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# BULLETIN

OF THE  
NEW YORK CITY BOARD OF STANDARDS  
AND APPEALS

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Volume 94, No. 19

May 22, 2009

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## DIRECTORY

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**MINUTES of Regular Meetings,  
Tuesday, May 12, 2009**

Morning Calendar .....312

**Affecting Calendar Numbers:**

301-03-BZ 1103 East 22<sup>nd</sup> Street, Brooklyn  
41-06-BZ 139-24 Booth Memorial Avenue, Queens  
951-55-BZ 1098 Richmond Road, Staten Island  
23-06-BZ 150-62 78<sup>th</sup> Road, Queens  
292-08-A 123 87<sup>th</sup> Street, Brooklyn  
47-09-A 114 Beach 215<sup>th</sup> Street, Queens  
147-08-BZY 95-04 Allendale Street, Queens  
83-08-A 3218 Emmons Avenue, Brooklyn  
19-09-A 132-55 34<sup>th</sup> Avenue, Queens

Afternoon Calendar .....319

**Affecting Calendar Numbers:**

247-08-BZ 3454 Nostrand Avenue, Brooklyn  
274-08-BZ 41-47 Grand Street, Manhattan  
306-08-BZ 969 Third Avenue, Manhattan  
312-08-BZ 1134 East 23<sup>rd</sup> Street, Brooklyn  
316-08-BZ 345-349 Second Avenue, Manhattan  
16-09-BZ 459 Broadway, Manhattan  
26-09-BZ/  
48-09-A 97 Crooke Avenue, Brooklyn  
276-08-BZ 150 East 55<sup>th</sup> Street, Manhattan  
297-08-BZ 3496 Bedford Avenue, Brooklyn  
308-08-BZ 201 East 67<sup>th</sup> Street, Manhattan  
1-09-BZ 39-01 Queens Boulevard, Queens  
10-09-BZ 2307 Farragut Road/583 East 23<sup>rd</sup> Street, Brooklyn  
17-09-BZ 5421 Beverly Road, Brooklyn  
21-09-BZ 222-89 Braddock Avenue, Queens  
35-09-BZ 345-347 East 103<sup>rd</sup> Street, Manhattan

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# DOCKETS

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New Case Filed Up to May 12, 2009  
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**164-09-BZ**

124 Irwin Street, Between Hampton Avenue and Oriental Boulevard., Block 8751, Lot(s) 416, Borough of **Brooklyn, Community Board: 15**. Special Permit (73-622) for the enlargement of an existing Two-Family home to be converted into a Single Family home. This application seeks to vary floor area, lot coverage and open space (ZR 23-141) and less than the required rear yard (ZR 23-47) in an R3-1 zoning district.  
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**165-09-A**

150 Hendricks Avenue, Between Jersey Street and Bismark Avenue., Block 44, Lot(s) 15, Borough of **Staten Island, Community Board: 1**. Appeal seeking a determination that the owner has aquired common law vested rights for a development commenced under the prior district regulations.  
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**166-09-BZ**

360-366 McGuinness Boulevard, North east corner of Freeman Street and McGuinness Boulevard., Block 2506, Lot(s) 2, 4, 5 & 52, Borough of **Brooklyn, Community Board: 1**. Special Permit pursuant to 75-53 to permit the enlargement of a manufacturing building contrary to floor area and height and setback regulations (43-12, 43-43). M1-1 District.  
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**167-09-A**

820 39th Street, South side, 150'-0" east of 8th Avenue between 8th Avenue and 9th Avenue., Block 916, Lot(s) 12, Borough of **Brooklyn, Community Board: 12**. An appeal challenging Department of Buildings determination that the reconstruction of the exsiting non- complying subject building must be done in accordance with ZR Section 54-41and be required to provide a 30 foot rear yard . M1-2 Zoning district .  
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**168-09-BZ**

1435 & 1437 East 26 Street, East side of east 26th Street distant 292 south of Avenue N., Block 7680, Lot(s) 34 & 35, Borough of **Brooklyn, Community Board: 14**. Special Permit (73-622) for the enlargement of an existing single family home. This application seeks to combine two semi-attached homes to create one single family home that varies in floor area and open space (ZR 23-141(a)) and less than the required rear yard (ZR 23-47) in an R-2 zoning district.  
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**169-09-BZ**

186 Saint George's Crescent, Eastern side of St. George's Crescent, approximately 170' southeast of the corner formed by the intersection of Van Cortland Avenue east, St. George's Crescent and Grand Concourse, Block 3312, Lot(s) 12, Borough of **Bronx, Community Board: 7**. Variance to allow a twelve-story, multi-family residential building, contrary to bulk regulations.  
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**170-09-A**

24-03 Queens Plaza North, Northeast corner of Queens Plaza North and 24th Street., Block 414, Lot(s) 5, Borough of **Queens, Community Board: 1**. An appeal filed by the Department of Buildings seeking to amend the Certificate of Occupancy No. 400942655 issued on May 2, 2002 to remove the reference to "Adult" Establishment "use on the second floor. M1-5/R-9 Special Mixed Use.  
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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 9, 2009, 10:00 A.M.**

**APPEALS CALENDAR**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, June 9, 2009, 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**

**1252-79-BZ**

APPLICANT – Benjamin A. Leonardi/Miele Associates, for C.B.R. LLC (Dr. Harry Kent), owner.

SUBJECT – Application April 2, 2009 – Extension of Term/Amendment (§72-01 and §72-22) to reopen for a unlimited time limit.

PREMISES AFFECTED – 23-87-91 Bell Boulevard, aka 214-05-15 & 214-19 24th Avenue, northwest south of 24<sup>th</sup> Avenue 10' east of Bell Boulevard and 24th Avenue, Block 5958, Lot 52, Borough of Queens.

**COMMUNITY BOARD #7Q**

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**303-99-BZ**

APPLICANT – Vito J. Fossella, P.E. (LPEC), for 2122 Richmond Avenue LLC, owner.

SUBJECT – Application March 26, 2009 – Extension of Time to obtain a Certificate of Occupancy which expired on September 12, 2004 and an Amendment to legalize the change in use from the previously granted Auto Sales Establishment (UG16) to Commercial/Retail (UG6) in an R3-2 zoning district.

PREMISES AFFECTED – 2122 Richmond Avenue, west side of Richmond Avenue, 111.72' north of corner formed by the intersection of Richmond Avenue and Draper Place, Block 2102, Lot 120, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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**55-01-BZ**

APPLICANT – Jay A. Segal, Greenberg Traurig, LLP, for 568 Broadway Perty, LLC, owner; Blissworld LLC, lessee.

SUBJECT – Application March 31, 2009 – Extension of Term/waiver of a previously granted Special Permit (§73-36) for the continued operation of a PCE (Bliss Spa) located on portions of the second and third floors of an eleven-story mixed use building in an M1-5B zoning district which expired on April 1, 2007.

PREMISES AFFECTED – 568 Broadway, north side of Prince Street, between Broadway and Crosby Street, Block 511, Lot 1, Borough of Manhattan.

**COMMUNITY BOARD #2M**

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**140-08-BZY**

APPLICANT – Eric Palatnik, P.C., for 1016 East 13<sup>th</sup> Realty, LLC, owner.

SUBJECT – Application April 5, 2008 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6 district regulations. R5 zoning district.

PREMISES AFFECTED – 1016 East 13<sup>th</sup> Street, between Avenue J and K, Block 6714, Lot 11, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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**293-08-A & 294-08-A**

APPLICANT – Juan D. Reyes, III, Riker Danzig, et al., for Alexandra Hladky, owner; Leonessa Development Corporation/Frank Volpicello, lessees.

SUBJECT – Application November 25, 2008 – Proposed construction of two semi detached two family homes located within the bed of a mapped street contrary to General City Law Section 35. R4 Zoning District.

PREMISES AFFECTED – 36-40 166<sup>th</sup> Street, northwest corner of Depot Road and 166<sup>th</sup> Street, Block 5288, Lot 39, Borough of Queens.

**COMMUNITY BOARD #7Q**

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**160-09-A**

APPLICANT – Eric Palatnik, P.C., for HBC Corona, LLC, owner.

SUBJECT – Application April 22, 2009 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior C2-4 /R6 zoning district. C2-4 /R6A.

PREMISES AFFECTED – 112-15 Northern Boulevard, between 112<sup>th</sup> Street and 112<sup>th</sup> Place, Block 1706, Lot 25, Borough of Queens.

**COMMUNITY BOARD #3Q**

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# CALENDAR

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**JUNE 9, 2009, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, June 9, 2009, 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**

**139-07-BZ**

APPLICANT – Agusta & Ross, for 328 Realty Holding, LLC, owner.

SUBJECT – Application May 25, 2007 – Variance (§72-21) to permit the development of a two-story and cellar, two-family residence on a vacant lot. The proposal is contrary to section 42-10. M1-2 district.

PREMISES AFFECTED – 328 Jackson Avenue, easterly side of Jackson Avenue, 80' northerly of East 141<sup>st</sup> Street, Block 2573, Lot 5, Borough of Bronx.

**COMMUNITY BOARD #1BX**

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**210-08-BZ**

APPLICANT – Sheldon Lobel, P.C., for Samaritan Foundation, Inc., owner.

SUBJECT – Application August 15, 2009 – Variance (§72-21) to permit the two-story enlargement to the existing drug treatment facility which would result in a four-story drug treatment center with sleeping accommodations (Use Group 3). The proposal is contrary to use regulations (ZR Section 43-00) and bulk regulations (ZR Section 52-22) in an M1-1 district.

PREMISES AFFECTED – 130-15 89<sup>th</sup> Road, north side of 89<sup>th</sup> Road, approximately 125' east of 130<sup>th</sup> Street, Block 9338, Lot 147, Borough of Queens.

**COMMUNITY BOARD #9Q**

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**7-09-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Sandra Zagelbaum and Yechiel Zagelbaum, owners.

SUBJECT – Application January 20, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary open space and floor area (23-141), side yards (23-461) and rear yard (23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1082 East 26<sup>th</sup> Street, East 26<sup>th</sup> Street, between Avenue J and Avenue K, Block 7607, Lot 85, Borough of Brooklyn.

**COMMUNITY BOARD #14Q**

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**50-09-BZ**

APPLICANT – Eric Palatnik, P.C., for Roni Mova, owner; Warrior Fitness, lessee.

SUBJECT – Application March 26, 2009 – Special Permit (§73-36) to allow the legalization of a physical culture establishment on the third floor in a twelve-story building. The proposal is contrary to ZR §42-10. M1-6 district.

PREMISES AFFECTED – 29 West 35<sup>th</sup> Street, West 35<sup>th</sup> Street and Fifth Avenue, Block 837, Lot 23, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, MAY 12, 2009  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**301-03-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Isabell Wassner and Leonard Wassner, owner.

SUBJECT – Application February 20, 2009 – Extension of Time/waiver to Complete Construction and obtain a Certificate of Occupancy of previously granted Special Permit (§73-622) for the enlargement of single family home and an Amendment to modify the previously approved plans, in an R2 zoning district, which expired on January 13, 2008.

PREMISES AFFECTED – 1103 East 22<sup>nd</sup> Street, between Avenue J and Avenue K, Block 7604, Lot 31, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Lyra Altman.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of time to complete construction of an enlargement of an existing single family home and obtain a certificate of occupancy, and an amendment to modify the previously approved plans; and

WHEREAS, a public hearing was held on this application on April 7, 2009, after due notice by publication in *The City Record*, with a continued hearing on April 28, 2009, and then to decision on May 12, 2009; and

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

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the site is located on the east side of East 22<sup>nd</sup> Street, between Avenue J and Avenue K, within an R2 zoning district; and

WHEREAS, on January 13, 2004, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-622, to permit the enlargement of an existing single-family home, which resulted in non-compliances as to floor area, open space ratio, rear and side yards; and

WHEREAS, a condition of the grant was that substantial construction be completed and a new certificate of occupancy be obtained within four years, to expire on January 13, 2008; and

WHEREAS, the applicant represents that additional time is necessary to complete the project; thus, the applicant now requests an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, in addition, the applicant now proposes to modify the approved plans; and

WHEREAS, specifically, the changes to the plans include the following: an increase in the width of the side yards from 4'-1" along the northern lot line and 8'-0" along the southern lot line, to 5'-0" and 8'-6", respectively; a decrease in the depth of the rear yard from 24'-0" to 20'-0"; and certain interior modifications; and

WHEREAS, the applicant represents that no other changes are proposed; and

WHEREAS, the Board notes that the proposed amendment cures the side yard non-compliance and that no increase in FAR is proposed; and

WHEREAS, accordingly, the Board finds that the requested change is within the scope of the original grant and does not affect the required special permit findings; and

WHEREAS, based upon its review of the record, the Board finds that the proposed amendment and extension of time to complete construction and obtain a certificate of occupancy is appropriate, with the conditions set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals waives the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated January 13, 2004, so that as amended this portion of the resolution shall read: "to permit an extension of time to complete construction and obtain a certificate of occupancy for a term of four years from the expiration of the previous grant, to expire on January 13, 2012, and to permit the noted modifications to the BSA-approved plans *on condition* that all work and site conditions shall comply with drawings marked "Received February 20, 2009"- (7) sheets and "April 21, 2009"-(2) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a floor area of approximately 5,167 sq. ft. (1.03 FAR); an open space ratio of approximately 53 percent; and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans

THAT substantial construction shall be completed by January 13, 2012;

THAT a Certificate of Occupancy shall be obtained by January 13, 2012;

THAT all conditions from the prior resolution not specifically waived by the Board shall 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. 301622885)

Adopted by the Board of Standards and Appeals, May

# MINUTES

12, 2009.

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## 41-06-BZ

APPLICANT – Akerman Senterfitt Stadtmauer Bailkin, for New York Hospital Queens, owner.

SUBJECT – Application February 9, 2009 – Amendment of a previously approved variance (§72-21) which permitted, on a portion of the campus of New York Hospital, the construction of an underground parking structure with 372 accessory parking spaces. The application did not comply with the front and side yard requirements. (§§24-33 & 24-34). The current application seeks to legalize a 4'-8" open area along the side lot line within the C1-2 overlay which does not comply with §33-25 (Minimum Required Side Yards). The site is located in a R6/C1-2 zoning district.

PREMISES AFFECTED – 139-24 Booth Memorial Avenue, south side of Booth Memorial Avenue and West Side of 141<sup>st</sup> Street, Block 6401, Lot 19, Borough of Queens.

## COMMUNITY BOARD #7Q

APPEARANCES – None.

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance which permitted, on a portion of the Queens campus of New York Hospital as part of a Large Scale Community Facility Plan, the construction of an underground accessory group parking facility with bulkheads encroaching into required front and side yards, contrary to ZR §§ 24-33 and 24-34; and

WHEREAS, a public hearing was held on this application on April 21, 2009, after due notice by publication in *The City Record*, and then to decision on May 12, 2009; and

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

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

WHEREAS, this application was brought on behalf of the New York Hospital – Queens (the “Hospital”), a not-for-profit institution; and

WHEREAS, the subject site is located at the southwest corner of the intersection of Booth Memorial Avenue and 141<sup>st</sup> Street, within a C1-2 (R4) zoning district; and

WHEREAS, on November 14, 2006, the Board granted a variance pursuant to ZR § 72-21, which permitted the construction of an underground accessory group parking facility with bulkheads encroaching into the required front and side yards, contrary to ZR §§ 24-33 and 24-34; and

WHEREAS, the applicant states that, subsequent to the Board’s grant, the neighboring property owner was unwilling to permit the underpinning of the existing adjoining structures

along the parties’ common lot line; the Hospital was therefore forced to redesign the garage to set back 4’-8” from the property line at the northwest corner of the site; and

WHEREAS, pursuant to ZR § 33-25, if an open area extending along a side lot line is provided at any level, it must either have a continuous minimum width of eight feet or a minimum width of five feet with an average width of eight feet; and

WHEREAS, the applicant represents that, due to the irregular jagged shape of the site, the egress, ingress and circulation requirements of the garage, and the demonstrated programmatic need for a parking garage with a capacity of at least 372 spaces, the Hospital is unable to comply with the requirements of ZR § 33-25; and

WHEREAS, thus, the applicant now seeks to legalize the 4’-8” open area along the side lot line at the northwest corner of the site, which does not comply with ZR § 33-25; 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 is appropriate, with certain conditions set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated November 14, 2006, so that as amended this portion of the resolution shall read: “to permit the noted modification to the plans to reflect the legalization of an open area along the side lot line with a width of 4’-8”, contrary to ZR § 33-25; *on condition* that all work shall substantially conform to drawings filed with this application and marked “Received February 9, 2009”-(14) sheets; and *on further condition*:

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. 402276817)

Adopted by the Board of Standards and Appeals, May 12, 2009.

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## 951-55-BZ

APPLICANT – Eric Palatnik, P.C., for Deborah Luciano, owner; Gaseteria Oil Corporation, lessee.

SUBJECT – Application March 18, 2009 – Amendment (§11-411) to permit the installation of a canopy and minor modifications to the existing pump islands to a previously granted variance for a UG16 gasoline service station in a C2-1/R3-2 zoning district.

PREMISES AFFECTED – 1098 Richmond Road, Targee Street and Richmond Road, Block 3181, Lot 1, Borough of Staten Island.

## COMMUNITY BOARD #2SI

# MINUTES

## APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to June 9, 2009, at 10 A.M., for continued hearing.

## 23-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Kehilat Sephardim of Ahavat Achim, owners.

SUBJECT – Application April 7, 2009 – Extension of Time/waiver to Complete Construction (which expired on July 2, 2008) and to obtain a Certificate of Occupancy (which expired on January 2, 2009) of a previously granted Variance (§72-21) for the expansion of an existing three story synagogue with accessory Rabbi's apartment in an R-4 zoning district.

PREMISES AFFECTED – 150-62 78<sup>th</sup> Road, southeast corner of the intersection formed by 78<sup>th</sup> Road and 153<sup>rd</sup> Street, Block 6711, Lot 84, Borough of Queens.

## COMMUNITY BOARD #8Q

### APPEARANCES –

For Applicant: Elizabeth Safian.

**ACTION OF THE BOARD** – Laid over to June 9, 2009, at 10 A.M., for continued hearing.

## APPEALS CALENDAR

## 292-08-A

APPLICANT – Robert Cunningham, for Robert Cunningham, lessee.

SUBJECT – Application March 17, 2009 – An Appeal Challenging Department of Buildings interpretation that §23-49-(a) Special Provisions for Party or Side Lot lines Walls is not applicable to this site. R3-1 zoning district.

PREMISES AFFECTED – 123 87<sup>th</sup> Street, north side of 87<sup>th</sup> Street, 480' west from northwest corner of 87<sup>th</sup> Street and Ridge Boulevard, Block 6042, Lot 67, Borough of Brooklyn.

## COMMUNITY BOARD #10BK

APPEARANCES – None.

**ACTION OF THE BOARD** – Appeal denied.

THE VOTE TO GRANT –

Affirmative: .....0

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

THE RESOLUTION: 1

WHEREAS, the instant appeal comes before the Board in response to a final determination from the Deputy Commissioner of Technical Affairs, dated October 22, 2008 (the "Final Determination"), issued in response to a request that the Department of Buildings ("DOB") reconsider a determination that ZR § 23-49 was inapplicable to a proposed

enlargement of a single-family home built before 1961 in an R3-1 zoning district (the "Final Determination"); and

WHEREAS, the Final Determination reads in pertinent part:

"We have learned from your narrative and submitted plans that the existing building is a fully detached one family residence with non-complying side yard of 9 inches on the west lot line. The proposed enlargement abuts the existing building to the east, which contradicts the provision set forth in ZR 23-49(a) in that the side yard requirement can only be waived on the east side lot line if a 8'-0" side yard is provided on the west side lot line. As such, it is the determination of this Department that the provision set forth in section ZR 23-49(a) cannot be applied"; and

WHEREAS, this appeal seeks to reverse a determination by DOB that a proposed enlargement to a single-family home in an R3-1 zoning district requires a side yard with a minimum width of 8'-0" along the western property line, and the issuance of a building permit pursuant to Alteration 1 Job Application No. 310089123; and

WHEREAS, a public hearing was held on this appeal on March 17, 2009, after due notice by publication in *The City Record*, with a continued hearing on April 28, 2009, and then to decision on May 12, 2009; and

## PARTIES AND SUBMITTED TESTIMONY

WHEREAS, the instant appeal is filed by Robert Cunningham, owner of the subject home located at 123 87<sup>th</sup> Street (the "Appellant"); and

WHEREAS, DOB was represented by counsel in this proceeding; and

WHEREAS, Mathew B. Gershon, owner of a home located at 127 87<sup>th</sup> Street adjoining the subject property, (hereinafter, the "adjacent owner" and the "adjacent home") was represented by counsel in this proceeding; and

WHEREAS, the Appellant, DOB and counsel for the adjacent owner made submissions to the Board concerning the instant appeal; and

WHEREAS, Community Board 10, Brooklyn, recommended denial of the instant appeal; and

WHEREAS, State Senator Martin J. Golden and other elected officials submitted letters in opposition to the instant appeal; and

WHEREAS, a number of local residents submitted letters in opposition to the instant appeal; and

## THE SITE

WHEREAS, the subject site is located within the Special Bay Ridge District in an R3-1 zoning district and is occupied by a fully-detached, two-story, single-family home which was built before the adoption of the 1961 Zoning Resolution; and

WHEREAS, the subject home has a non-complying side yard of 0'-9" along the western lot line and a complying side yard of approximately 23'-8" along the eastern lot line; and

WHEREAS, the adjacent home is built to the eastern lot line of the subject home; and

1 Headings are utilized only in the interest of clarity and organization.

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# MINUTES

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## PROCEDURAL HISTORY

WHEREAS, on February 5, 2008, the Appellant filed Alteration 1 Application No. 310089123 (“No. 310089123”) proposing to convert the existing single-family dwelling into a two-family dwelling, and to enlarge it by adding a two-story foyer and masonry dwelling extending 23’-8” to the eastern lot line, thereby abutting the adjacent home; and

WHEREAS, on February 15, 2008, DOB issued a Notice of Objections; Objection No. 4 states: “Demonstrate compliance with required side yard/s as per 23-461 ZR, in that if semi-detached as per 12-10 ZR, then one 8’ minimum required side yard to be provided. If detached as per 12-10 ZR then 2 side yards totaling 13’ minimum 5’ to be provided”; and

WHEREAS, the Appellant responded by submitting a request to the Brooklyn Borough Office of DOB for an interpretation and clarification of ZR § 23-461, stating that the side yard requirements were inapplicable to the subject home as it is permitted to utilize a party wall or abut an independent wall along a side lot line existing prior to December 15, 1961; and

WHEREAS, On June 9, 2008, a response by the Chief Plan Examiner of the Brooklyn Borough Office of DOB stated that “Existing building is a fully detached building with non-complying side yard to the west, 8 ½” vs. 5’-0”, per ZR 23-461(a). Proposed enlargement abuts the existing building to the east and makes a semi-attached building which creates a new non-compliance for the side yard to the west of 8 ½” vs. 8’-0” per ZR 23-461(b). Per ZR 54-31, no enlargement may create a new non-compliance nor may it increase the degree of existing non-compliance”; and

WHEREAS, on June 23, 2008, the Appellant’s architect requested a meeting and reconsideration of the response by the Chief Plan Examiner; and

WHEREAS, on October 22, 2008, the DOB Deputy Commissioner of Technical Affairs issued the Final Determination referenced above; and

WHEREAS, the Appellant thereafter filed the instant appeal challenging the Final Determination; and

## The Other Applications

WHEREAS, Alteration Type 2 Permit No. 301376767 (“Permit No. 301376767”) permitting the enlargement of the subject home was initially issued to the Appellant on August 2, 2002, based on professionally-certified plans; and

WHEREAS, on October 27, 2006 an audit of Job No. 301376767 identified 14 violations of the Zoning Resolution and Administrative Code (the “Objections”); and

WHEREAS, DOB states that on October 30, 2006, the agency issued a Letter of Intent to Revoke Permit No. 301376767 based on the Objections and the permit was revoked on December 19, 2007 after the Appellant failed to cure the Objections; and

WHEREAS, in the instant appeal, the Appellant requested that the Board rescind the revocation and reinstate Permit No. 301376767; alternatively, that the Board make a determination that work performed pursuant to Permit No. 301376767 complies with the Zoning Resolution; and

WHEREAS, a submission by the attorney representing

the adjoining owner argues that the Board can take no action concerning the aforementioned request, because it is untimely and outside the scope of the appeal; and

WHEREAS, pursuant to § 666(6)(a) of the New York City Charter and §§ 1-07(a) and 1-07(b) of its Rules of Practice and Procedure, the Board lacks subject matter jurisdiction to hear an appeal of a DOB determination unless an application is filed within thirty days of the determination; and

WHEREAS, the record indicates that Permit No. 301376767 was revoked on December 19, 2007, and that no request to the Board to review the compliance of the permit application with the Zoning Resolution was filed before January 19, 2008; and

WHEREAS, the Appellant’s request is therefore untimely and cannot be acted on by the Board; and

WHEREAS, regarding the request that the Board evaluate the compliance of the work performed with the Zoning Resolution and with Permit No. 301376767, the Board notes that the Final Determination submitted by the Appellant is silent concerning these issues; and

WHEREAS, as discussed above, the submission of a relevant final determination by DOB is a necessary precondition to any determination by the Board; and

WHEREAS, the Final Determination does not concern Permit No. 301376767, the Board is therefore without jurisdiction to render a determination thereto;

WHEREAS, the Appellant additionally requests that the Board recommend the approval of revised plans submitted in connection with Application No. 301362488 by DOB, and its issuance of a permit; and

WHEREAS, the record indicates that on June 11, 2002, the Appellant filed Alteration Application Type 2 No. 301362488 (“Application No. 301362488”) with DOB, also proposing an enlargement of the subject home; and

WHEREAS, as discussed above, the Board’s jurisdiction to hear an appeal is predicated on the issuance by DOB of a final determination concerning the subject matter of the appeal; and

WHEREAS, DOB states that agency plan examiners have been meeting with the Appellant to assist him to revise Application No. 301362488 to comply with zoning and Building Code requirements identified in a Notice of Objections issued on March 10, 2009, and further states that these discussions have not yet reached a conclusion; and

WHEREAS, because DOB has issued no final determination with respect to the compliance of Application No. 301362488, the Board therefore lacks jurisdiction to render a decision thereto; and

WHEREAS, as noted above, the Final Determination that is being appealed exclusively concerns the zoning compliance of Permit No. 310089123; and

WHEREAS, the ambit of the Board’s review in the instant appeal is therefore limited to matters related to the zoning compliance of Permit No. 310089123; and

## ISSUES PRESENTED

WHEREAS, in an R3-1 zoning district, ZR § 23-461(a) requires a minimum of two side yards having a

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minimum combined total width of 13 feet with a required minimum of five feet in width for each side yard; and

WHEREAS, to comply with the minimum requirements of ZR § 23-461(a), a home in the subject district must have at least one side yard with a minimum width of eight feet and another side yard with a minimum width of five feet; and

WHEREAS, the subject home has an existing non-complying side yard of approximately 0'-9" on the west side lot line and a complying side yard of approximately 23'-8" on the east side lot line; and

WHEREAS, the Appellant proposes to maintain the existing non-complying side yard of approximately 0'-9" on the west side lot line and to eliminate the 23'-8" complying side yard on the east side lot line; and

WHEREAS, the Appellant makes the following primary arguments in support of its position that the proposed enlargement complies with all zoning district regulations: (1) that ZR § 23-49 permits the subject home to use an existing party wall along the east property line while maintaining the existing non-complying side yard to the west; (2) the subject home has a complying side yard to the west; and (3) that the proposed enlargement is permitted under ZR § 54-31; and

WHEREAS, regarding the first argument, the Appellant states that the adjacent home was built prior to the adoption of the 1961 Zoning Resolution and is within 0'-2" of the eastern side lot line of the subject home, and therefore the western wall of the adjacent home constitutes a party wall pursuant to "DOB Memo 09/02/86 – Special Provisions for Party of Side Lot Line Walls – ZR 23-49;" and

WHEREAS, ZR § 23-49 provides that in an R3-1 district, a residence may be constructed so as to "utilize a party wall or party walls, or abut an independent wall or walls along a side lot line, existing on December 15, 1961 or lawfully erected under the terms of this Resolution"; and

WHEREAS, the Appellant contends that the proposed enlargement complies with ZR § 23-49 because the western wall of the adjoining home is a party wall existing prior to the adoption of the Zoning Resolution; and

WHEREAS, DOB argues that ZR § 23-49 explicitly requires at least one 8'-0" side yard where an enlargement to a residence abuts a wall along a side yard; and

WHEREAS, ZR § 23-49 further states that "if a residence is so constructed, the side yard requirements shall be waived along that boundary of the zoning lot coincident with said party wall or party walls, or independent wall or walls along a side lot line, and one side yard shall be provided along any side lot line of the zoning lot where such a wall is not so utilized, at least eight feet wide" in the subject R3-1 zoning district; and

WHEREAS, the Appellant has conceded that an 8'-0" side yard is required and states that the 0'-9" side yard on the western lot line lies within a complying 8'-0" side yard; and

WHEREAS, the Board notes that there is no complying 8'-0" side yard indicated by the building plans initially submitted by the Appellant in connection with Permit No. 310089123, and that only the aforementioned 0'-

9" side yard is shown; and

WHEREAS, the proposed enlargement will abut the adjacent neighbor's exterior wall on the east side lot line, while the side yard on the west side lot line would remain 0'-9" wide; and

WHEREAS, therefore, the proposed enlargement would not meet the 8'-0" side yard requirement of ZR § 23-49; and

WHEREAS, the Appellant further contends that, because "the portion of the existing building located in the non-complying side yard is not being enlarged or altered," that the proposed enlargement does not increase the degree of non-compliance of the building and is consequently permitted by ZR § 54-31; and

WHEREAS, the existing non-complying home was built prior to the adoption of the Zoning Resolution, an enlargement which maintains a non-complying side yard is permitted under ZR § 54-31, provided that the degree of non-compliance is not increased; and

WHEREAS, as discussed above, the existing 23'-8" side yard on the east side lot line exceeds the 8'-0" minimum width required by the R3-1 zoning district; and

WHEREAS, DOB argues, however, that the proposed enlargement would eliminate the existing complying 23'-8" side yard, thereby increasing the degree of non-compliance since the subject home would thereafter have no complying side yard; and

WHEREAS, DOB contends that the proposed enlargement therefore increases the degree of non-compliance of the subject home, inconsistent with ZR § 54-31; and

WHEREAS, the Board agrees with DOB that: (i) ZR § 23-49 requires the provision of a minimum 8'-0" side yard for a semi-detached building; and (ii) that the existing non-complying 0'-9" side yard neither qualifies as within the required 8'-0" side yard or as a pre-existing non-compliance that may remain, since the enlargement converts a formerly detached building into a semi-detached building, thereby increasing the degree of non-compliance; and

## CONCLUSION

WHEREAS, the Board has considered all of the arguments made by Appellant and DOB in light of the entire record; and

WHEREAS, the Board finds that the proposed enlargement does not provide a complying side yard as required by § 23-49; and

WHEREAS, the Board additionally finds that the proposed enlargement increases the pre-existing non-compliance of the subject home; and

WHEREAS, accordingly, the Board agrees with DOB's denial of the reconsideration; and

WHEREAS, the Board notes that its decision is limited to the question raised in this appeal concerning the applicability of ZR § 23-49 to the proposed enlargement of the subject home, and makes no determination as to whether pending Application No. 301362488 complies with zoning requirements; and

WHEREAS, the Board further notes that, after the

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hearing was closed, the Appellant submitted a set of stamped plans filed in connection with Application No. 310089123 approved by DOB on September 5, 2008 (the "approved plans), which were accepted into the record; and

WHEREAS, the Appellant represents that, due to a hold imposed by DOB, the Appellant cannot secure a building permit allowing him to proceed with construction of the home contemplated by the approved plans, and has asked for a lift of that hold by the Board; and

WHEREAS, because the validity of the approved plans is similarly outside the scope of the instant appeal, the Board can make no determination concerning their zoning or Building Code compliance.

Therefore it is Resolved that the instant appeal, seeking a reversal of the Final Determination of the Deputy Commissioner of Technical Affairs of the Department of Buildings concerning Application No. 310089123, dated October 22, 2008, is hereby denied.

Adopted by the Board of Standards and Appeals, May 12, 2009.

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## 47-09-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Maureen & John Tully, lessees.  
SUBJECT – Application March 23, 2009 – Reconstruction and enlargement of an existing single family dwelling not fronting on a legally mapped street contrary to General City Law Section 36. R4 Zoning District.

PREMISES AFFECTED – 114 Beach 215<sup>th</sup> Street, west side Beach 215<sup>th</sup> Street, 240' south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

### COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

**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 Superintendent, dated March 6, 2009, acting on Department of Buildings Application No. 410219699, reads in pertinent part:

"The street giving access to the existing building to be reconstructed and enlarged is not duly placed on the map of the City of New York, therefore:

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

B. Existing dwelling to be reconstructed and enlarged does not have at least 8% of the total perimeter of the building fronting directly upon a legally mapped street or frontage space, contrary to Section 27-291 of the Administrative Code;" and

WHEREAS, a public hearing was held on this application on May 12, 2009 after due notice by publication in the *City Record*, then to closure and decision on the same date; and

WHEREAS, by letter dated April 20, 2009, the Fire Department states that it has reviewed the subject proposal and has no objections; 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 Superintendent, dated March 6, 2009, acting on Department of Buildings Application No. 410219699, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; on condition that construction shall substantially conform to the drawing filed with the application marked "Received March 23, 2009" – (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and on further condition:

THAT 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 12, 2009.

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## 147-08-BZY

APPLICANT – Hui-Li Xu, for Beachway Equities, Inc., owner.

SUBJECT – Application May 23, 2008 – Extension of time (§11-331) to complete construction of a minor development commenced prior to the amendment of the zoning district regulations on April 30, 2008. R5 zoning district.

PREMISES AFFECTED – 95-04 Allendale Street, between Atlantic Avenue and 97<sup>th</sup> Avenue, Block 10007, Lot 108, Borough of Queens.

### COMMUNITY BOARD #12Q

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to June 16, 2009, at 10 A.M., for an adjourned hearing.

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## 83-08-A

APPLICANT – NYC Department of Buildings, for H. Patel, P.M. – Purvi Enterprises, LLC, owner.

SUBJECT – Application April 9, 2008 – An appeal seeking

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to revoke Certificate of Occupancy No. 301279319 issued on January 17, 2007 as it was issued in error due to failure to comply with ZR §62-711 requiring waterfront certification. R5 SP Sheepshead Bay District.

PREMISES AFFECTED – 3218 Emmons Avenue, Emmons Avenue between Bringham Street, and Bragg Street, Block 8815, Lot 590, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to June 16, 2009, at 10 A.M., for postponed hearing.

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**19-09-A**

APPLICANT – Elizabeth Safian of Sheldon Lobel Associates, for 34<sup>th</sup> and 35<sup>th</sup> Avenues Realty, LLC, owners. SUBJECT – Application February 10, 2009 – Legalization of an existing building constructed within the bed of a mapped street contrary to General City Law Section 35. M2-1 Zoning District.

PREMISES AFFECTED – 132-55 34<sup>th</sup> Avenue, north side of 34<sup>th</sup> Avenue, 75’ east of the intersection formed by Collins Place and 34<sup>th</sup> Avenue, Block 4946, Lot 126, Borough of Queens.

**COMMUNITY BOARD #7Q**

APPEARANCES –

For Applicant: Elizabeth Safian.

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 9, 2009, at 10 A.M., for decision, hearing closed.

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*Jeffrey Mulligan, Executive Director*

Adjourned: 10:30 A.M.

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**REGULAR MEETING  
TUESDAY AFTERNOON, MAY 12, 2009  
1:30 P.M.**

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

**ZONING CALENDAR**

**247-08-BZ**

**CEQR #09-BSA-032K**

APPLICANT – Howard S. Weiss, Esq., for Davidoff Malito, for 3454 Star Nostrand LLC, owner.

SUBJECT – Application October 6, 2008 – Special Permit filed pursuant to §73-243 to allow the operation of a accessory drive-through facility in connection with a planned as-of-right eating and drinking establishment (Starbucks Coffeeshouse) (Use Group 6) located in a C1-2/R4 zoning district.

PREMISES AFFECTED – 3454 Nostrand Avenue and approx. 49’ along Gravesend Neck Road, Block 7362, Lot 10, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Howard Weiss.

**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 September 4, 2008, acting on Department of Buildings Application No. 310109628, reads:

“Pursuant to Zoning Resolution Section 32-15, ‘eating or drinking establishments’ with accessory drive-through facilities (Use Group 6A) are permitted in C1 districts only as provided in Zoning Resolution Section 73-243, which requires a special permit from the Board of Standards and Appeals”; and

WHEREAS, this is an application under Z.R. §§ 73-243 and 73-03, to permit, on a site within a C1-2 (R4) zoning district, the operation of an accessory drive-through facility in conjunction with an as-of-right eating and drinking establishment (Use Group 6), contrary to ZR § 32-15; and

WHEREAS, a public hearing was held on this application on March 31, 2009, with a continued hearing on April 21, 2009, and then to decision on May 12, 2009; and

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

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

WHEREAS, Council Member Lewis A. Fidler provided testimony in support of the application; and

WHEREAS, several principals and managers of surrounding businesses provided testimony in support of the proposal; and

WHEREAS, the subject site is an L-shaped lot with approximately 49 feet of frontage on Nostrand Avenue along its eastern property line and approximately 52 feet of frontage on Gravesend Neck Road along its northern property line, within a C1-2 (R4) zoning district; and

WHEREAS, the subject site has a total lot area of 6,567 sq. ft. and is currently vacant; and

WHEREAS, the site will be operated by Starbucks Coffee Company (“Starbucks”) and will operate 24 hours per day; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 20, 1955 when, under BSA Cal. No. 837-55-BZ, the Board granted a variance to permit an accessory parking lot for a supermarket located at 2901-2911 Gravesend Neck Road; the variance lapsed on December 20, 1965; and

WHEREAS, under Z.R. § 73-243, the application must demonstrate that: (1) the drive-through facility provides reservoir space for not less than ten automobiles; (2) the drive-through facility will cause minimal interference with traffic flow in the immediate vicinity; (3) the eating and drinking establishment with accessory drive-through facility complies with accessory off-street parking regulations; (4) the character of the commercially-zoned street frontage within 500 feet of the subject premises reflects substantial orientation toward the motor vehicle; (5) the drive-through facility will not have an undue adverse impact on residences within the immediate vicinity; and (6) there will be adequate buffering between the drive-through facility and adjacent residential uses; and

WHEREAS, the applicant submitted a site plan indicating that the drive-through facility provides reservoir space for a ten-car queue; and

WHEREAS, at hearing, the Board questioned whether the reservoir spaces might interfere with the usage of certain accessory parking spaces and whether the proposed layout could create a conflict between cars attempting to exit and enter the site through the single curb cut on Gravesend Neck Road; and

WHEREAS, the Board also raised concerns regarding the safety of pedestrians queuing at a designated bus stop located at the exit to the drive-through lane on Nostrand Avenue; and

WHEREAS, in response, the applicant submitted a revised site plan providing: (1) an overhead sign at the entrance/exit of the drive-through and accessory parking area to clearly distinguish vehicle ingress and egress routes; (2) entry/exit directional arrow signs and painted markings to complement the overhead signage; (3) a 36-inch high guard rail along the eastern edge of the drive-through lane to physically separate the drive-through lane from the accessory parking area; and (4) a stop sign at the exit of the drive-through lane to ensure the safety of pedestrians queuing at the designated bus stop on Nostrand Avenue; and

WHEREAS, the applicant represents that the facility will

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cause minimal interference with traffic flow in the immediate vicinity of the subject site; and

WHEREAS, in support of this representation, the applicant provided a traffic analysis indicating that the proposed eating and drinking establishment could generate up to 169 trips during the morning peak period and 53 trips during the evening peak period by persons traveling by car, bus, or on foot; and

WHEREAS, the applicant's traffic analysis estimates that new trips added to the network by the proposed eating and drinking establishment represent approximately 25 percent of morning peak period trips and up to 50 percent of afternoon peak period trips; and

WHEREAS, the applicant notes that the proposed eating and drinking establishment will cause minimal interference with traffic flow in the vicinity because vehicles using the drive-through lane will exit onto the southbound lane of Nostrand Avenue, a major two-lane commercial through-route; and

WHEREAS, the applicant represents that the facility fully complies with the accessory off-street parking regulations for the C1-2 (R4) zoning district; and

WHEREAS, in support of this representation, the applicant submitted a proposed site plan providing five accessory off-street parking spaces, as required by ZR § 36-21, and indicating that the open parking area complies with the minimum parking stall and maneuverability standards of ZR § 36-58(b); and

WHEREAS, the applicant represents that the facility conforms to the character of the commercially zoned street frontage within 500 feet of the subject premises, which reflects substantial orientation toward the motor vehicle; and

WHEREAS, the applicant further represents that existing restaurants, local retail uses and community facilities located within 500 feet of the site presently generate significant vehicular traffic; and

WHEREAS, the applicant submitted photographs of the premises and the surrounding area, which support this representation; and

WHEREAS, the applicant notes that existing sites in the immediate vicinity are served by accessory drive-through facilities, including a restaurant located directly across Nostrand Avenue from the subject site, and a bank located at the northwest corner of the intersection at Nostrand Avenue and Avenue U; and

WHEREAS, the applicant represents that the drive-through facility will not have an undue adverse impact on residences within the immediate vicinity of the subject premises; and

WHEREAS, the applicant states that Nostrand Avenue is characterized by commercial uses and that no residences are located along Nostrand Avenue within 400 feet to the north, south or east of the proposed drive-through facility; and

WHEREAS, the applicant further states that there will be no undue adverse impacts on residences located to the west of the subject site because vehicles will exit from the facility onto Nostrand Avenue and not traverse residential streets; and

WHEREAS, the applicant notes that the proposed eating

and drinking establishment is permitted as-of-right, and without the drive-through facility patrons would seek on-street parking in the surrounding area; thus, the applicant represents that the drive-through facility will have a positive impact on nearby residences by removing traffic that would otherwise occur; and

WHEREAS, the applicant represents that adequate buffering between the drive-through facility and adjacent residential uses is provided; and

WHEREAS, as indicated on the revised site plan, visual screening and sound attenuation is provided by: (1) a six-foot-high noise barrier wall system along the western property line and along the southern property line past the existing adjacent commercial building wall; and (2) dense plantings measuring at least four feet wide and four feet high along the south and southwest portions of the property; and

WHEREAS, the applicant notes that the rear yard setbacks separating the adjacent residences from the drive-through facility provide further buffering of the use; and

WHEREAS, the applicant states that exterior lighting will be directed away from the adjoining residences; 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, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-243 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6NYCRR, Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 09-BSA-032K dated October 6, 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, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration 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

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Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under Z.R. §§ 73-243 and 73-03 to permit, on a site within a C1-2 (R4) zoning district, the operation of an accessory drive-through facility in connection with an as-of-right eating and drinking establishment (Use Group 6), contrary to ZR §32-15; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received April 21, 2009"- (3) sheets; and *on further condition*:

THAT the term of this grant shall expire on May 12, 2014;

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

THAT parking and queuing space for the drive-through shall be provided as indicated on the BSA-approved plans;

THAT all landscaping and/or buffering shall be maintained as indicated on the BSA-approved plans;

THAT exterior lighting shall be directed away from the adjacent residential uses;

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

THAT all signage shall conform with the underlying C1 district regulations;

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

THAT substantial construction 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 12, 2009.

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## 274-08-BZ

### CEQR #09-BSA-042M

APPLICANT – Jesse Masyr, Esq., Wachtel & Masyr, LLP, for West Broadway 220 LLC (47 Grand Street), owner; West Broadway 330 LLC (431, 43 Grand Street), lessee.

SUBJECT – Application November 10, 2008 – Variance pursuant to §72-21 to allow for an increase in floor area, variation in height and setback requirements and retail use below the level of the second story, contrary to §42-14, §43-12 and §43-43. M1-5A & M1-5B Districts.

PREMISES AFFECTED – 41-47 Grand Street (a/k/a 330 West Broadway) southwest corner of Grand Street and West Broadway, Block 227, Lots 19, 20, 22, Borough of Manhattan.

### COMMUNITY BOARD #2M

APPEARANCES – None.

**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 12, 2009.

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## 306-08-BZ

### CEQR #09-BSA-051M

APPLICANT – Sheldon Lobel, P.C., for Third and Fifty-Eight. LLC,owner; Evergreen Spa, Inc., lessee.

SUBJECT – Application December 18, 2008 – Special Permit (§73-36) to allow the operation of a physical culture establishment in the cellar of an existing 21-story mixed-use building. The proposal is contrary to ZR §32-10. C5-2 district.

PREMISES AFFECTED – 969 Third Avenue a/k/a 200 East 58<sup>th</sup> Street, Block 1331, Lot 7501, Borough of Manhattan.

### COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Elizabeth Safian.

**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 March 6, 2009, acting on Department of Buildings Application No. 110278315, reads in pertinent part:

“Proposed change of use to physical culture establishment is contrary to ZR 32-10 and is not permitted as of right in C5-2 zoning district and must be referred to the BSA for approval pursuant to ZR 73-36;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C5-2 zoning district, the establishment of a physical culture establishment (PCE) in a portion of the cellar of an existing 21-story mixed-use commercial/residential building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on March 24, 2009 after due notice by publication in *The City Record*, with a continued hearing on April 21, 2009 and then to decision on May 12, 2009; and

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

WHEREAS, Community Board 6, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the southeast corner of the intersection at Third Avenue and East 58<sup>th</sup> Street, in a C5-2 zoning district; and

WHEREAS, the site is occupied by a 21-story mixed-use commercial/residential building; and

WHEREAS, the PCE will occupy 2,735 sq. ft. in a

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portion of the cellar level of the existing building; and

WHEREAS, the PCE will be operated as the “Ever Green Spa;” and

WHEREAS, the proposed hours of operation are: 10:00 a.m. to 2:00 a.m. daily; and

WHEREAS, the applicant represents that the services at the PCE will include facilities for the practice of massage; and

WHEREAS, the applicant represents that because the existing building consists of retail and office space from the cellar level through the fourth floor, the PCE will have no impact on the residential tenants in the subject building; and

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

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

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

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 09BSA051M, dated March 13, 2008; and

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

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the

Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C5-2 zoning district, the establishment of a physical culture establishment on the cellar level of an existing 21-story mixed-use commercial/residential building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received April 22, 2009” - Two (2) sheets; and *on further condition*:

THAT the term of this grant shall expire on May 12, 2019;

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

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

THAT all signage shall comply with C5 zoning regulations;

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

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, May 12, 2009.

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## **312-08-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Leah Friedman and Michael Friedman, owners.

SUBJECT – Application December 18, 2008 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary floor area and open space (§23-141), side yard (§23-461) and less than the minimum required rear yard (§23-47) in an R2 zoning district.

PREMISES AFFECTED – 1134 East 23<sup>rd</sup> Street, west side of East 23<sup>rd</sup> between Avenue K and Avenue L, Block 7622, Lot 60, Borough of Brooklyn.

## **COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Lyra J. Altman.

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

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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 November 18, 2008, acting on Department of Buildings Application No. 310209869, reads:

“Proposed plans are contrary to ZR 23-141 in that the proposed building exceeds the maximum permitted floor area ratio of 0.50.

Proposed plans are contrary to ZR 23-141 in that the proposed open space ratio is less than the minimum required open space of 150.

Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the minimum required rear yard of 30’-0”.

Proposed plans are contrary to ZR 23-461 in that the proposed side yard, straight line extension, is less than the 5’-0” minimum side yard permitted;” and

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

WHEREAS, a public hearing was held on this application on March 17, 2009 after due notice by publication in *The City Record*, with a continued hearing on April 21, 2009, and then to decision on May 12, 2009; and

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

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East 23<sup>rd</sup> Street, between Avenue K and Avenue L, in an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a single-family home with a floor area of approximately 1,943 sq. ft. (0.49 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from approximately 1,943 sq. ft. (0.49 FAR) to approximately 4,017 sq. ft. (1.00 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of approximately 57 percent (150 percent is the minimum required); and

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

along the southern lot line; and

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

WHEREAS, at hearing the Board questioned whether the existing foundation was being retained; and

WHEREAS, in response, the applicant submitted a letter from the project engineer, dated March 24, 2009, explaining how the existing foundation will be retained; and

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

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

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

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

*Therefore it is resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under Z.R. § 73-622 and 73-03, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space ratio, side yards and rear yards, contrary to Z.R. §§ 23-141, 23-461, and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received May 5, 2009”-(12) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a floor area of approximately 4,017 sq. ft. (1.00 FAR); an open space ratio of approximately 57 percent; a side yard with a minimum width of 4’-11” along the northern lot line; and a rear yard with a minimum depth of 20’-0”, as illustrated on the BSA-approved plans;

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

THAT DOB shall confirm that the portions of the existing building shall be retained as illustrated on the BSA-approved plans; and

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

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

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

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

Adopted by the Board of Standards and Appeals, May 12, 2009.

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## 316-08-BZ

### CEQR #09-BSA-055M

APPLICANT – Bryan Cave LLP/Robert S. Davis, for The Simons Foundation, Inc., owner.

SUBJECT – Application December 23, 2008 – Variance (§72-21) to permit the development of a three- and eight-story school building. The proposal is contrary to ZR Section 35-24c (minimum base height). R9A with a C1-5 district overlay.

PREMISES AFFECTED – 345-349 Second Avenue, a/k/a 247-249 East 20<sup>th</sup> Street, northwest corner of East 20<sup>th</sup> Street and Second Avenue, Block 901, Lots 26, 27 & 28, Borough of Manhattan.

### COMMUNITY BOARD #6M

#### APPEARANCES –

For Applicant: Robert Davis.

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

#### THE VOTE TO GRANT –

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

#### THE RESOLUTION -

WHEREAS, the decision of the Manhattan Borough Superintendent, dated December 8, 2008, acting on Department of Buildings Application No. 110058570 reads, in pertinent part:

“The proposed new base height of the building is contrary to ZR 35-24(c) in that the minimum should be at least 60’-0”,” and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within a C1-5 (R9A) zoning district, the construction of a three-story and eight-story school building, which is contrary to ZR § 35-24(c); and

WHEREAS, a public hearing was held on this application on March 17, 2009, after due notice by publication in the *City Record*, and was set for decision on April 7, 2009; and

WHEREAS, on April 7, 2009, the decision was deferred to May 12, 2009; and

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

WHEREAS, Community Board 6, Manhattan, recommends approval of the application; and

WHEREAS, this application is brought on behalf of Learning Spring Elementary School (“Learning Spring”), a non-profit private school for children diagnosed as being on the high-functioning end of the autism spectrum; and

WHEREAS, the site is located on the northwest corner of the intersection at Second Avenue and 20<sup>th</sup> Street, within a C1-5 (R9A) zoning district; and

WHEREAS, the site is a corner lot with a rectangular shape, with 62 feet of frontage on Second Avenue and 79 feet of frontage on 20<sup>th</sup> Street, and a total lot area of 4,898 sq. ft.; and

WHEREAS, the applicant notes that the site was formerly comprised of three separate, rectangular-shaped tax lots: Tax Lot 26, Tax Lot 27, and Tax Lot 28; and

WHEREAS, the applicant states that Tax Lot 26 was a corner lot with 22 feet of frontage on Second Avenue and 79 feet of frontage on East 20<sup>th</sup> Street; formerly Tax Lot 27 was an interior lot with 20 feet of frontage on Second Avenue, a depth of 79 feet, and a southern lot line abutting the northern lot line of Tax Lot 26; and formerly Tax Lot 28 was an interior lot with 20 feet of frontage on Second Avenue, a depth of 79 feet, and a southern lot line abutting the northern lot line of Tax Lot 27; and

WHEREAS, the applicant represents that a tax lot merger was filed with the NYC Department of Finance on January 2, 2008, and excavation and new building permits were issued by the NYC Department of Buildings (“DOB”) for the merged area now designated as Tax Lot 26; and

WHEREAS, the subject site is currently vacant; and

WHEREAS, the applicant proposes a 27,492 sq. ft. three-story and eight-story lower and middle school servicing 110 students (the “School”) on the site; and

WHEREAS, the applicant states that the School will consist of a single building with an eight-story segment on the southern portion of the site from the site’s frontage on East 20<sup>th</sup> Street running north for 42 feet (the “Southern Portion”), and a three-story segment on the remaining 20-foot portion of the site located on former Tax Lot 28 (the “Northern Portion”); and

WHEREAS, the proposed building has the following non-compliance: a 38’-3” street wall height on the northern 20 feet of the site’s frontage on Second Avenue (a minimum street wall height of 60’-0” is required); and

WHEREAS, the applicant notes that the remaining 42 feet of the School’s frontage on Second Avenue and all of its East 20<sup>th</sup> Street frontage provide a 101’-6” street wall in compliance with the R9A zoning requirements; and

WHEREAS, the proposal provides for the following uses: (1) a shared gymnasium/multi-purpose room on the cellar level; (2) a lobby and garden terrace on the first floor; (3) a shared library, conference room, and administrative offices on the second floor; (4) lower school classrooms and a shared lunchroom on the third floor; (5) a shared play area on the roof above the third-floor lunch room; (6) lower school classrooms on the fourth floor; (7) shared classroom and therapy space on the fifth and sixth floors; and (8) middle school classrooms on the seventh and eighth floors; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the proposed school: (1)

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accommodating the current enrollment while allowing for future growth; (2) providing a middle school; (3) providing small floor plates; and (4) preserving a physical separation between the lower and middle schools while simultaneously providing communal spaces for all students' use; and

WHEREAS, in order to meet its programmatic needs, the applicant seeks a variance to ZR § 35-24; and

WHEREAS, the applicant states that Learning Spring currently leases space in an office building located at 254 West 29<sup>th</sup> Street which is now inadequate to accommodate its current and projected enrollment; and

WHEREAS, the applicant further states that the current location can accommodate only 59 kindergarten through sixth grade students; and

WHEREAS, the applicant states that Learning Spring provides educational opportunities for students diagnosed with autism spectrum disorders, including Asperger's Syndrome and Pervasive Developmental Disorder, and other neuro-cognitive disorders; and

WHEREAS, the applicant represents that there is a lack of appropriate middle schools in New York City for children diagnosed as being on the high-functioning end of the autism spectrum; and

WHEREAS, the applicant states that Learning Spring therefore proposes to create a seventh and eighth grade middle school program at the subject site, thereby increasing the size of its student body from 59 students to 110 students; and

WHEREAS, thus, the applicant represents that its relocation to the subject site is necessary in order to develop a new school building that would accommodate its current enrollment as well as new middle school students; and

WHEREAS, the applicant represents that the environment most conducive to learning for students with autism spectrum disorders is provided by small classrooms on floor plates which limit the number of classrooms to three or four per floor; and

WHEREAS, the applicant further represents that small classrooms on small floor plates are necessary to create and maintain an intimate, comprehensible learning environment to meet the unique educational and therapeutic requirements for students at the School; and

WHEREAS, the applicant further represents that the unique educational and therapeutic requirements for students at the School also require that adequate light and air be provided to each classroom and multi-use space; and

WHEREAS, the applicant states that small floor plates allow for a greater amount of light and air to reach each classroom than would be possible with larger floor plates; and

WHEREAS, the applicant states that limiting the development of the Northern Portion of the site to a height of 38'-3" enables the School to construct smaller floor plates on the upper floors, thereby providing an intimate, comprehensible environment conducive to fostering socialization in a supportive and controlled atmosphere; and

WHEREAS, the applicant submitted plans for an as-of-right school building, which indicate that compliance with the minimum street wall height would result in substantially larger third, fourth, and fifth floors than those in the proposed school,

with each floor consequently accommodating a greater number of students and a larger number of activities than is optimal; and

WHEREAS, the applicant states that such floor plates would constrain the ability to provide an intimate, comprehensible learning environment, and would not provide adequate light and air to the classrooms; and

WHEREAS, the applicant represents that the requested variance is therefore necessary in order to provide small floor plates for the School; and

WHEREAS, the applicant states that meeting its students' unique educational and therapeutic requirements requires that the lower and middle school classrooms be physically separated, while providing jointly used educational, recreational, and therapy spaces; and

WHEREAS, the applicant represents that such a physical arrangement is integral to the students' daily routines and provides the stability, safety, and intimacy needed to meet the School's educational goals; and

WHEREAS, the applicant further represents that the School's design enables Learning Spring to meet its programmatic needs by permitting students from the lower and middle schools to share common spaces, including the library, lunch room, gymnasium, computer and science labs, and specialized therapy and counseling spaces, while maintaining separate lower and middle school learning environments; and

WHEREAS, the applicant further states that the lower height of the Northern Portion of the School allows a play area to be located on the roof of that portion of the building, providing proximity to the lower school as well as separation from the shared core educational spaces; and

WHEREAS, the applicant represents that a complying school building would impair the School's ability to maintain separation between the lower and middle schools because the lower school students would be required to navigate the shared educational spaces located on the fourth and fifth floors in order to access the lunch room and rooftop play area; and

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

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

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

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

WHEREAS, the applicant states that the Northern

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Portion of the subject site is also subject to a 1969 light and air easement over former Tax Lot 28, restricting any new or enlarged building on that portion of the site to a maximum height of 12 feet above the height of the then-existing building; and

WHEREAS, the applicant notes that the height of the prior building located on former Tax Lot 28 was approximately 34'-11"; thus, the easement limits the portion of the subject building located on former Tax Lot 28 to a maximum height of approximately 46'-11"; and

WHEREAS, the applicant represents that the easement restriction also creates a practical difficulty and unnecessary hardship in complying with the applicable zoning; and

WHEREAS, based upon the above, the Board finds that the aforementioned physical condition, when considered in conjunction with the programmatic needs of the School, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

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

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

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

WHEREAS, the applicant represents that the bulk and height of the School would be consistent with the bulk and height of buildings in the surrounding neighborhood, which is characterized by low-rise and mid-rise buildings in the mid-block areas and mid-rise and high-rise buildings on Second Avenue; and

WHEREAS, the applicant notes that the surrounding neighborhood is a mixed-use area containing residential, commercial and institutional uses, including several other schools; and

WHEREAS, the Board notes that the proposed school building is smaller than is permitted by the zoning requirements, and that the proposed 38'-3" street wall height for the Northern Portion of the School is consistent with the street wall height of the adjacent three-story buildings; and

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

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

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

WHEREAS, the applicant states that the requested

variance is limited to the Northern Portion of the building; the remaining 42 feet of the School's Second Avenue frontage and all of its East 20<sup>th</sup> Street frontage complies with the minimum street wall requirement; and

WHEREAS, therefore, the applicant represents that the requested waiver for street wall height is the minimum necessary to accommodate the School's current and projected programmatic needs; and

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

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

WHEREAS, the project is classified as a Unlisted action pursuant to Sections 617.2 of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 09BSA055M, dated December 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 ("DEP") Office of Environmental Planning and Assessment has evaluated the following submissions from the applicant: (1) an August 2007 Phase I Environmental Site Assessment; (2) a December 2008 Environmental Assessment Statement ("EAS"); (3) a March 2009 Phase II Subsurface Investigation; (4) a March 2009 OITC Acoustical Analysis; and (5) an April 2009 Revised EAS Noise Analysis; and

WHEREAS, the applicant has installed a Preprufe membrane as part of the foundation to provide a barrier for water, moisture and gases; and

WHEREAS, DEP concludes that the proposed project would not result in a significant adverse hazardous materials impact provided that all DEP remedial requirements have been properly implemented; and

WHEREAS, after all remediation activities are implemented, a Remedial Closure Report certified by a professional engineer must be submitted to DEP for approval which includes, but is not limited to transportation manifests and soil, construction and demolition debris disposal/recycling certificates; and

WHEREAS, DEP has reviewed the March 2009 acoustical analysis and determined that the attenuation required to achieve an acceptable interior noise level of 45 dBA on the east façade (Second Avenue frontage) is 31 dBA and that the attenuation required to achieve an

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acceptable noise level on the south facade (East 20<sup>th</sup> Street frontage) is 26 dBA; and

WHEREAS, DEP also determined that windows with an Outdoor-Indoor Transmission Class rating (“OITC”) of at least 39 dBA are necessary on the fifth floor façade immediately adjacent to the rooftop play area to satisfy interior noise level requirements and that central air-conditioning is required as an alternate means of ventilation; and

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within a C1-5 (R9A) zoning district, the construction of a three-story and eight-story school building (Use Group 3), which is contrary to ZR § 35-24(c), *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 March 3, 2009,” – (15) sheets and “Received May 8, 2009,” – (1) sheet and *on further condition*:

THAT the following shall be the bulk parameters of the building: a 38’-3” street wall height on the northern 20 feet of the site’s frontage on Second Avenue, as illustrated on the BSA-approved plans;

THAT any change in the use, occupancy, or operator of the School requires review and approval by the Board;

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

THAT the issuance of building permits shall be conditioned on the submission of a DEP Notice to Proceed;

THAT issuance of a permanent certificate of occupancy shall be conditioned on the issuance by DEP of a Notice of Satisfaction;

THAT windows with an OITC rating of at least 39 dBA be installed on the fifth floor façade adjacent to the rooftop play area, that windows with an OITC rating of at least 31 dBA be installed on the east façade (Second Avenue frontage), that windows with an OITC rating of at least 26 dBA be installed on the south facade (East 20<sup>th</sup> Street frontage), and that central air-conditioning be provided; and

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning

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

Adopted by the Board of Standards and Appeals, May 12, 2009.

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## 16-09-BZ

### CEQR #09-BSA-065M

APPLICANT – Slater & Beckerman, LLP, for The Devlin Building LLC, owner; Yoga Works, Inc., lessee.

SUBJECT – Application February 4, 2009 – Special Permit (§73-36) to allow a physical culture establishment on the second and third floors of an existing five-story building. The proposal is contrary to ZR §42-10. M1-5B district.

PREMISES AFFECTED – 459 Broadway, south west corner of Broadway and Grand Street, Block 231, Lot 30, Borough of Manhattan.

### COMMUNITY BOARD #2M

#### APPEARANCES –

For Applicant: Joshua Trauner.

**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 January 30, 2009, acting on Department of Buildings Application No. 110435967, reads in pertinent part:

“Physical culture establishment (yoga studio) is not permitted as of right in M1-5B district and is contrary to ZR § 42-10;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site in an M1-5B zoning district within the SoHo-Cast Iron Historic District, the establishment of a physical culture establishment (“PCE”) on the second and third floors of a five-story commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on April 21, 2009 after due notice by publication in *The City Record*, and then to decision on May 12, 2009; and

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

WHEREAS, the subject site is located on the southwest corner of the intersection at Broadway and Grand Street, within an M1-5B zoning district; and

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

WHEREAS, the PCE will occupy approximately 8,511 sq. ft. of floor area on the second and third floors of the existing building; and

WHEREAS, the PCE will be operated as “YogaWorks;” and

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

WHEREAS, the site is located within the SoHo-Cast Iron Historic District and the applicant represents that measures have been taken to preserve the historical integrity of the property; and

WHEREAS, the applicant submitted a Certificate of No Effect from the Landmarks Preservation Commission, issued February 23, 2009; and

WHEREAS, the proposed hours of operation are: Monday through Friday, from 6:00 a.m. to 9:00 p.m.; and Saturday and Sunday, from 7:00 a.m. to 8:00 p.m.; and

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

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

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

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 09BSA065M, dated January 12, 2009; and

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

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental

Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site located in an M1-5B zoning district within the SoHo-Cast Iron Historic District, the establishment of a physical culture establishment on the second and third floors of an existing five-story commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received April 27, 2009"-(3) sheets; and *on further condition*:

THAT the term of this grant shall expire on May 12, 2019;

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

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

THAT all signage shall comply with M1 zoning regulations;

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

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, May 12, 2009.

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## **26-09-BZ & 48-09-A**

APPLICANT – Sheldon Lobel, P.C., for CAMBA Housing Ventures, Inc., owner.

SUBJECT – Application February 17, 2009 – Variance (§72-21) to permit the construction of a nine-story community facility building. The proposal is contrary to ZR section 24-36. R7-1 district. Waiver of Section 36 of the General City Law to permit the construction of a building without the 30-foot turnaround frontage space.

PREMISES AFFECTED – 97 Croke Avenue, north side of Croke Avenue, 164' west of Ocean Avenue, Block 5059, Lot 51, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

APPEARANCES –

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For Applicant: Richard Lobel.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 3, 2009, acting on Department of Buildings Application No. 310246061, reads in pertinent part:

“Proposed rear yard on Croke Avenue for a community facility in an R7-1 district is contrary to ZR 24-36. Required rear yard = 30’. Proposed rear yard = 24’”; and

WHEREAS, this is an application under ZR §72-21, to permit, within an R7-1 zoning district, the proposed construction of a nine-story community facility building with sleeping accommodations (UG 3), contrary to ZR §24-36; and

WHEREAS, the applicant filed a companion case under BSA Calendar No. 48-09-A pursuant to General City Law § 36, to allow the proposed building to be erected without a 30-foot turnaround frontage space; this application was granted the date hereof; and

WHEREAS, a public hearing was held on this application on March 31, 2009 after due notice by publication in *The City Record*, and then to decision on May 12, 2009; and

WHEREAS, this application is brought on behalf of CAMBA Housing Ventures, Inc. (“CAMBA”), a not-for-profit entity; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, Borough President Marty Markowitz submitted a letter supporting the proposal; and

WHEREAS, a number of local residents submitted letters and oral testimony in support of the proposal; and

WHEREAS, several local residents testified at hearing in opposition to the proposal; and

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

WHEREAS, the site is located on the north side of Croke Avenue, 164 feet west of Ocean Avenue within an R7-1 zoning district and has a lot area of approximately 8,227 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes a nine-story 53-unit community facility building (UG 3) with a floor area of 28,290 sq. ft. (3.4 FAR); and

WHEREAS, the building will provide a rear yard of 24’-0” (a rear yard of 30’-0” is the minimum required); and

WHEREAS, the applicant states that CAMBA has a mission to provide supportive housing and social services to low-income tenants; and

WHEREAS, the applicant represents that the requested variance is necessitated by unique conditions of the site that

create a hardship, specifically: (1) the site’s triangular shape; (2) an adjacent below-grade subway line; and (3) the site’s limited frontage; and

WHEREAS, the applicant states that the triangular shape of the site creates substantial difficulty in designing an efficient residential building without encroaching into the rear yard; and

WHEREAS, the applicant further states that the unique configuration of the subject site sharply reduces the number of units possible in a complying building; plans submitted by the applicant indicate that such a building could produce no more than 39 units; and

WHEREAS, the applicant represents that a 60-unit building could be built on a site with the same lot area as the subject site but which instead had a more standard rectangular configuration; and

WHEREAS, as to the adjacent subway line, the subject site abuts an 18-foot below-grade right-of-way for the B and Q subway lines; and

WHEREAS, the applicant states that a five-foot Metropolitan Transit Authority (“MTA”) retaining wall separates the right of way from the subject site and that MTA regulations mandate that eight feet of clearance be provided between the building and the wall to protect the existing railroad structure; and

WHEREAS, the applicant states that providing the required clearance further reduces the floor plates of a complying development; and

WHEREAS, the applicant states that the subject site has an effective frontage of only 12 feet, due to an existing easement held by the MTA for a bridge structure; and

WHEREAS; the applicant further states that building utilities must consequently be provided within the 12-foot street frontage, which is not feasible for a building of this type; and

WHEREAS, the applicant also states that a rear yard variance is requested based on CAMBA’s programmatic need to provide 53 permanent dwelling units for homeless and formerly homeless persons, and low-income individuals; and

WHEREAS, specifically, the applicant states that 60 percent of the units will be restricted to individuals with special needs living in City shelter and transitional facilities and that 40 percent of the units will be reserved for individuals with annual incomes at or below 60 percent of the adjusted median income established for the New York metropolitan area; and

WHEREAS, the applicant further states that the building program includes access to onsite accessory social service programming, which includes job training, counseling, and case management; and

WHEREAS, the applicant provided documentation of preliminary funding commitments from the NYC Department of Health and Human Services, the NYC Department of Homeless Services, the NYC Department of Housing Preservation and Development, and the Office of the Brooklyn Borough President; and

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

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WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate and in conjunction with the programmatic need of the applicant, create practical difficulties and unnecessary hardship in developing the site in strict conformance with the applicable zoning regulations; and

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

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, the community facility use is permitted as-of-right in the subject R7-1 zoning district; and

WHEREAS, the applicant states that the proposed development is consistent with that of the surrounding area, which is characterized by multi-family residential buildings; and

WHEREAS, the applicant further states that the requested rear yard waiver of 6'-0" would have a limited affect on surrounding properties because the 15'-9" rear yard of the adjoining property provides a combined rear yard distance of 39'-9" between buildings; and

WHEREAS, additionally, the applicant represents that the MTA subway right-of-way with a width of 60 feet adjoining the subject site further ensures access to light and air; and

WHEREAS, several neighborhood residents testified in opposition to the proposed building, citing concerns with its bulk and height; and

WHEREAS, the Board notes that the proposed bulk is well below the limit for an as-of-right Use Group 3 community facility building in the subject R7-1 zoning district; and

WHEREAS, specifically, a community facility with an FAR of 4.8 is permitted; the proposed building has an FAR of 3.44; and

WHEREAS, the Board further notes that the proposed floor area, building height and setback are well within the parameters of the subject zoning district; and

WHEREAS, the applicant submitted an impact review of projected noise levels caused by the adjacent subway lines indicating that double-glazed windows must be provided to achieve 35 dBA window-wall attenuation and a resulting interior level of 45 dBA; and

WHEREAS, the applicant agrees to provide the recommended noise attenuation measures; and

WHEREAS, the applicant additionally proposes to provide landscaping and an outdoor recreation area at the rear of the site; and

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

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

WHEREAS, as discussed above, CAMBA requires a

minimum number of housing units in order to achieve its programmatic needs and to be eligible for certain funding; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford relief and allow CAMBA to carry out the stated needs; and

WHEREAS, thus, 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, Sections 617.6(h) and 617.2(h) of 6NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 09BSA073K, dated April 20, 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, 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 R7-1 zoning district, the proposed construction of a nine-story community facility building, contrary to ZR § 24-36, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received May 11, 2009"- (6) sheets; and "Received May 12, 2009"- (1) sheet and *on further condition*:

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

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

THAT the parameters of the proposed building shall be a rear yard of 24'-0";

THAT double-glazed windows with a 35 dBA shall be provided to achieve a 45 dBA interior noise level, as shown on the BSA-approved plans;

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

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

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

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

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

Adopted by the Board of Standards and Appeals, May 12, 2009.

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## 276-08-BZ

APPLICANT – Alfonso Duarte, for Kesyl LLC, owner; Beljanski Wellness Center Inc., lessee.

SUBJECT – Application November 12, 2008 – Special Permit (§73-36) to allow a physical culture establishment on the sixth floor in a seven-story office building. The proposal is contrary to ZR §32-10. C5-2 district.

PREMISES AFFECTED – 150 East 55<sup>th</sup> Street, south side, 155' east of Lexington Avenue, Block 1309, Lot 7501, Borough of Manhattan.

### COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Alfonso Duarte.

For Opposition: Alan Jaskowitz

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 9, 2009, at 1:30 P.M., for decision, hearing closed.

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## 297-08-BZ

APPLICANT – Lewis E. Garfinkel, for Itzhak Bardror, owner.

SUBJECT – Application December 4, 2008 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary open space and floor area (§23-141(a)); and less than the required rear yard (§23-47) in an R2 zoning district.

PREMISES AFFECTED – 3496 Bedford Avenue, between Avenue M and Avenue N, Block 7660, Lot 78, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik and Lewis E. Garfindel.

For Opposition: Stuart A. Klein, Sam Trencher, Lea Fuch and Marcus Fuchs.

**ACTION OF THE BOARD** – Laid over to June 23, 2009, at 1:30 P.M., for continued hearing.

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## 308-08-BZ

APPLICANT – Davidoff Malito & Hutcher, LLP, for 201 East 67 LLC, owner; MonQi Fitness, lessee.

SUBJECT – Application October 17, 2008 – Special Permit (§73-36) to allow the legalization of an existing physical culture establishment located on the third through fifth floors in a five-story building. The proposal is contrary to ZR §32-00. C1-9 district.

PREMISES AFFECTED – 201 East 67<sup>th</sup> Street, northeast corner of the intersection of Third Avenue and East 67<sup>th</sup> Street, Block 1422, Lot 1, Borough of Manhattan.

### COMMUNITY BOARD #8M

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to May 19, 2009, at 1:30 P.M., for deferred decision.

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## 1-09-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 39-01 QB LLC c/o Rhodes Management, owner; TSI Sunnyside LLC dba New York Sports Club, lessee.

SUBJECT – Application January 2, 2009 – Special Permit (§73-36) to allow the legalization of an existing physical culture establishment on a portion of the ground floor in a three-story building. The proposal is contrary to ZR §42-00. M1-4 district.

PREMISES AFFECTED – 39-01 Queens Boulevard, northerly side of Queens Boulevard, easterly of 39<sup>th</sup> Street, Block 191, Lot 5, Borough of Queens.

### COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Lyra Altman.

**ACTION OF THE BOARD** – Laid over to May 19, 2009, at 1:30 P.M., for deferred decision.

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## 10-09-BZ

APPLICANT – Francis R. Angelino, Esq., for Religious Org. Tenseishinbikai USA, Inc., owner.

SUBJECT – Application January 23, 2009 – Variance pursuant to § 72-21 to allow a community facility use (house of worship), contrary to front yard regulations, §24-34. R3-2 District.

PREMISES AFFECTED – 2307 Farragut Road/583 East 23<sup>rd</sup> Street, north east corner of Farragut Road and East 23<sup>rd</sup> Street, Block 5223, Lot 2, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Francis R. Angelino, Esq., Omar Walrond, Michiyo Ishikawa, Joseph Tarella, Andy Choi, Fank Fortino and David Leffler.

For Opposition: Richard Silverman, ? Warren Dingott, Russell Bracher, Kyle Christopher, Cecil Riley and Julianne Hirsh.

**ACTION OF THE BOARD** – Laid over to June 9, 2009, at 1:30 P.M., for continued hearing.

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## 17-09-BZ

APPLICANT – MetroPCS New York, LLC, for Pearl Beverly, LLC, owner; MetroPCS New York, LLC, lessee.  
SUBJECT – Application February 4, 2009 – Special Permit (§73-03 & §73-30) to allow a non-accessory radio facility and all accessory equipment.

PREMISES AFFECTED – 5421 Beverly Road, northside of Beverly Road, between East 54<sup>th</sup> and East 55<sup>th</sup> Street, Block 4739, Lot 33, Borough of Brooklyn.

### COMMUNITY BOARD #17BK

APPEARANCES –

For Applicant: Steven Mark.

For Opposition: Angel Stewart.

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 16, 2009, at 1:30 P.M., for decision, hearing closed.

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## 21-09-BZ

APPLICANT – MetroPCS New York, LLC, for Braddock Avenue Owners, Inc., owner; MetroPCS New York, LLC, lessee.

SUBJECT – Application February 10, 2009 – Special Permit (§73-03 & §73-30) to allow a non-accessory radio facility on the rooftop of the existing building.

PREMISES AFFECTED – 222-89 Braddock Avenue, north west corner of Braddock Avenue and Ransom Street, Block 7968, Lot 31, Borough of Queens.

### COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Steven Mark.

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 16, 2009, at 1:30 P.M., for decision, hearing closed.

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## 35-09-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for East 103rd Street Realty LLC c/o Glenwood Management Corporation, owner.

SUBJECT – Application March 2, 2009 – Special Permit filed pursuant to §11-411 & §11-412 of the New York City Zoning Resolution to renew for an additional ten (10) years and to extend a use district exception previously granted pursuant to Section 7(e) of the pre-1961 Zoning Resolution, allowing the use of the ground floor of a two-story building located in an R7A zoning district as a contractors' establishment (Use Group 16).

PREMISES AFFECTED – 345-347 East 103rd Street, for

North side of East 103rd Street between First and York Avenues, Block 1675, Lot 21, 22, Borough of Manhattan.

### COMMUNITY BOARD #11M

APPEARANCES –

For Applicant: James P. Powel and Gary Tarnoff.

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 9, 2009, at 1:30 P.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: 3:30P.M.*