submit a remediation plan, including a health and safety plan ("Remediation Plan"), for approval by DEP prior to the commencement of any construction or demolition activities at the site; and

WHEREAS, prior to the issuance of any building permit by DOB that would result in grading, excavation, foundation, alteration, building or other permit respecting the subject property, the applicant proposes to obtain from DEP either: (A) a Notice of No Objection ("Notice of No Objection") for the project, which shall be issued after the applicant has completed the work set forth in the DEP-approved Sampling Protocol and DEP has determined in writing that the results of such sampling demonstrate that no soil vapor intrusion remediation is required for the proposed project; or (B) a Notice to Proceed ("Notice to Proceed") for the property in the event that DEP has determined in writing that: (i) the project-specific Remediation Plan has been approved by DEP and (ii) the permit(s) respecting the property that permit grading, excavation, foundation, alteration, building or other permit respecting the property which permits soil disturbance or construction of the superstructure are necessary to further the implementation of the DEP-approved Remediation Plan; and

WHEREAS, prior to the issuance of any temporary or permanent Certificate of Occupancy by DOB, the applicant proposes to obtain from DEP either: (A) a Notice of Satisfaction ("Notice of Satisfaction") for the project in the event that DEP determines in writing that the DEP approved project-specific Remediation Plan has been completed to the satisfaction of DEP, or (B) a Notice of No Objection ("Notice of No Objection") for the project in the event that DEP determines in writing that the work has been completed as set forth in the project-specific DEP approved Sampling Protocol and the results of such sampling demonstrate that no soil vapor intrusion remediation is required for the proposed project; and

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type I Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City

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Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-19 and 73-03 and grants a special permit, to allow the proposed operation of a Use Group 3 school, on a site in an M1-5B zoning district within the NoHo Historic District; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received May 6, 2010" -(9 sheets) and *on further condition*:

THAT prior to the issuance of any building permit that would result in grading, excavation, foundation, alteration, building or other permit respecting the subject site which permits soil disturbance for the Project, the applicant or successor shall obtain from DEP, as applicable, either a Notice of No Objection, Notice to Proceed, or Notice of Satisfaction and shall comply with all DEP requirements to obtain such notices;

THAT no temporary or permanent Certificate of Occupancy shall be issued by DOB or accepted by the applicant or successor until the DEP shall have issued a Notice of No Objection, or Notice of Satisfaction;

THAT the applicant shall obtain any supplemental approvals from LPC, as required;

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 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 plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 18, 2010.

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## **210-07-BZ**

APPLICANT – Eric Palatnik, P.C., for Gasper Nogara, owner.

SUBJECT – Application August 30, 2007 – Variance (§72-21) to allow for a residential use in a manufacturing district, contrary to §42-00. M1-1 zoning district.

PREMISES AFFECTED – 15 Luquer Street, Northern side of Luquer Street between Columbia and Hicks Streets, Block 513, Lot 44, Borough of Brooklyn.

### **COMMUNITY BOARD #6BK**

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to July 13, 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: Phillip Rampulla.

**ACTION OF THE BOARD** – Laid over to July 13, 2010, at 1:30 P.M., for continued hearing.

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## **29-09-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Chabad Israeli Center, owner.

SUBJECT – Application February 23, 2009 – Variance (§72-21) to legalize and enlarge a synagogue (*Chabad Israeli Center*), contrary to lot coverage, front yards, side yards, and parking regulations. R3X zoning district.

PREMISES AFFECTED – 44 Brunswick Street, northwest corner of Brunswick Street and Richmond Hill Road, Block 2397, Lot 212, Borough of Staten Island.

### **COMMUNITY BOARD #2SI**

APPEARANCES –

For Applicant: Fredrick A. Becker.

**ACTION OF THE BOARD** – Laid over to July 13, 2010, at 1:30 P.M., for deferred decision.

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## **234-09-BZ**

APPLICANT – Sheldon Lobel, P.C., for Zenida Radonicic, owner.

SUBJECT – Application July 24, 2009 – Variance (§72-21) for the construction of a detached two-family home contrary to side yard regulations (§23-48). R-5 zoning district.

PREMISES AFFECTED – 25-71 44<sup>th</sup> Street, situated on the east side of 44<sup>th</sup> Street approximately 290 feet north of 28<sup>th</sup> Avenue. Block 715, Lot 16. Borough of Queens.

### **COMMUNITY BOARD #1Q**

APPEARANCES –

For Applicant: Elizabeth Safian.

**ACTION OF THE BOARD** – Laid over to July 13, 2010, at 1:30 P.M., for continued hearing.

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## **327-09-BZ**

APPLICANT – Sheldon Lobel, P.C., for 255 Butler, LLC, owner.

SUBJECT – Application December 17, 2009 – Special Permit (§73-19) to allow a Use Group 3 charter school (*Summit Academy*) with first floor retail use in an existing warehouse. M1-2 zoning district.

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PREMISES AFFECTED – 255 Butler Street, corner lot on Nevins Street between Butler and Baltic Streets, Block 405, Lot 27, Borough of Brooklyn.

**COMMUNITY BOARD #6BK**

APPEARANCES –

For Applicant: Richard Lobel, Maureen Coughlen and Robert Klein.

**ACTION OF THE BOARD** – Laid over to June 22, 2010, at 1:30 P.M., for continued hearing.  
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**33-10-BZ**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Vornado Realty Trust, owner; 692 Broadway Fitness Club, Inc., lessee.

SUBJECT – Application March 18, 2010 – Special Permit (§73-36) to allow the operation of a physical culture establishment. M1-5B zoning district.

PREMISES AFFECTED – 692 Broadway (aka 384/8 Lafayette Street, 2/20 East 4<sup>th</sup> Street) southeast corner of intersection of Broadway and East 4<sup>th</sup> Street, Block 531, Lot 7501, Borough of Manhattan.

**COMMUNITY BOARD #2M**

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Laid over to June 22, 2010, at 1:30 P.M., for continued hearing.  
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**36-10-BZ**

APPLICANT – Eric Palatnik, P.C., for Karen Abramowitz, owner.

SUBJECT – Application March 22, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space ration (§23-141); side yard (§23-461) and rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 1225 East 28<sup>th</sup> Street, south of Avenue L, Block 7646, Lot 34, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Helanie Balsam.

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 June 22, 2010, at 1:30 P.M., for decision, hearing closed.  
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**37-10-BZ**

APPLICANT – Eric Palatnik, P.C., for Hadassah Bakst, owner.

SUBJECT – Application March 22, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space (§23-141); side yard (§23-461) and rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1230 East 27<sup>th</sup> Street, south of Avenue L, Block 7644, Lot 58, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to June 22, 2010, at 1:30 P.M., for continued hearing.  
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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

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## \*CORRECTION

These resolution adopted on March 2, 2010, under Calendar No. 182-09-BZ and printed in Volume 95, Bulletin No. 10, is hereby corrected to read as follows:

### 182-09-BZ

#### CEQR #10-BSA-115M

APPLICANT – Eric Palatnik, P.C., for Congregation Mita, Inc., owner.

SUBJECT – Application June 4, 2009 – Variance (§72-21) to legalize the existing UG 3 novitiate and UG 4 house of worship (*Congregation Mita*), contrary to §24-35 (side yard) and §24-36 (rear yard). R7-2 zoning district.

PREMISES AFFECTED – 612 West 180<sup>th</sup> Street, 180<sup>th</sup> Street between Wadsworth and St. Nicholas Avenues, Block 2162, Lot 33, Borough of Manhattan.

#### COMMUNITY BOARD #12M

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, the decision of the Manhattan Borough Commissioner, dated December 18, 2009, acting on Department of Buildings Application No. 110160753, reads:

- “1. Proposed side yard of 4’-6” at second and third floors is contrary to ZR 24-35 which requires minimum 8’-0” width if side yard is provided.
2. Proposed rear yards at 3’-8”, 6’-4” and 13’-4” at second floor is contrary to ZR 24-36 which requires minimum 30’-0”.
3. Proposed increase of lot coverage from 81% to 83% is contrary to ZR 24-11 which requires maximum 65%;” and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21, to permit, on a site within an R7-2 zoning district, the legalization of an existing novitiate (Use Group 3) and church (Use Group 4), which does not comply with side yard, rear yard and lot coverage regulations, contrary to ZR §§ 24-35, 24-36 and 24-11; and

WHEREAS, a public hearing was held on this application on December 15, 2009, after due notice by publication in *The City Record*, with a continued hearing on February 2, 2010, and then to decision on March 2, 2010; and

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

WHEREAS, Community Board 12, Manhattan, states that it has no objection to the application; and

WHEREAS, certain members of the community provided testimony in opposition to the proposal, citing concerns about traffic and the maintenance of the site; and

WHEREAS, this application is brought on behalf of Congregation Mita, a non-profit religious entity (the “Congregation”); and

WHEREAS, the subject site is located on the west side of West 180<sup>th</sup> Street, between Wadsworth Avenue and St. Nicholas Avenue, within an R7-2 zoning district; and

WHEREAS, the site has 75 feet of frontage on West 180<sup>th</sup> Street, a depth of 100 feet, and a total lot area of approximately 7,500 sq. ft.; and

WHEREAS, the site is currently occupied by a three-story community facility building with a novitiate (the “Church”), which provides accommodations to religious students (Use Group 3) and a house of worship (Use Group 4), for a total floor area of 18,329.67 sq. ft. (2.44 FAR); and

WHEREAS, the applicant currently seeks to legalize an enlargement to the Church which increased the degree of non-compliance of the side and rear yards; and

WHEREAS, the pre-existing building provided a rear yard with a depth of 2’-8” and side yards with widths of 4’-6” behind the full-width facade, which were pre-existing legal non-complying conditions (a rear yard with a depth of 30 feet and two side yards, if any side yards are provided, with minimum widths of 8’-0” each are required for a community facility); although, the first floor, with a height of less than 23 feet, was permitted within the required rear yard, pursuant to community facility regulations; and

WHEREAS, the enlarged second floor, which extended the pre-existing partial second floor was built on the footprint of the pre-existing first floor and maintains the existing non-complying side yards and rear yard; and

WHEREAS, the proposal provides for the following uses: (1) the cellar, which is occupied by a small cafeteria and kitchen, and mechanicals; (2) the main sanctuary on the first floor; (3) the novitiate’s lounge, kitchen, office, and sleeping quarters on the second floor; and (4) novitiate sleeping quarters on the third floor; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Congregation which necessitate the requested variance: (1) a house of worship to provide space for religious services and educational programming and (2) a novitiate to accommodate participants in the formal process of advancing through the sect’s spiritual ranks, which involves retreats with prayer and religious education; and

WHEREAS, the applicant represents that the religious training, which draws participants from around the world, requires the separation of the novitiates, ministers, pastors, and deacons from the rest of the Congregation during intense spiritual retreats six to nine times per year; and

WHEREAS, the applicant represents that the physical space requirements include (1) separate men’s and women’s sleeping quarters to accommodate approximately 51 participants; (2) a dining room which is separate from the remainder of the Congregation; (3) a study lounge which can accommodate all persons participating

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in the spiritual retreats to allow for education and prayer study; (4) a kitchen which is separate from the Congregation's general kitchen; and (5) space for laundry and other accessory uses; and

WHEREAS, further, the applicant represents that the novitiate facilities must be placed in close proximity to each other and nearby to but separate from the other portions of the building, which are generally accessible; and

WHEREAS, the applicant represents that, prior to the enlargement, the site was occupied by a house of worship constructed in the 1920s, which has historically been used by religious institutions; and

WHEREAS, the applicant states that in 2004, the Congregation enlarged the rear portion of the pre-existing second story of the building and added a partial third story at the front of the building such that the current building is a full two stories with a partial third story; and

WHEREAS, the applicant states that the Congregation enlarged the building, which provided only the sanctuary and a partial second floor in order to accommodate its programmatic needs; and

WHEREAS, the applicant represents that in an as-of-right enlargement, the novitiate's gathering space, which is now on the second floor, would have to be located on a smaller third or fourth floor; and

WHEREAS, the applicant represents that dividing the space up vertically on multiple smaller floors, rather than on one larger floor and one smaller floor, does not support the programmatic need of horizontal space to foster interaction and the exchange of ideas; and

WHEREAS, the applicant represents that the first floor house of worship accommodates the Congregation's needs for church services, which have been established since 1982, and thus maintaining the location was essential to its congregants; and

WHEREAS, the applicant represents that the size, layout and design of the pre-existing building was inadequate to serve the current needs of the congregation and would be inadequate for its future needs; and

WHEREAS, specifically, the applicant states that the pre-existing building at the site only accommodated the house of worship and not the novitiate; and

WHEREAS, the applicant states that the requested waivers enable the Congregation to legalize the existing building, maintain the use it accommodated and meet the interconnected programmatic needs of the novitiate; and

WHEREAS, the Board acknowledges that the Congregation, 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 Board notes that the applicant provided evidence of the Congregation's status as a non-profit religious institution and of the novitiate's status and established religious program; and

WHEREAS, in addition to its programmatic needs, the applicant represents that the existing building on the site constrains the ability to provide complying yards; and

WHEREAS, specifically, the applicant states that the existing side yards and rear yard do not comply with community facility regulations, and therefore the Congregation would be forced to set back the new portion of the second floor and the third floor to provide the complying side yards; and

WHEREAS, the applicant represents that, from a structural and design standpoint, it is more efficient to extrude the existing exterior walls such that the new walls do not create new non-compliance as to the yards, but rather increase the degree of the existing non-compliance, which is legal due to the pre-1961 construction of the pre-existing building; and

WHEREAS, the applicant notes that the third floor includes skylights to provide adequate light and air to the sleeping accommodations, since the windows at the front of the third floor are insufficient; the applicant represents that the addition of a fourth floor would eliminate the skylights and result in the need for a costly retrofitting of the front windows, which are old and arched-shaped; and

WHEREAS, the applicant represents that the existing third-floor windows can not be made operable and new custom-built windows would be required, at a significant expense to the Congregation; and

WHEREAS, thus, the applicant represents the programmatic need for larger floorplates with horizontal space to promote connectivity, the efficiency of extending the existing exterior walls, and the cost of retrofitting the existing building associated with adding a fourth floor, necessitated that the second floor be built out; and

WHEREAS, the applicant represents that, without the yard waivers, the floorplates would be constrained and there would not be sufficient space to accommodate all participants in the novitiate program; only a maximum of 44 people could be accommodated for sleeping and there would be a 54 percent loss in the common space on the second floor; the dining room and kitchen would similarly be reduced; and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the Congregation and the constraints of the historic building 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 Congregation 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 enlarged building does not alter the essential character of the neighborhood, does not substantially impair the appropriate use

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or development of adjacent property, and is not detrimental to the public welfare; and

WHEREAS, the applicant states that that the proposed/existing use and floor area are permitted as-of-right in the subject zoning district and only the extension of the pre-existing non-complying yards is contrary to zoning district regulations; and

WHEREAS, specifically, the applicant notes that the height of 41'-8" is less than the heights of buildings on adjacent lots, including multiple dwelling buildings on either side of the site; and

WHEREAS, the radius diagram submitted by the applicant also establishes that the bulk and height of the Congregation's building are consistent with the bulk and height of the homes in the surrounding neighborhood, which have heights ranging between three and 32 stories; and

WHEREAS, as reflected on the radius diagram, the four sites at the rear of the site, occupied by a multiple dwelling, two stores, and an office building in three-story buildings, provide rear yards, which allows for open space adjacent to the Congregation's pre-existing absence of a rear yard; and

WHEREAS, the Board notes that the site could be developed as-of-right with a building with greater height and floor area, if all yards were provided; and

WHEREAS, the Board further notes that the enlargement does not create any new non-compliance but rather increases the degree of existing non-compliance; and

WHEREAS, the applicant notes that the subject enlargement is only minimally visible from the West 180<sup>th</sup> Street frontage; and

WHEREAS, at hearing, the Board directed the applicant to confirm that the enlarged building complies with all Building Code, Fire Code, and any other relevant requirements specifically with regard to light and air and egress; and

WHEREAS, in response, the applicant stated that all requirements are met, including the location of the air-conditioning condensers; and

WHEREAS, the applicant agreed to review the plans with the Department of Buildings to confirm compliance; and

WHEREAS, in response to community concerns about traffic, the applicant states that the Congregation has installed a parking guard to direct traffic; and

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

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

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

WHEREAS, the Board notes that the building complies with all bulk and use regulations, with the exception of the non-complying yards; and

WHEREAS, accordingly, the Board finds the requested waivers to be the minimum necessary to afford the

Congregation the relief needed both to meet its programmatic needs and to occupy 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 6 NYCRR Part 617.12 (a) and 617.5; 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) 09BSA115M, dated May 22, 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 determination 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 R7-2 zoning district, the legalization of an existing novitiate (Use Group 3) and church (Use Group 4), which does not comply with side yard, rear yard and lot coverage regulations, contrary to ZR §§ 24-35, 24-36 and 24-11, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 1, 2009" – Seven (7) sheets; and *on further condition*:

THAT the building parameters shall be as reflected on the approved plans;

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

THAT the use shall be limited to a house of worship (Use Group 4) and novitiate (Use Group 3);

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

THAT DOB shall review the building for compliance with light and air and egress requirements;

THAT DOB shall review the building's mechanicals, including the air-conditioning condenser for compliance with all relevant regulations;

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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 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, March 2, 2010.

**\*The resolution has been corrected to update part of the decision of the Borough Commissioner dated December 18, 2009. Corrected in Bulletin No. 21, Vol. 95, dated May 5, 2010.**