

---

# BULLETIN

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

Published weekly by The Board of Standards and Appeals at its office at:  
40 Rector Street, 9th Floor, New York, N.Y. 10006.

---

Volume 94, Nos. 39-40

October 16, 2009

---

### DIRECTORY

**MEENAKSHI SRINIVASAN, *Chair***

**CHRISTOPHER COLLINS, *Vice-Chair***

**DARA OTTLEY-BROWN**

**SUSAN M. HINKSON**

**EILEEN MONTANEZ**

*Commissioners*

**Jeffrey Mulligan, *Executive Director***

**Roy Starrin, *Deputy Director***

**Becca Kelly, *Counsel***

---

**OFFICE - 40 Rector Street, 9th Floor, New York, N.Y. 10006**

**HEARINGS HELD - 40 Rector Street, 6th Floor, New York, N.Y. 10006**

**BSA WEBPAGE @ <http://www.nyc.gov/html/bsa/home.html>**

**TELEPHONE - (212) 788-8500**

**FAX - (212) 788-8769**

### CONTENTS

DOCKET .....621

CALENDAR of October 27, 2009

Morning .....622

Afternoon .....623

---

# CONTENTS

---

**MINUTES of Regular Meetings,  
Tuesday, October 6, 2009**

Morning Calendar .....624

**Affecting Calendar Numbers:**

32-91-BZ	838/846 Fulton Street, Brooklyn
297-99-BZ	45-05 Bell Boulevard, Queens
684-64-BZ	360 East 72 <sup>nd</sup> Street, Manhattan
590-76-BZ	243 East 59 <sup>th</sup> Street, Manhattan
1259-79-BZ	29 West 26 <sup>th</sup> Street, Manhattan
16-95-BZ	434 East 77 <sup>th</sup> Street, Manhattan
5-96-BZ	564-92 St. John Place, Brooklyn
172-96-BZ	597/99 Marcy Avenue, Brooklyn
193-97-BZ	27-29 Great Jones Street, Manhattan
296-08-A	45-02 111 <sup>th</sup> Street, Queens
38-09-A	72-45 43 <sup>rd</sup> Avenue, Queens
181-09-A	410 East 64 <sup>th</sup> Street, Manhattan
228-09-A & 229-09-A	37-45 and 37-47 98 <sup>th</sup> Street, Queens
233-09-BZY	91-12 175 <sup>th</sup> Street, Queens

Afternoon Calendar .....630

**Affecting Calendar Numbers:**

169-08-BZ	46 Laight Street, Manhattan
7-09-BZ	1082 East 26 <sup>th</sup> Street, Brooklyn
46-09-BZ	122 Oxford Street, Brooklyn
49-09-BZ	1323 East 32 <sup>nd</sup> Street, Manhattan
176-09-BZ	220-236 West 28 <sup>th</sup> Street, Manhattan
184-09-BZ	4072 Bedford Avenue, Brooklyn
73-06-BZ	111 Union Street, Brooklyn
195-07-BZ	8-12 Bond Street, Manhattan
100-08-BZ & 101-08-A	205 Wolverine Street, Staten Island
171-08-BZ	40 West 68 <sup>th</sup> Street, Manhattan
186-08-BZ	3065 Atlantic Avenue, Brooklyn
197-08-BZ	341/349 Troy Avenue, Brooklyn
210-08-BZ	130-15 89 <sup>th</sup> Road, Queens
260-08-BZ	148 Oxford Street, Brooklyn
297-08-BZ	3496 Bedford Avenue, Brooklyn
23-09-BZ	114 Amherst Street, Brooklyn
29-09-BZ	44 Brunswick Street, Staten Island
164-09-BZ	124 Irwin Street, Brooklyn
225-09-BZ	45 Beacon Avenue, Staten Island
226-09-BZ	24 East 13 <sup>th</sup> Street, Manhattan

---

# DOCKETS

---

New Case Filed Up to October 6, 2009  
-----

**272-09-BZ**

32-62 Steinway Street, North side, 281' east of 34th Avenue., Block 656, Lot(s) 61, Borough of **Queens, Community Board: 1**. Special Permit (73-36) to allow legalization of a physical culture establishment. C4-2 district.  
-----

**273-09-BZ**

117-40 125th Street, West side of 125th Street, 360 mfeet north of intersection with Sutter Avenue., Block 11746, Lot(s) 64, Borough of **Queens, Community Board: 10**. Variance to allow a single family home, contrary to bulk regulations. R3-2 district.  
-----

**274-09-A**

3920 Merritt Avenue, 153 Feet north of intersection of Merritt and East 233rd Street, Block 4972, Lot(s) 12, Borough of **Bronx, Community Board: 12**. Application filed by the Fire Department seeking to modify Certificate of Occupancy No. 71956 to require additional fire protection for a commercial use in the form of automatic wet sprinkler system throughout the entire building . M1-1 by an R-4 district.  
-----

**275-09-A**

1801 51st Street, 18th Avenue and 51st Street, Block 5461, Lot(s) 1, Borough of **Brooklyn, Community Board: 12**. Application filed by the NYC Fire Department to modify Certificate of Occupancy No. 12578, 53475, 15219 & 71956 to require additional fire protection in the form of automatic wet sprinkler system throughout the entire building . R-5 district.  
-----

**276-09-A**

18th Avenue and 51st Street, Block 5461, Lot(s), Borough of **Brooklyn, Community Board: 12**. Application for multiple certificate of occupancies to require additional fire protection. R-5 district.  
-----

**277-09-A**

18th Avenue and 51st Street, Block 5461, Lot(s), Borough of **Brooklyn, Community Board: 12**. Application for multiple certificate of occupancy to require additional fire protection. R-5 district.  
-----

**278-09-A**

18th Avenue and 51st Street, Block 5461, Lot(s) 1, Borough of **Brooklyn, Community Board: 12**. Application for multiple certificate of occupancy to require additional fire protection. R-5 district.  
-----

**279-09-BZ**

2709 Avenue M, Between East 27th and East 28th Street, Block 7645, Lot(s) 7, Borough of **Brooklyn, Community Board: 14**. Special Permit (73-622) for the enlargment of a single family home. R-2 district.  
-----

**280-09-A**

330 West 86th Street, South side of West 86th Street, 280 feet west of the intersection of Riverside Drive and West 86th Street., Block 1247, Lot(s) 49, Borough of **Manhattan, Community Board: 7**. Appeal seeking determination of the Department of Building. R10A district.  
-----

**279-09-BZ**

2709 Avenue M, Between East 27th and East 28th Street., Block 7645, Lot(s) 7, Borough of **Brooklyn, Community Board: 14**. Special Permit (73-622) for the enlargment of a single family home. R-2 district.  
-----

**280-09-A**

330 West 86th Street, South side of West 86th Street, 280 feet west of the intersection of Riverside Drive and West 86th Street., Block 1247, Lot(s) 49, Borough of **Manhattan, Community Board: 7**. Appeal seeking determination of the Department of Building. R10A district.  
-----

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

---

# CALENDAR

---

**OCTOBER 27, 2009, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, October 27, 2009, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

-----  
**SPECIAL ORDER CALENDAR**

**321-63-BZ**

APPLICANT – Slater & Beckerman, LLP, for Verizon New York, owner.

SUBJECT – Application September 15, 2009 – Amendment of Special Permit (§73-65) which allowed the enlargement of Telephone Exchange Facility (UG 6D). The amendment would allow the change of use from a telephone exchange (UG 6D) to a UG 6 on the first floor, from a hospital related facility (UG 4A) to a school (UG 3) on the fourth floor, from a telephone exchange (UG 6D) to a school (UG 3) on the fifth and sixth floors, and from offices for the Human Resources Administration (UG 6B) to offices (UG 6B) on the seventh and eighth floors and the creation of recreation space, accessory to the school (UG 3), on the roof. R8/Special Grand Concourse Preservation District.

PREMISES AFFECTED – 1775 Grand Concourse, 100 East 175th Street and 1730 Walton Avenue, Corner lot with frontages on the south side of East 175th Street, east side of Walton Avenue and west side of Grand Concourse, Block 2822, Lot 27, Borough of Bronx.

**COMMUNITY BOARD #5BX**

-----

**60-82-BZ**

APPLICANT – Eric Palatnik, P.C., for BP Products North America, owner.

SUBJECT – Application September 22, 2009 – Extension of Time to obtain a Certificate of Occupancy for a gasoline service station (BP North America) which expired on December 13, 2007; Waiver of the Rules. C2-3/R7X zoning district.

PREMISES AFFECTED – 60-11 Queens Boulevard, between 60<sup>th</sup> Street and 61<sup>st</sup> Street, Block 1338, Lot 1, Borough of Queens.

**COMMUNITY BOARD #2Q**

-----

**140-92-BZ**

APPLICANT – The Law Office of Fredrick A. Becker, for Evangel Church, owner.

SUBJECT – Application December 19, 2008 – Amendment of variance (§72-21) which allowed a five story and cellar enlargement of an existing four story and cellar non-conforming school with accessory uses (UG 3) which increased the degree of non-compliance when the zoning lot was designated M1-3D. The amendment seeks to enlarge the current building creating new non-compliances with

respect to height and setback (§43-43). M1-2/R5D & M1-2/R5B (Special Long Island City Mixed Use District). PREMISES AFFECTED – 39-21 Crescent Street, southerly side of Crescent Street between 39th Avenue and 40th Avenue, Block 396, Lot 10 & 36, Borough of Queens.

**COMMUNITY BOARD #1Q**

-----

**3-04-BZ**

APPLICANT – Eric Palatnik, P.C., for Rushikesh Trivedi, owner.

SUBJECT – Application September 22, 2009 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for a two story, two family dwelling which expires on November 29, 2009; Waiver of the Rules. R-2 zoning district.

PREMISES AFFECTED – 147-08 46<sup>th</sup> Avenue, between Parsons Boulevard and 149<sup>th</sup> Street, Block 5452, Lot 3, Borough of Queens.

**COMMUNITY BOARD #7Q**

-----

**19-05-BZ**

APPLICANT – Slater & Beckerman, LLP, for Groff Studios Corporation, owner.

SUBJECT – Application September 18, 2009 – Extension of Time to complete construction of a previously granted Variance (§72-21) for the change in use of portions of an existing nine-story, mixed-use building to residential use which expires on October 18, 2009. M1-6 zoning district.

PREMISES AFFECTED – 151 West 28<sup>th</sup> Street, north side of West 28<sup>th</sup> Street, 101' east of Seventh Avenue, Block 804, Lot 8, Borough of Manhattan.

**COMMUNITY BOARD #5M**

-----

**APPEALS CALENDAR**

**197-09-A**

APPLICANT – Paul Russo, Breezy Point Cooperative Inc., owner; Paul Armour, lessee.

SUBJECT – Application June 26, 2009 – Proposed reconstruction and enlargement of an existing building which lies within the bed of a mapped street contrary to General City Law Section 35 and the upgrade of the private disposal system located within the bed of a mapped street contrary to Section 35 GCL and the Department of Buildings Policy. R4 Zoning District.

PREMISES AFFECTED – 518 Browns Boulevard, southwest side of Browns Boulevard, 366.43' east of Bayside Drive, Block 16340, Lot 50, Borough of Queens.

**COMMUNITY BOARD #14Q**

-----

---

# CALENDAR

---

**232-09-A**

APPLICANT – New York City Fire Department  
OWNER OF PREMISES: Martin Goldstein  
LESSEE: Romar Check Cashing  
SUBJECT – Application July 23, 2009 – An appeal filed by the NYC Fire Department seeking a modification of Certificate of Occupancy to require an approved automatic wet sprinkler system installed throughout the entire building of a commercial use . R5 zoning district.  
PREMISES AFFECTED – 1775 Flatbush Avenue, Brooklyn Avenue and East 36<sup>th</sup> Street, Block 7618, Lot 39, Borough of Brooklyn.  
**COMMUNITY BOARD #18BK.**  
-----

**OCTOBER 27, 2009, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, October 27, 2009, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:  
-----

## ZONING CALENDAR

**14-09-BZ**

APPLICANT – Eric Palatnik, P.C., for Orenstein Brothers, owner; ExxonMobil Corporation, lessee.  
SUBJECT – Application January 26, 2009 – Special Permit (§73-211) to allow an automotive service station with an accessory convenience store and automotive laundry (UG 16B) on a site located in a C2-1/R3-2 zoning district.  
PREMISES AFFECTED – 2294 Forest Avenue, Southeast intersection of Forest Avenue and South Avenue, Block 1685, Lot 15, 20, Borough of Staten Island.  
**COMMUNITY BOARD #1SI**  
-----

**182-09-BZ**

APPLICANT – Eric Palatnik, P.C., for Congregation Mita, Inc., owner.  
SUBJECT – Application June 4, 2009 – Variance (§72-21) to legalize the existing Use Group 3 novitiate and Use Group 4 house of worship. The proposal is contrary to §24-35 (side yard) and §24-36 (rear yard). R7-2 district.  
PREMISES AFFECTED – 612 West 180<sup>th</sup> Street, 180<sup>th</sup> Street between Wadsworth and St. Nicholas Avenues, Block 2162, Lot 33, Borough of Manhattan.  
**COMMUNITY BOARD #12M**  
-----

**215-09-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for 92-16 95th Avenue Realty Corporation By: Alfred Smith, owner.  
SUBJECT – Application July 6, 2009 – Special Permit (§11-411 & §11-413) for a reinstatement and change of use

from a wholesale sales of imported food products (UG 7) to retail (UG6) on the ground floor of a three story building, which expired on March, 2002; Extension of Time to obtain a certificate of occupancy, which expired March 1993; Waiver of the Rules. R5 zoning district.

PREMISES AFFECTED – 92-16 95th Avenue Southwest corner of 93rd Street and 95th Avenue, Block 9032, Lot 8, Borough of Queens.

**COMMUNITY BOARD #9Q**  
-----**218-09-BZ**

APPLICANT – Jeffrey A. Chester, for Rich Gene Realty Corporation, owner; McDonald's Corporation, lessee.  
SUBJECT – Application July 8, 2009 – Special Permit (§73-243) to allow an accessory drive-through facility to an as-of-right eating and drinking establishment (McDonald's) on the C1-3 zoned portion of a lot which is divided by a district boundary line and is contrary to §32-15. C1-3/C8-2 zoning district.

PREMISES AFFECTED – 57 Empire Boulevard, between Mckeever Place and Bedford Avenue, bounded by Sullivan Place on south, Block 1306, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**  
-----**247-09-BZ**

APPLICANT – Michael T. Sillerman, Esq., c/o Kramer Levin et al, for Central Synagogue, owner.

SUBJECT – Application August 26, 2009 – Variance (§72-21) to allow for the expansion of the Community House of the Congregation Ahawath Chesed Shaar Hashomayim contrary to floor area and height and setback regulations. (ZR 33-12, 81-211, 33-432). C5-2, C5-2.5 MiD District.

PREMISES AFFECTED – 123 East 55<sup>th</sup> Street, north side of East 55<sup>th</sup> Street between Park Avenue and Lexington Avenue, 127.5', Block 1310, Lot 10, Borough of Manhattan.

**COMMUNITY BOARD #5M**  
-----

*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, OCTOBER 6, 2009  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**32-91-BZ**

APPLICANT – Walter T. Gorman, P.E., for Fulvan Realty Corporation, owner; Fulton Auto Repair Incorporated, lessee.

SUBJECT – Application May 5, 2009 – Extension of Term and Waiver of the Rules for the continued use of a Gasoline Service Station (*Coastal*) which expired on May 19, 2007. C2-4/R7A zoning district.

PREMISES AFFECTED – 838/846 Fulton Street, south east corner of Vanderbilt Avenue, Block 2010, Lot 25, Borough of Brooklyn.

**COMMUNITY BOARD #2BK**

APPEARANCES –

For Applicant: Cindy Bachan.

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term for a gasoline service station (Use Group 16) with accessory uses, which expired on May 19, 2007; and

WHEREAS, a public hearing was held on this application on July 21, 2009, after due notice by publication in *The City Record*, with a continued hearing on August 18, 2009, and then to decision on October 6, 2009; and

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

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

WHEREAS, the site is located on the southeast corner of the intersection at Fulton Street and Vanderbilt Avenue, within a C2-4 (R7A) zoning district; and

WHEREAS, the site is currently occupied by a gasoline service station (Use Group 16) with accessory uses; and

WHEREAS, on September 29, 1959, under BSA Cal. No. 336-59-BZ, the Board granted a variance to permit the construction and maintenance of a gasoline service station, lubricatorium, car washing and accessory uses for a term of 15

years; and

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

WHEREAS, on May 19, 1992, under the subject calendar number, the Board granted an application under ZR § 11-411 to re-establish the expired variance for a gasoline service station with accessory uses, for a term of five years; and

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

WHEREAS, most recently, on July 23, 2002, the Board granted an amendment to permit the installation of a new canopy, the elongation of the island on the Fulton Street side of the property, the addition of one new multi-product dispenser, the conversion of the existing sales area to a new accessory convenience store and the extension of the service building to accommodate a new bay; and

WHEREAS, the applicant now seeks to extend the term for an additional ten years; and

WHEREAS, at hearing, the Board requested that the applicant either maintain the planters located at the rear of the premises or repair the existing fence and provide screening for the adjacent residential uses; and

WHEREAS, in response, the applicant submitted revised drawings indicating that the existing chain-link fence located at the southeast and southwest corners of the site will be repaired and made 100 percent opaque; and

WHEREAS, at hearing, the Board requested that the applicant provide documentation regarding the current status of an open spill report issued by the New York State Department of Environmental Conservation (“DEC”) and violations issued by the Fire Department regarding a failure to provide the Fire Department with documentation from the Department of Buildings (“DOB”) establishing that its fuel oil equipment has been approved and that its tank has the proper oil level gauge; and

WHEREAS, as to the open spill report, the applicant submitted a letter from its environmental consultant stating that its soil analytical results were below the DEC Technical Administrative Guidance Memorandum Soil Cleanup Objectives, and recommending that no further environmental work needs to be completed; and

WHEREAS, the applicant also submitted a copy of a letter from its environmental consultant to DEC requesting that the subject spill report be closed based on its findings; and

WHEREAS, as to the Fire Department violations, the applicant represents that DOB approved its application, dated August 29, 2009, to replace the existing fuel oil tank, and that it is in the process of selecting a contractor for the work; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated May 19, 1992, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from May 19, 2007, to expire on May 19, 2017; *on condition* that any and all work shall substantially conform to drawings as they apply to the

# MINUTES

objections above noted, filed with this application marked "Received May 5, 2009"– (5) sheets and "August 3, 2009"–(1) sheet; and *on further condition*:

THAT the term of this grant shall expire on May 19, 2017;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Application No. 320016745)

Adopted by the Board of Standards and Appeals, October 6, 2009.

-----

## 297-99-BZ

APPLICANT – Walter T. Gorman, P.E., for Bell & Northern Bayside Company, LLC, owner; ExxonMobil Corporation, lessee.

SUBJECT – Application June 1, 2009 – Extension of Term and Waiver of the Rules for the continued use of a Gasoline Service Station (*Mobil*) which expires on September 19, 2010. C2-2/R-6B zoning district.

PREMISES AFFECTED – 45-05 Bell Boulevard, east side blockfront between Northern Boulevard and 45<sup>th</sup> Road, Block 7333, Lot 201, Borough of Queens.

## COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Cindy Bachan.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term for a gasoline service station (Use Group 16) with accessory uses, which expires September 19, 2010; and

WHEREAS, a public hearing was held on this application on September 15, 2009, after due notice by publication in *The City Record*, and then to decision on October 6, 2009; and

WHEREAS, Community Board 11, Queens, recommends approval of this application; and

WHEREAS, the site is located on the east side of Bell Boulevard between 45<sup>th</sup> Road and Northern Boulevard, in a C2-2 (R6B) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 3, 1960 when, under BSA Cal. No.

477-31-BZ, the Board granted a variance to permit the construction of a gasoline service station located partially within a business district and partially within a residential district; and

WHEREAS, on September 19, 2000, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-211, to permit the replacement of the existing non-conforming gasoline service station with a larger gasoline service station and an accessory convenience store, to expire on September 19, 2010; and

WHEREAS, on February 12, 2008, under the subject calendar number, the Board permitted an amendment to the plans and an extension of time to complete construction and obtain a certificate of occupancy; the grant included a condition that a new certificate of occupancy be obtained by February 12, 2009; and

WHEREAS, on December 9, 2008, under the subject calendar number, the Board granted a further extension of time to obtain a certificate of occupancy, to expire on February 12, 2010, based on the applicant's representation that the owner would be unable to obtain the certificate of occupancy by the stipulated date due to a boundary dispute with the adjoining property owner; and

WHEREAS, the applicant states that the boundary dispute remains ongoing and concerns an approximately 70 sq. ft. portion located at the southeast corner of the site, which was designated for landscaping in the Board's grant on September 19, 2000; and

WHEREAS, the applicant represents that the owner has diligently pursued a new certificate of occupancy but has been unable to obtain it because the Department of Buildings cannot issue a sign-off due to the fact that the southeast corner of the site cannot be developed in accordance with the latest BSA-approved drawing because of the boundary dispute; and

WHEREAS, the applicant now seeks to extend the term of the special permit for ten years, so that when the boundary dispute is resolved the owner will have a term extension in place and be able to promptly obtain a new certificate of occupancy with an expiration date of September 19, 2020; and

WHEREAS, the applicant represents that the boundary dispute is expected to be settled in time to complete all landscaping in accordance with the BSA-approved plans and obtain a certificate of occupancy by February 12, 2010; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated September 19, 2000, so that as amended this portion of the resolution shall read: "to extend the term for a period of ten years from September 19, 2010, to expire on September 19, 2020; *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 June 1, 2009"–(5) sheets; and *on further condition*:

THAT the term of this grant shall expire on September 19, 2020;

THAT a new certificate of occupancy be obtained by

# MINUTES

February 12, 2010;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 402586554)

Adopted by the Board of Standards and Appeals, October 6, 2009.

-----

## 684-64-BZ

APPLICANT – George E. Berger, for 360 East 72<sup>nd</sup> Street Owners Corporation owner.

SUBJECT – Application July 30, 2009 – Extension of Term permitting the use of no more than 45 unused and surplus tenant parking spaces, within an accessory garage, for transient parking granted by the Board pursuant to §60 (3) of the Multiple Dwelling Law (MDL) which is set to expire on October 23, 2009. C1-5 in a R10A & R8B zoning district. PREMISES AFFECTED – 360 East 72<sup>nd</sup> Street, East side of 1<sup>st</sup> Avenue between East 71<sup>st</sup> Street and East 72<sup>nd</sup> Street, Block 1446, Lot 23, Borough of Manhattan.

### COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: George E. Berger.

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 October 27, 2009, at 10 A.M., for decision, hearing closed.

-----

## 590-76-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Cinfiors Limited, owners.

SUBJECT – Application September 15, 2009 – Extension of Term of a previously granted Variance (§72-01(b)) for an existing illuminated sign that exceeds the permitted height above curb level. C2-8 zoning district.

PREMISES AFFECTED – 243 East 59<sup>th</sup> Street, northwest corner of 59<sup>th</sup> Street and Second Avenue, Block 1414, Lot 120, Borough of Manhattan.

### COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to October 20, 2009, at 10 A.M., for decision, hearing closed.

-----

## 1259-79-BZ

APPLICANT – Sheldon Lobel, P.C., for Arabara, LLC, owner.

SUBJECT – Application August 13, 2009 – Extension of Time to complete construction and obtain a certificate of occupancy and Waiver of the Rules of a previously granted Variance (§72-21) for the conversion of all floors above the first floor from manufacturing lofts into residential dwellings which expired on October 6, 1984. M1-6 zoning district.

PREMISES AFFECTED – 29 West 26<sup>th</sup> Street, north side of West 26<sup>th</sup> Street, 350’ east of Sixth Avenue, Block 826, Lot 16, Borough of Manhattan.

### COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Richard Lobel.

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 October 27, 2009, at 10 A.M., for decision, hearing closed.

-----

## 16-95-BZ

APPLICANT – Akerman Senterfitt, LLP, for STA Parking Group, owner.

SUBJECT – Application July 24, 2009 – Extension of Term and Waiver of the Rules of a previously granted Variance (§72-21) for a UG8 parking garage with accessory auto repairs which expired on March 23, 2009. R-8B zoning district.

PREMISES AFFECTED – 434 East 77<sup>th</sup> Street, between 76<sup>th</sup> and 77<sup>th</sup> Street, Block 1471, Lot 31, Borough of Manhattan.

### COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Calvin Wong.

**ACTION OF THE BOARD** – Laid over to October 27, 2009, at 10 A.M., for continued hearing.

-----

## 5-96-BZ

APPLICANT – Sheldon Lobel, P.C. for Saint John's Place, LLC c/o Ultra Parking Systems Incorporated, owner; Park Right Corporation, lessee.

SUBJECT – Application January 20, 2009 – Extension of Term (§11-411) to permit the operation a one-story public parking garage for no more than 150 cars (UG 8), which expired on March 18, 2007; Amendment to change the parking layout; and an Extension of Time to obtain a certificate of occupancy, which expired on March 18, 1998. R7-1 zoning district.

# MINUTES

PREMISES AFFECTED – 564/92 St. John's Place, South side of Saint John's Place approximately 334' west of Classon Avenue, Block 1178, Lot 25, Borough of Brooklyn.

## COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Jordan Most.

**ACTION OF THE BOARD** – Laid over to November 24, 2009, at 10 A.M., for adjourned hearing.

-----

## 172-96-BZ

APPLICANT – Law Office of Mitchell Ross, Esquire, for Don Mitchell owner.

SUBJECT – Application April 17, 2009 – Extension of Term for a variance (§72-21) which expired on May 11, 2009 allowing the operation of a welding shop (UG 16A) contrary to §32-00; Waiver of the Rules. C6-6 zoning district.

PREMISES AFFECTED – 597/99 Marcy Avenue, Southeast corner of Marcy and Vernon Avenues., Block 1759, Lot 7, Borough of Brooklyn.

## COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Mitchell Ross.

**ACTION OF THE BOARD** – Laid over to October 27, 2009, at 10 A.M., for continued hearing.

-----

## 193-97-BZ

APPLICANT – Fredrick A. Becker, for 29 Great Jones Corporation owner.

SUBJECT – Application July 22, 2009 – Extension of Term for a special permit (§73-36) which expired on April 1, 2008 for the operation of a Physical Culture Establishment (Great Jones Spa); Waiver of the Rules. M1-5B zoning

PREMISES AFFECTED – 27-29 Great Jones Street, Southerly side of Great Jones Street 69' easterly of the corner of Great Jones Street and Lafayette Street, Block 530, Lot 20, Borough of Manhattan.

## COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Fredrick A. Becker.

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 October 27, 2009, at 10 A.M., for decision, hearing closed.

-----

## APPEALS CALENDAR

### 296-08-A

APPLICANT – Gerald J. Caliendo, R.A., for Federico Camacho, owner.

SUBJECT – Application November 25, 2008 – Proposed four-story, six-family dwelling with a community facility use located within the bed of a mapped street, contrary to General City Law, Section 35. R6B Zoning District.

PREMISES AFFECTED – 45-02 111<sup>th</sup> Street, east side of 45<sup>th</sup> Avenue, 100' south of intersection of 111<sup>th</sup> Street and 45<sup>th</sup> Avenue, Block 2001, Lot 37, Borough of Queens.

### COMMUNITY BOARD #4Q

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, October 6, 2009.

-----

### 38-09-A

APPLICANT – Benjamin Lam, for Lee Zhen Xiang, owner.

SUBJECT – Application March 6, 2009 – Proposed construction of a three-family home located within the bed of mapped street, contrary to General City Law, Section 35. R-5 zoning district.

PREMISES AFFECTED – 72-45 43<sup>rd</sup> Avenue, corner of 43<sup>rd</sup> Avenue and 74<sup>th</sup> Street, Block 1353, Lot 46, Borough of Queens.

### COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Benjamin Lam.

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated March 4, 2009, acting on Department of Buildings Application No. 402138682, reads in pertinent part:

“Proposed building is built to City Mapped Street contrary to Section 35 General City Law;” and

WHEREAS, this application seeks to construct a three-family house located partially within the bed of 43<sup>rd</sup> Avenue, a mapped street; and

WHEREAS, a public hearing was held on this application on October 6, 2009, after due notice by publication in the *City Record*, and then to closure and decision on the same date; and

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

# MINUTES

and

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

WHEREAS, on May 22, 2007, under BSA Cal. No. 65-06-BZ, the Board granted a variance to permit the construction of a three-story three-family home that does not provide one of the two required front yards nor one of the two required side yards, contrary to ZR § 23-45(a) and ZR § 23-462(a); and

WHEREAS, the applicant now seeks permission to construct the proposed three-family home in the bed of a mapped street; and

WHEREAS, by letter dated March 18, 2009, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated April 14, 2009, the Department of Environmental Protection (DEP) states that it has reviewed the application and advises the Board that there is an existing 12-inch combined sewer and an eight-inch diameter water main in the bed of 43<sup>rd</sup> Avenue between 74<sup>th</sup> Street and the Long Island Rail Road (LIRR), and as per Amended Drainage Plan No. 24(32), 8C, 28(3) and 27(4) second ward dated May 22, 1923, there is a future 12-inch diameter combined sewer in 43<sup>rd</sup> Avenue between 74<sup>th</sup> Street and the LIRR; and

WHEREAS, DEP requested that the applicant provide a revised survey or plan showing: (1) the total width of 43<sup>rd</sup> Avenue and the width of the portion of the street to be widened between 74<sup>th</sup> Street and the LIRR; and (2) the distance from the existing water main and the combined sewer to the lot lines in 43<sup>rd</sup> Avenue between 74<sup>th</sup> Street and the LIRR; and

WHEREAS, in response, the applicant submitted a revised site plan reflecting that the 60-ft. total width of 43<sup>rd</sup> Avenue and the paved corridor of 50 feet for 43<sup>rd</sup> Avenue between 74<sup>th</sup> Street and the LIRR will be available for the installation, maintenance and/or reconstruction of the existing 12-inch diameter combined sewer and the eight-inch diameter water main; and

WHEREAS, by letter dated July 7, 2009, DEP states that it has reviewed the revised site plan and has no further objections; and

WHEREAS, by letter dated July 29, 2009, the Department of Transportation (DOT) states that it has reviewed the application and advises the Board that it requires a minimum sidewalk width of ten feet; and

WHEREAS, in response, the applicant submitted a revised site plan showing the addition of the ten-foot wide sidewalk on 43<sup>rd</sup> Avenue; and

WHEREAS by letter dated October 1, 2009, DOT states that it has reviewed the revised site plan and has no further objections; and

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

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated March 4, 2009, acting on Department of Buildings Application No. 402138682 is

modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received October 5, 2009" – one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

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

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

Adopted by the Board of Standards and Appeals, October 6, 2009.

## 181-09-A

APPLICANT – Fire Department of New York, for Koppelman Management, owner; Alexander and Sons Upholstery, lessees.

SUBJECT – Application June 1, 2009 – An appeal filed by the NYC Fire Department seeking a Modification of Certificate of Occupancy to require an approved Automatic Wet Sprinkler system throughout the cellar and first floor of a commercial use. R8 zoning district.

PREMISES AFFECTED – 410 East 64<sup>th</sup> Street, Block 1458, Lot 41, Borough of Manhattan.

### COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Anthony Scaduto, FDNY.

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

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 from the Fire Commissioner, requesting to modify the certificate of occupancy of the subject premises to reflect a requirement for automatic wet sprinklers throughout the cellar level and the stairway leading into and out of the cellar; and

WHEREAS, the Fire Commissioner proposes to issue the following order to the property owner:

“You are hereby directed and required to comply with the following order within (30) days.

Install an approved Automatic Wet Sprinkler System throughout the cellar occupancy and stairs

---

# MINUTES

---

leading into and out of the cellar occupancy arranged and equipped as per Title 27, Chapter 1, and Subchapter 17 of the NYC Administrative Code.

Note: Plans shall be filed and approved by the Department of Buildings before work commences;" and

WHEREAS, a public hearing was held on this application on September 15, 2009, after due notice by publication in the *City Record*, and then to decision on October 6, 2009; and

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

WHEREAS, representatives of the building owner (hereinafter, the "Owner"), provided testimony in opposition to the application; and

WHEREAS, the subject premises is located on the south side of East 64<sup>th</sup> Street, between York Avenue and First Avenue, within an R8 zoning district; and

WHEREAS, the subject site is occupied by a five-story mixed-use building with a shoe repair store and furniture upholstery repair store operating on the first floor, accessory storage of upholstery fabrics in the cellar, and apartments on the second through fifth floors; and

WHEREAS, the current Certificate of Occupancy Number 79367 (the "Current CO") reflects the following uses: (i) a boiler room and storage in the cellar; (ii) Use Group 6 beauty shop and retail store, with an apartment in the rear, on the first floor; and (iii) Use Group 2 apartments on the second through fifth floors; and

WHEREAS, the Current CO does not reflect that sprinklers are required; and

WHEREAS, the Fire Department performed an inspection of the building on January 5, 2009 and submitted a Sprinkler System Recommendation Report for the subject site, dated January 22, 2009, which explained the need for the proposed automatic wet sprinkler system in the cellar and first floor and included photographs of the conditions at the subject site; and

WHEREAS, the Fire Department asserts that the proposed modification to the Current CO is necessary in the interest of public safety because fire protection within the subject building is deemed inadequate; and

WHEREAS, specifically, the Fire Department states that an automatic wet sprinkler system is required on the cellar level and the stairs leading into and out of the cellar for the following reasons: (1) the subject building is a non-fireproof building; (2) the furniture upholstery repair shop with extensive storage in the cellar contains combustible fibers and creates a dangerous condition; (3) the cellar area has very limited access through an interior stair below the main egress for tenants; (4) the inability to vent the cellar, combined with its narrow stairs, combustible storage throughout, and its overall narrowness leads to difficulty in fire suppression and unsafe conditions for

firefighters and building occupants; and (5) a violation order was issued to remove all rubbish and to repair holes in the cellar ceiling; and

WHEREAS, the Fire Department states that there are no fire protection systems currently in place at the subject site, and that the installation of the proposed sprinkler system will help counteract the lack of ventilation and lack of exterior access to the basement; and

WHEREAS, pursuant to the Administrative Code § 27-4265, the Fire Department requests to modify the certificate of occupancy to reflect that an automatic wet sprinkler system be installed throughout the cellar level and stairway leading into and out of the cellar; and

WHEREAS, at hearing, the Owner objected to the proposed sprinkler system as being overly expensive and time-consuming to install, and questioned whether there was an alternative to the installation of the proposed sprinkler system; and

WHEREAS, in response, the Fire Department states that the installation of an automatic wet sprinkler system is the only way to resolve the safety issues created by the first floor and cellar use of the subject building and to protect the tenants of the residential units above; and

WHEREAS, the Board agrees with the Fire Department that, given the use of the building and the inability to provide ventilation through any other means, automatic sprinklers are required in the entire building as per the Building Code; and

WHEREAS, however, the Board notes that the property owner and the Fire Department may agree to modify the specifications for the sprinkler system and the Board would not object to such mutual agreement; and

WHEREAS, thus, based on the evidence in the record, the Board finds that the installation of an automatic wet sprinkler system, as requested by the Fire Department, is necessary to protect life and property at the premises in the event of fire.

*Therefore it is Resolved* that the application of the Fire Commissioner, dated June 1, 2009, seeking the modification of Certificate of Occupancy No. 79367 is hereby granted.

Adopted by the Board of Standards and Appeals, October 6, 2009.

-----

## **228-09-A & 229-09-A**

APPLICANT – Jordan Most of Sheldon Lobel, P.C., for Selvakumar Rajaratnam, owner.

SUBJECT – Application July 16, 2009 – An Appeal seeking a common law vested right to complete construction commenced under the prior R6B zoning district. R5 zoning district.

PREMISES AFFECTED – 37-45 and 37-47 98<sup>th</sup> Street, east side of 98<sup>th</sup> Street, Block 1761, Lots 48 and 49, Borough of Queens.

## **COMMUNITY BOARD #3Q**

APPEARANCES –

For Applicant: Jordan Most.

**ACTION OF THE BOARD** – Laid over to

# MINUTES

November 10, 2009, at 10 A.M., for continued hearing.  
-----

## 233-09-BZY

APPLICANT – Sheldon Lobel, P.C., for 175<sup>th</sup> Street Associates, LLC, owner.

SUBJECT – Application July 24, 2009 – Application to complete construction of a minor development (§11-332) commenced under the prior R6 Zoning District. R4-1 zoning district.

PREMISES AFFECTED – 91-12 175<sup>th</sup> Street, west side of 175<sup>th</sup> Street, Block 9809, Lot (Tent. 70), Borough of Queens.

### COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Richard Lobel.

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 October 20, 2009, at 10 A.M., for decision, hearing closed.  
-----

## REGULAR MEETING

TUESDAY AFTERNOON, OCTOBER 6, 2009

1:30 P.M.

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

## ZONING CALENDAR

### 169-08-BZ

#### CEQR #08-BSA-099M

APPLICANT – James Chin & Associates, LLC, for Jeffrey Bennett, owner.

SUBJECT – Application June 24, 2008 – Variance (§72-21) to allow the redevelopment of a commercial building for residential use. Six residential floors and six dwelling units are proposed; contrary to use regulations (§42-00 & §111-104 (e)). M1-5 (TMU- Area B-2) district.

PREMISES AFFECTED – 46 Laight Street, north side of Laight Street, 25’ of frontage on Laight Street, Block 220, Lot 35, Borough of Manhattan.

### COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Mindy Chin.

**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, decision of the Manhattan Borough Commissioner, dated September 18, 2008, acting on Department of Buildings Application No. 104367436, reads:

“Proposed residential use (UG 2) is not permitted as of right in Manufacturing M1-5, Area B-1 of the Special Tribeca Mixed Use zoning district is contrary to ZR 111-104(e) and ZR 42-00”;

WHEREAS, to permit, within an M1-5 zoning district, within the Special Tribeca Mixed Use District (Area B1) and the Tribeca North Historic District, the conversion and enlargement of a five-story commercial building into a six-story, six-unit residential building, which is contrary to ZR §§ 42-00 and 111-104(e); and

WHEREAS, a public hearing was held on this application on February 3, 2009, after due notice by publication in the *City Record*, with continued hearings on June 16, 2009, July 28, 2009, and August 25, 2009, and then to decision on October 6, 2009; and

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

WHEREAS, Community Board 1, Manhattan, recommends approval of this application; and

WHEREAS, the site is located on the north side of Laight Street between Hudson Street and Varick Street, within an M1-5 zoning district, within the Special Tribeca Mixed Use District (Area B1) and the Tribeca North Historic District; and

WHEREAS, the site has 25 feet of frontage on Laight Street, a depth of 100 feet, and a lot area of approximately 2,500 sq. ft.; and

WHEREAS, the site is occupied by a five-story commercial building built in 1874, with a total floor area of 10,625 sq. ft. and an FAR of 4.3; portions of the building, including the façade, side walls, and the foundation remain, and the floors and rear wall will be reconstructed; and

WHEREAS, the applicant proposes to maintain certain building elements and construct a partial sixth floor to result in a building with a total floor area of 12,500 sq. ft. and an FAR of 5.0; and

WHEREAS, the building will provide one residential unit on each floor, with one parking space and a residential lobby also on the first floor; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in complying with applicable zoning district regulations: (1) the historic building is obsolete for modern commercial or manufacturing use; (2) the site is small; and (3) the site is in close proximity to the Holland Tunnel, has a narrow street width, and is located mid-block, which are not compatible conditions for a conforming use; and

WHEREAS, the applicant represents that the building, built in 1874, is obsolete for modern commercial or manufacturing due to its small floor plate, and lack of a loading dock; and

---

# MINUTES

---

WHEREAS, as to the building's floor plate, the applicant represents that a floor plate of less than 2,500 sq. ft. cannot accommodate modern manufacturing use and cannot compete with modern commercial uses, which provide floorplates in excess of 10,000 sq. ft.; and

WHEREAS, the land use map submitted by the applicant reflects that most sites occupied by conforming uses in the surrounding neighborhood have significantly larger floor plates; and

WHEREAS, as to the lot size, the applicant states that it is insufficient to accommodate a modern building for a conforming use; and

WHEREAS, as to the uniqueness of this condition, the applicant's land use map reflects that the majority of sites within a 400-ft. radius of the site are significantly larger and that there are only six other similarly-sized midblock sites within a 400-ft. radius of the site, one of which is occupied by an eight-story multiple dwelling; and

WHEREAS, the Board finds that the roadway's width, in and of itself, would not create a hardship, but that the combination of the Holland Tunnel traffic, small lot size, small floor plate, and lack of space for loading berths, creates unnecessary hardship and practical difficulty in using the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant notes that the site is located immediately to the north of the rotary road system for vehicles exiting the Holland Tunnel, which results in continuous vehicular traffic that passes directly by the site thus making it unsuitable for a conforming use, which would require loading docks and viable street access for trucks; and

WHEREAS, the applicant also states that the lack of a loading dock and the narrowness of Laight Street, with of width of 60 feet, constrain the site from accommodating the deliveries required of modern manufacturers; and

WHEREAS, the applicant provided a feasibility study analyzing three alternatives: (1) a new as of right commercial building; (2) an as of right conversion of the existing building into loft dwellings and commercial use; and (3) the proposed residential building; and

WHEREAS, the applicant's financial analysis reflects that only the proposal will provide a reasonable rate of return; and

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

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

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

WHEREAS, the applicant notes that the proposed residential use is consistent with the character of the area, which includes many other such uses, some of which occupy

the subject block; and

WHEREAS, the Board agrees that the character of the area is mixed-use, and finds that the introduction of six dwelling units is compatible with the neighborhood character; and

WHEREAS, the applicant also notes that there are several residential buildings which are larger or of comparable size in the vicinity; and

WHEREAS, specifically, a site to the west on Laight Street occupied by a six-story residential building; the site at the northeast corner of Greenwich Street and Laight Street is occupied by an 11-story loft building with first floor commercial use; and there is also a nine-story building and a five-story building with residential use a block away; and

WHEREAS, in support of the above statements, the applicant submitted a land use map, reflecting the uses in the immediate vicinity of the site; and

WHEREAS, additionally, the applicant notes that the sixth floor will be set back so as to minimize its visibility from the street; and

WHEREAS, the Board notes that there are no bulk regulations for a residential building in an M1-5 zoning district, but that the proposed FAR of 5.0 and all other bulk parameters comply with regulations for a conforming use within the subject zoning district; and

WHEREAS, since the rear wall was demolished, the Board inquired as to whether the applicant could provide a rear yard with a depth of 30 feet; and

WHEREAS, the applicant represents that there has historically been a rear yard with a depth of 15 feet, prior to the demolition of the rear wall; accordingly, the applicant proposes to provide a rear yard with a depth of 15 feet, rather than the 30 feet required for residential uses in a residential zoning district; and

WHEREAS, in response to the Board's inquiry, the applicant provided evidence that the site historically had a rear yard with a depth of 15 feet, which is maintained with the reconstruction of the rear wall and the reconstruction of the floors in the place of the pre-existing floors; and

WHEREAS, the Board accepts the evidence as to the historic rear yard condition, but requests that the Department of Buildings confirm that the rear yard condition does not create any non-compliance with the Multiple Dwelling Law or Building Code; and

WHEREAS, the Board notes that the applicant will provide a rear setback with a depth of 30 feet at the sixth floor; and

WHEREAS, the applicant received a Certificate of Appropriateness from the Landmarks Preservation Commission (LPC), dated March 17, 2008; and

WHEREAS, at the LPC's direction, the applicant designed the height of the street wall to be compatible with adjacent buildings; the floor to ceiling heights are proportionate to those on adjacent buildings; and the composition of the façade is in a traditional arrangement which is characteristic of the multi-story buildings in the district; and

WHEREAS, additionally, the applicant represents that the façade materials have been chosen to be compatible with

---

# MINUTES

---

the district's historic character; and

WHEREAS, at hearing, the Board inquired whether an earlier iteration of the proposal, which did not include a vestibule, complied with egress and other Building and Fire Code requirements and directed the applicant to revise the plans if they did not comply; and

WHEREAS, in response, the applicant revised the plans to include the required vestibule; and

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

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

WHEREAS, the applicant represents that the proposed building envelope, which reflects the pre-existing building envelope with the addition of a partial sixth floor, is the minimum necessary to compensate for the additional construction costs associated with the uniqueness of the lot and which has been designed to be compatible with nearby buildings; and

WHEREAS, the Board observes that the proposed building of six dwelling units is limited in scope and compatible with nearby development; and

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

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

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 08-BSA-099M, dated September 22, 2009; and

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

WHEREAS, the Department of Environmental Protection's Office of Environmental Planning and Assessment (DEP) has reviewed the following submissions from the Applicant: June 24, 2008 Environmental Assessment Statement; February 2007 Phase I Environmental Site Assessment; July 2009 Phase II Subsurface Investigation Report; July 2009 Remedial Action Plan (RAP); July 2009 Construction Health & Safety Plan (CHASP); and June 5, 2009 and July 21, 2009 Air Quality and Noise submissions; and

WHEREAS, these submissions specifically examined the proposed action for potential hazardous materials, air quality

and noise impacts; and

WHEREAS, DEP finds the RAP & CHASP acceptable and requests that the applicant submit a professionally-certified Remedial Closure Report to DEP at the conclusion of the construction activities on the subject site; the Remedial Closure Report should contain documentation that all measures described in the RAP have been implemented and that remediation on the site has been completed; and

WHEREAS, DEP states that based on the air quality submissions that significant air quality impacts from surrounding manufacturing/industrial uses on the proposed project are not anticipated; and

WHEREAS, the following proposed noise attenuation was reviewed and approved by DEP for the building: the building design shall include the use of double-glazed windows and an alternate means of ventilation to maintain an interior noise level of 45 dBA in the residential units and the south facade of the proposed building at Laight Street requires 25 dBA of attenuation; and

WHEREAS, DEP has determined that the proposed project would not generate sufficient traffic to have to potential to cause a significant noise impact from mobile sources; 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 Type I Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, within an M1-5 zoning district, within the Special Tribeca Mixed Use District (Area B1) and the Tribeca North Historic District, the conversion and enlargement of a five-story commercial building into a six-story, six-unit residential building, which is contrary to ZR §§ 42-00 and 111-104(e); and, *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 October 2, 2009"– (8) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the proposed building: six stories; six residential units; a total floor area of 12,500 sq. ft. (5.0 FAR); a rear yard with a minimum depth of 15 feet and a minimum depth of 30 feet at the sixth floor; a streetwall height of 59'-10"; and a total height of 66'-4";

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 and confirm compliance for egress, light and air, and all other relevant sections of the Multiple Dwelling Law and Building Code;

# MINUTES

THAT all construction shall be performed in conformance with the plans approved by the LPC and associated with the Certificate of Appropriateness, dated March 17, 2008;

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

THAT the building design shall include the use of double-glazed windows and an alternate means of ventilation to maintain a maximum interior noise level of 45 dBA in the residential units and a maximum of 25 dBA in the south facade of the proposed building at Laight Street;

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

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

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

Adopted by the Board of Standards and Appeals, October 6, 2009.

-----

## 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, contrary to open space and floor area (§23-141), side yards (§23-461) and rear yard (§23-47) regulations. 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 #14BK

#### APPEARANCES –

For Applicant: Lyra J. Altman.

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

#### THE VOTE TO GRANT –

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

Negative:.....0

#### THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated December 19, 2008, acting on Department of Buildings Application No. 310239925, reads:

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

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

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

WHEREAS, a public hearing was held on this application on June 9, 2009 after due notice by publication in *The City Record*, with continued hearings on July 14, 2009, August 11, 2009 and September 15, 2009, and then to decision on October 6, 2009; and

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

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

WHEREAS, certain neighbors to the south of the subject site provided testimony in opposition to the original proposal, citing concerns that the proposed enlargement would block their access to light and air; and

WHEREAS, in response, the applicant modified the proposal and the neighbors withdrew their opposition; and

WHEREAS, the subject site is located on the west side of East 26<sup>th</sup> Street, between Avenue J and Avenue K, in an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 3,750 sq. ft., and is occupied by a single-family home with a floor area of approximately 1,969 sq. ft. (0.52 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 1,969 sq. ft. (0.52 FAR) to 3,764 sq. ft. (1.00 FAR); the maximum permitted floor area is 1,875 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of approximately 54 percent (150 percent is the minimum required); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yard with a width of 3’-9” along the northern lot line (a minimum width of 5’-0” is required) and will provide a complying side yard of 8’-5” 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 adjacent neighbors to the south of the site raised concerns that the proposed enlargement at the rear would reduce the amount of light and air their homes receive; and

WHEREAS, in response, and at the direction of the

# MINUTES

Board, the applicant submitted revised plans reflecting a reduction in the total height of the proposed home from 36'-3" to 35'-2"; and

WHEREAS, subsequently, the neighbors submitted a response to the revised plans, indicating their approval of the new design; and

WHEREAS, at hearing, the Board questioned whether the dormers and roof of the proposed home were in compliance with the requirements of ZR § 23-661; and

WHEREAS, in response, the applicant submitted revised plans reflecting that the dormers were relocated towards the front and the building was redesigned to comply with ZR § 23-661; and

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

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

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

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

*Therefore it is resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 and 73-03, to permit, within an R2 zoning district, the 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 ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received July 28, 2009"-(5) sheets, "September 1, 2009"-(6) sheets and "September 16, 2009"-(2) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a floor area of 3,764 sq. ft. (1.00 FAR); an open space ratio of approximately 54 percent; a side yard with a minimum width of 3'-9" along the northern lot line; a side yard with a minimum width of 8'-5" along the southern lot line; a rear yard with a minimum depth of 20'-0"; and a total height of 35'-2", as illustrated on the BSA-approved plans;

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

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

cellar;

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

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

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

Adopted by the Board of Standards and Appeals, October 6, 2009.

-----

## 46-09-BZ

APPLICANT – Eric Palatnik, P.C., for Igor Orak, owner.

SUBJECT – Application March 23, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, lot coverage and open space (§23-141(b)), side yards (§23-461) and rear yard (§23-47) regulations. R3-1 zoning district.

PREMISES AFFECTED – 122 Oxford Street, between Shore Boulevard and Oriental Avenue, Block 8757, Lot 92, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated February 25, 2009, acting on Department of Buildings Application No. 310300689, reads in pertinent part:

1. The proposed total floor area exceeded the permitted, contrary to ZR 23-141(b).
2. The proposed lot coverage exceeded the permitted, contrary to ZR 23-141(b).
3. The proposed open space is inadequate, contrary to ZR 23-141(b).
4. The proposed side yards are contrary to ZR 23-461.
5. The proposed rear yard is contrary to ZR 23-47;" and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, lot coverage, open space, and side and rear yards, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on July 14, 2009 after due notice by publication

---

# MINUTES

---

in *The City Record*, with continued hearings on August 11, 2009 and September 15, 2009, and then to decision on October 6, 2009; and

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

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

WHEREAS, the subject site is located on the west side of Oxford Street, between Shore Boulevard and Oriental Avenue, in an R3-1 zoning district; and

WHEREAS, the subject site has a total lot area of 2,500 sq. ft., and is occupied by a single-family home with a floor area of 833 sq. ft. (0.33 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 833 sq. ft. (0.33 FAR) to approximately 2,321 sq. ft. (0.93 FAR); the maximum permitted floor area is 1,500 sq. ft. (0.60 FAR, with attic bonus); and

WHEREAS, the applicant proposes to provide a lot coverage of 41 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to provide an open space ratio of 59 percent (65 percent is the minimum required); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yards with a width of 3'-0" along the northern lot line and a width of 3'-0" along the southern lot line (two side yards with a minimum width of 5'-0" each are required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 25'-11" (a minimum rear yard of 30'-0" is required); and

WHEREAS, at hearing the Board questioned which portions of the original home were being retained; and

WHEREAS, in response, the applicant submitted an affidavit from the project engineer stating that: (1) the existing first floor will be lifted by jacking up the existing floor joists; (2) the existing crawl space will be dug out to create a full cellar; (3) the existing foundation walls and footings are composed of reinforced concrete; and (4) the existing reinforced concrete foundation walls and footings will be underpinned; and

WHEREAS, the applicant also submitted revised plans showing that the first floor and two side walls are being 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 ZR § 73-622 and 73-03, to permit, within an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, lot coverage, open space, and side and rear yards, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received October 6, 2009"-(13) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a floor area of approximately 2,321 sq. ft. (0.93 FAR); a lot coverage of 41 percent; an open space ratio of 59 percent; a side yard with a minimum width of 3'-0" along the northern lot line; a side yard with a minimum width of 3'-0" along the southern lot line; and a rear yard with a minimum depth of 25'-11", 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;

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, October 6, 2009.

-----

# MINUTES

## 49-09-BZ

### CEQR #09-BSA-102K

APPLICANT – Law Office of Fredrick A. Becker, for Beth Israel Medical Center, owner; Kollel Bnei Torah, lessee.

SUBJECT – Application March 26, 2009 – Variance (§72-21) to permit the enlargement of a synagogue contrary to side yard regulations (§24-35(a)). R4 district.

PREMISES AFFECTED – 1323 East 32<sup>nd</sup> Street, east side of East 32<sup>nd</sup> Street, between Avenue M and Kings Highway, Block 7668, Lot 36, Borough of Brooklyn.

### COMMUNITY BOARD #18BK

#### APPEARANCES –

For Applicant: Lyra J. Altman.

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

#### THE VOTE TO GRANT –

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

Negative:.....0

#### THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 26, 2009, acting on Department of Buildings Application No. 302280092, reads:

“Proposed side yard is contrary to Zoning Resolution section 24-35(a);” and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21, to permit, on a site within an R4 zoning district, the enlargement of a two-story and cellar synagogue and the conversion of the residential portion of the building to a Rabbi’s residence (Use Group 4), which does not comply with side yard requirements for community facilities, contrary to ZR § 24-35; and

WHEREAS, a public hearing was held on this application on July 21, 2009, after due notice by publication in *The City Record*, after which the hearing was closed and the application was set for decision on August 25, 2009; and

WHEREAS, on August 25, 2009, the hearing was reopened to allow additional submissions and testimony by the parties, with a continued hearing on September 22, 2009, and then to decision on October 6, 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 18, Brooklyn, recommends disapproval of the application; and

WHEREAS, State Senator Carl Kruger provided written testimony in opposition to the proposal; and

WHEREAS, certain members of the community provided testimony in support of the proposal; and

WHEREAS, certain members of the community provided testimony in opposition to the proposal; and

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

WHEREAS, specifically, the Opposition raised the following primary concerns: (1) the proposed synagogue does not provide parking; (2) the proposed enlargement has already

been constructed; and (3) the claimed hardship is self-created; and

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

WHEREAS, the subject premises is located on the east side of East 32<sup>nd</sup> Street, between Kings Highway and Avenue M, within an R4 zoning district; and

WHEREAS, the site has 30 feet of frontage on East 32<sup>nd</sup> Street, a depth of 100 feet, and a total lot area of 3,000 sq. ft.; and

WHEREAS, the subject site is currently occupied by a two-story and cellar residential building and synagogue, with a floor area of 2,772 sq. ft. (0.92); and

WHEREAS, the proposed two-story synagogue and Rabbi’s residence consists of a 22’-7½” by 8’-0” enlargement in the northern side yard of the existing building, resulting in a total floor area of 3,132 sq. ft. (1.04 FAR); and

WHEREAS, the proposal maintains the existing non-complying side yard of 2’-10½” along the southern lot line and maintains the existing side yard of 6’-9” along the majority of the northern lot line, aside from a 22’-7½” portion along the northern lot line that provides no side yard (two side yards with minimum widths of 8’-0” each are required for a community facility use); and

WHEREAS, the Board notes that only a small portion of the building will have no side yard along the northern lot line, as the existing 6’-9” side yard is maintained for the majority of the residential portion of the building; and

WHEREAS, the existing building includes a residential use (Use Group 2) in the front and a synagogue use (Use Group 4) at the rear; and

WHEREAS, the applicant states that the existing side yards with a width of 2’-10 ½” along the southern lot line (a pre-existing, non-complying condition) and a complying width of 6’-9” along the northern lot line are associated with the pre-existing residential use, but that a waiver is required for the proposed change of use from residential to community facility (Rabbi’s residence) because greater side yards are required for such use; and

WHEREAS, the proposal provides for the following uses: (1) the main sanctuary and Rabbi’s residence on the first floor; (2) the women’s gallery and Rabbi’s residence on the second floor; and (3) a men’s bathroom, mechanical room, and storage space on the cellar level; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue which necessitate the requested variance: (1) to accommodate the current congregation and the future growth in the congregation; and (2) to provide a residence for the Synagogue’s Rabbi; and

WHEREAS, the applicant represents that the existing synagogue, located two blocks away from the subject site on Nostrand Avenue, has serviced the congregation since 1998, but that it is no longer able to accommodate the size of the congregation; and

WHEREAS, as a result, the applicant represents that the congregation sought a building which can better accommodate

---

# MINUTES

---

the size of its growing congregation; and

WHEREAS, the applicant states that the congregation acquired the subject building to accommodate its programmatic needs, and commenced building an as-of-right synagogue as an enlargement to the existing home on the site, pursuant to valid permits issued by the Department of Buildings (“DOB”); and

WHEREAS, the applicant represents that the size, layout and design of the presently constructed synagogue at the site is inadequate to serve the current needs of the congregation of approximately 50 families, and would be inadequate for its future needs; and

WHEREAS, specifically, the applicant states that the as-of-right synagogue at the subject site accommodates only 100 people seated; and

WHEREAS, the applicant states that the requested side yard waiver would enable the Synagogue to enlarge the main sanctuary on the first floor and the women’s gallery on the second floor to accommodate 138 people seated, thereby meeting its programmatic needs; and

WHEREAS, in addition, the applicant states that the side yard waiver will allow the Synagogue to convert the existing residential portion of the building to a community facility use, specifically, a residence for the Synagogue’s Rabbi; and

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

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

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

WHEREAS, specifically, the applicant states that the existing side yards do not comply with the proposed community facility use, and therefore the Synagogue would be forced to demolish portions of the existing building to provide complying side yards; and

WHEREAS, the applicant further states that providing two eight-foot side yards, in compliance with ZR § 24-35, would result in a narrow building with a width of only 14 feet; and

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

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

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the

neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that that the proposed use and floor area are permitted as-of-right in the subject zoning district; and

WHEREAS, the applicant submitted a 400-foot radius diagram establishing that the use of the site will be consistent with the current uses located in the surrounding neighborhood, which include a church, a rectory, a school, a health care facility, and a hospital as well as residential use; and

WHEREAS, the radius diagram submitted by the applicant also establishes that the bulk and height of the proposed Synagogue are consistent with the bulk and height of the homes in the surrounding neighborhood, which have heights ranging between two and six stories; and

WHEREAS, the Board notes that the site could be developed as-of-right with a building that has a floor area of 6,000 sq. ft. (3,132 sq. ft. is proposed) if all yards were provided; and

WHEREAS, the Board further notes that the proposed enlargement only results in an additional 360 sq. ft. of floor area; and

WHEREAS, the applicant notes that the subject enlargement is proposed on the northern side of the site, and that the property situated to the north of the site is owned by a hospital which also owns the subject property, and that the hospital has consented to this application; and

WHEREAS, at hearing, the Board directed the applicant to confirm whether there was a parking requirement and to describe the anticipated parking demand; and

WHEREAS, in response, the applicant submitted a letter from the architect stating that the required number of parking spaces is less than ten, which meets the finding of a waiver pursuant to ZR § 25-33; and

WHEREAS, in addition, the applicant states that on the Sabbath and the majority of the holidays when the synagogue is most often used, there is only pedestrian traffic as the orthodox practice of the congregation prohibits driving on these days; and

WHEREAS, the applicant further states that there has been sufficient parking to meet the demand of the prior synagogue, located only two blocks away from the subject site; and

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

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

WHEREAS, the Opposition contends that the applicant was aware of the restrictions of the R4 zoning district when it purchased the subject site, and therefore the hardship claimed by the applicant was self-created; and

WHEREAS, the Board notes that ZR § 72-21(d)

# MINUTES

specifically states that “the purchase of a zoning lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship;” and

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

WHEREAS, the Board notes that the proposed Synagogue complies with all bulk and use regulations, with the exception of the non-compliant side yards; and

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

WHEREAS, the Opposition argues that this application should be denied because the enlargement sought under the variance application has already been constructed; and

WHEREAS, in response, the applicant submitted evidence that the portion of construction that was completed during the pendency of this application was for the as-of-right synagogue, which was constructed under valid permits issued by the Department of Buildings; and

WHEREAS, the Board notes that, notwithstanding the fact that under appropriate circumstances a variance may be granted to legalize construction that has already been performed, the only construction requested under the subject application is for a small enlargement in the northern side yard, which has not been performed; and

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.12 (aj) and 617.5; and

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type II determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an R4 zoning district, the enlargement of a two-story and cellar synagogue and the conversion of the residential portion of the building to a Rabbi’s residence (Use Group 4), which does not comply with side yard requirements for community facilities, contrary to ZR § 24-35, *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 June 12, 2009” – (10) sheets; and *on further condition*:

THAT the building parameters shall be: a floor area of 3,132 sq. ft. (1.04 FAR); a side yard of 2’-10 ½” along the southern lot line; a front yard of 10’-9”; and a total height of 32’-0”;

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

THAT the use shall be limited to a house of worship and Rabbi’s residence (Use Group 4);

THAT the above conditions shall be listed on the

certificate of occupancy;

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

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

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

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

Adopted by the Board of Standards and Appeals, October 6, 2009.

-----

## **176-09-BZ CEQR #09-BSA-112M**

APPLICANT – Bryan Cave LLP/Margery Purlmutter, for City of New York, owner.

SUBJECT – Application May 25, 2009 – Special Permit (§73-64) to waive height and setback regulations (§33-432) for a community facility building (*Fashion Institute of Technology*). C6-2 District.

PREMISES AFFECTED – 220-236 West 28<sup>th</sup> Street, south side of West 28<sup>th</sup> Street, between Seventh and Eighth Avenues, Block 777, Lots 1, 18, 37, Borough of Manhattan.

### **COMMUNITY BOARD #5M**

APPEARANCES –

For Applicant: Frank Chaney.

**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 May 22, 2009, acting on Department of Buildings Application No. 120029940, reads:

“Request reconsideration to allow in a C6-2 zoning district – where pursuant to ZR 33-432, the maximum street wall height on a narrow street is the lesser of 85 feet or six stories with a sky exposure plane ratio of 2.7:1 – a community facility building with a street wall that rises without setback to a height of 134’-2”, then sets back 8’-0” and rises to a building height of 143’-10+.”;” and

WHEREAS, this is an application under ZR §§ 73-641 and 73-03, to permit, on a site located within a C6-2 zoning district, the proposed construction of a ten-story community facility building, which does not comply with the zoning requirements for height, setback and sky exposure plane, contrary to ZR § 33-432; and

WHEREAS, a public hearing was held on this

---

# MINUTES

---

application on July 28, 2009 after due notice by publication in *The City Record*, with a continued hearing on September 15, 2009, and then to decision on October 6, 2009; and

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

WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

WHEREAS, this application is brought on behalf of the Fashion Institute of Technology (“FIT”), a college of the State University of New York, a non-profit entity; and

WHEREAS, the subject site is located on the south side of West 28<sup>th</sup> Street, between Seventh Avenue and Eighth Avenue, within a C6-2 zoning district; and

WHEREAS, the applicant states that FIT occupies the entirety of Block 777, which is a single zoning lot consisting of three tax lots; Lot 1 on the western end of the block, Lot 37 on the eastern end of the block and Lot 18 in the middle of the block; and

WHEREAS, the zoning lot is currently occupied by four FIT buildings located on Lots 1, 18 and 37, with a total floor area of 746,889 sq. ft.; and

WHEREAS, the proposed development is located on a site with a footprint of 15,092 sq. ft. consisting of: (1) a 12,941 sq. ft. portion of Lot 18 with approximately 214 feet of frontage along West 28<sup>th</sup> Street and an average depth of 60 feet; and (2) a 2,151 sq. ft. portion of Lot 1 located immediately to the west of Lot 18 (the “Project Site”); and

WHEREAS, the Project Site is currently an unoccupied, walled-in courtyard; and

WHEREAS, the applicant proposes to construct a ten-story academic building with a floor area of 67,066 sq. ft. and an additional 27,393 sq. ft. of space in the cellar and sub-cellar (the “Proposed Building”) as an addition to the existing nine-story academic building located on Lot 18, immediately to the south of the Project Site (the “Existing Building”); and

WHEREAS, the applicant states that the addition of the Proposed Building will increase the total floor area of the zoning lot from 746,889 sq. ft. (4.72 FAR) to 813,955 sq. ft. (5.15 FAR); the maximum floor area permitted is 1,028,163 sq. ft. (6.5 FAR); and

WHEREAS, as a result of the addition of the Proposed Building, the applicant requests the following modifications: a street wall height of 134’-2” (85 feet is the maximum permitted); no setback up to a height of 134’-2”, and an eight-ft. setback from 134’-2” up to the total height of 143’-10” (a setback of 20 feet is required at 85 feet); and penetration of the sky exposure plane; and

WHEREAS, as a threshold requirement under ZR § 73-641, the applicant must establish that it has owned a portion of the zoning lot and continuously occupied and used one or more buildings located thereon for a specified community facility use from December 15, 1961 until the time of the application and to the present; and

WHEREAS, the applicant represents that it has owned Lot 18 since 1955; and

WHEREAS, in support of the above representation, the applicant has submitted a copy of an Order of the Supreme Court of the State of New York dated August 29, 1955, in Condemnation Proceeding 41340, which reflects that the City of New York acquired title to the properties that currently constitute Lot 18 in Block 777 as a site for FIT; and

WHEREAS, the applicant also submitted a temporary certificate of occupancy dated September 14, 1959, which reflects that FIT took legal occupancy of a new building on the premises as of that date; and

WHEREAS, accordingly, the Board finds that the applicant has satisfied the threshold requirement of ZR § 73-641; and

WHEREAS, the applicant represents that the proposed modifications are required in order to provide education and training in all aspects of the fashion industry, which is an essential service to the community, as per ZR § 73-641(a); and

WHEREAS, the applicant states that the Proposed Building is designed to provide sufficient classroom, studio, administrative and student life space to address a space shortfall of more than 400,000 sq. ft. identified in FIT’s 2002 campus facilities master plan; and

WHEREAS, the applicant further states that New York City has historically been the center of the fashion industry in the United States, and that the Garment District of Manhattan, within which FIT is located, has been and remains the center of the fashion industry in New York City; and

WHEREAS, the applicant represents that fashion and its ancillary businesses and services, including fabric and clothing design and manufacturing, advertising, photography and art, is one of New York City’s largest industries; and

WHEREAS, accordingly, the Board finds that the requested modifications are required in order to enable FIT to provide an essential service to the community; and

WHEREAS, the applicant states that, as per ZR § 73-641(b), without the requested height and setback modification there is no way to design and construct the Proposed Building in satisfactory physical relationship with the existing buildings on the site, so as to produce an integrated development; and

WHEREAS, the applicant states that all of FIT’s academic and student life facilities, with the exception of a dormitory located on West 31<sup>st</sup> Street, are located on the subject block and a portion of Block 776; and

WHEREAS, the applicant represents that the Project Site is the only significant development parcel remaining within the two-block campus; and

WHEREAS, the applicant states that the development of the Project Site is constrained by the fact that it has an average depth of only 60 feet and is directly adjacent to the Existing Building, the north-facing wall of which consists of windows that provide light to all of the classrooms and offices on the north side of the building; and

WHEREAS, the applicant represents that constructing

---

# MINUTES

---

the addition directly against the north side of the Existing Building would allow the addition to comply with the applicable height and setback requirements, but doing so would effectively turn all of the Existing Building's nine floors of rooms into interior rooms with no access to natural light; and

WHEREAS, the applicant states that shifting the floor area and core of the Proposed Building away from the Existing Building and interposing a full-height atrium between the two buildings allows the interior walls of both buildings to have access to natural light while still allowing for the integration of the new addition with the Existing Building and providing full internal access between the two buildings; and

WHEREAS, the applicant represents that providing natural light to the classrooms of both the Proposed Building and the Existing Building is of critical importance because the design work and study in these classrooms involve color and texture; and

WHEREAS, the applicant concludes that the requested modifications for height and setback are therefore necessary to provide for an integrated development and to ensure that the Proposed Building is in satisfactory relationship to the Existing Building that is to remain on the site; and

WHEREAS, the applicant states that, as per ZR § 73-641(c), such modification is the minimum necessary to permit the proposed development, and thereby creates the least detriment to the character of the neighborhood and the use of nearby zoning lots; and

WHEREAS, the applicant states that the defining design features of the Proposed Building include: the triple-height student life hall located on floors five, six and seven, around which the building is centered; the glass-enclosed vertical and horizontal circulation core on the front façade which extends from the second floor to the tenth floor; and the rear atrium that spans the full height of the building from the basement to the tenth floor; and

WHEREAS, the applicant represents that the student life hall will provide a much needed space for students, faculty and administration to meet and exchange ideas in a community-oriented setting; and

WHEREAS, the applicant states that the rear atrium will allow light to reach all levels of both the Proposed Building and the Existing Building, which is of critical importance at FIT because the many disciplines of design study taught there involve work with, and the analysis of, color and texture; and

WHEREAS, the applicant represents that in combination with the student life hall, the front circulation core and rear atrium will allow light to flow through the building and onto West 28<sup>th</sup> Street, thereby increasing the amount of sunlight reaching street level beyond what would otherwise be available if the atrium and student life hall were not provided; and

WHEREAS, the applicant states that in order to comply with the street wall height, setback and sky exposure plane requirements of ZR § 33-432(a), the floors above the student life hall would have to be set back 20 feet, and the

floor plates above the student life hall would have to be reduced in depth to retain the rear atrium, which is essential for providing natural light to the classrooms in both the Proposed Building and the Existing Building; and

WHEREAS, the applicant submitted plans reflecting that in order to provide the necessary floor area and program space required to meet FIT's needs within a complying building, FIT would have to construct a 13-story building with a total height of 171 feet, as opposed to the proposed ten-story building with a total height of 144 feet; and

WHEREAS, the applicant states that the smaller floor plates on the eighth through 13<sup>th</sup> floors in the complying building would contain inefficiently configured classrooms and meeting rooms and require increased horizontal and vertical circulation at those levels, resulting in a building with approximately 6,800 sq. ft. more floor area than the Proposed Building; and

WHEREAS, the applicant states that the smaller floor plates would also negatively affect the flexibility of the academic space on these floors by creating long, narrow classrooms with a width to length ratio of 1:4 rather than the ideal 1:1 ratio, and subdividing the long classrooms into smaller classrooms of the correct proportions would create many small seminar rooms instead of the large, flexible multi-purpose rooms that are necessary for studios, workshops and instructional technology; and

WHEREAS, the applicant further states that the smaller floor plates on the eighth through 13<sup>th</sup> floors also limit the utility of the conference rooms, which could no longer accommodate the large meetings, readings, performances, awards ceremonies and other administrative and academic functions for which it was intended; and

WHEREAS, the applicant represents that setting back the eighth through 13<sup>th</sup> floors by 20 feet would reduce the depth of the rear atrium at these levels, as well as the height of the student life hall at the rear of the building, thereby reducing the amount of natural sunlight that reaches the classrooms in both the Proposed Building and the Existing Building; and

WHEREAS, the applicant further represents that a reduction in the atrium depth would also reduce the amount of sunlight passing through the atrium into the building and onto West 28<sup>th</sup> Street; and

WHEREAS, in sum, the applicant states that the proposal: (1) allows for a building with fewer floors to accommodate FIT's programmatic space needs; (2) provides adequate room sizes and efficient floor layouts; and (3) allows light to flow into the atrium and student life hall, through the building, and onto West 28<sup>th</sup> Street; and

WHEREAS, as noted, without the requested modifications FIT would be required to build a less efficient building with a greater height that would not accommodate its programmatic needs; and

WHEREAS, specifically, the applicant represents that the as-of-right scenario would not permit light to funnel through the building and provide all portions of the Existing Building and Proposed Building with access to required light and air; and

---

# MINUTES

---

WHEREAS, accordingly, the Board finds the requested modifications are the minimum necessary to permit the development of an integrated community facility that will thereby create the least detriment to the character of the neighborhood and the use of nearby zoning lots; and

WHEREAS, 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 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 §§ 73-641 and 73-03; and

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

WHEREAS, the Bureau of Environmental Planning and Analysis of the New York City Department of Environmental Protection ("DEP") has reviewed the following submissions by the applicant: a September 2009 Environmental Assessment Statement, a May 2009 Phase I Environmental Site Assessment, and a May 2009 Phase II Subsurface Sampling Investigation; and

WHEREAS, these submissions specifically examined the proposed action for Hazardous Materials; and

WHEREAS, prior to the issuance of any building permit by DOB that would result in grading, excavation, foundation, alteration, building or other permit respecting the subject site which permits soil disturbance, the applicant proposes to have DEP review and approve: (1) a Remedial Action Plan ("RAP") for the subject site; and (2) a site-specific Construction Health and Safety Plan ("CHASP"); and

WHEREAS, after review and approval of the RAP and CHASP, DEP will issue a Notice to Proceed for the subject property; and

WHEREAS, following implementation of the RAP, a Remedial Closure Report certified by a Professional Engineer, must be submitted to DEP showing that all remedial requirements have been properly undertaken; and

WHEREAS, after review and approval of the Remedial Closure Report, DEP will issue a Notice of Satisfaction; and

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the

New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, and makes the required findings under ZR §§ 73-641 and 73-03, to permit, on a site located within a C6-2 zoning district, the proposed construction of a ten-story community facility building, which does not comply with the zoning requirements for height, setback and sky exposure plane, contrary to ZR § 33-432; *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application and marked "Received August 28, 2009"-(21) sheets; and *on further condition*

THAT the bulk parameters of the Proposed Building shall be as follows: a floor area of 67,006 sq. ft., a street wall height of 134'-2"; a setback of 8'-0" at a height of 134'-2"; and a total height of 143'-10";

THAT prior to DOB's issuance of any grading, excavation, foundation, alteration, building, or other permit respecting the subject site which permits soil disturbance, a Remedial Action Plan shall be submitted to DEP for review and approval delineating that all soils and fill materials will be properly disposed of in accordance with applicable New York State Department of Environmental Conservation ("DEC") regulations, and that additional testing of the soils may be required by the disposal and/or recycling facility;

THAT a site-specific Construction Health and Safety Plan shall be submitted to DEP prior to the start of soil disturbance or construction on the basis of worker exposure to the contaminants detected at the site;

THAT during the course of construction the applicant shall:

- 1) Incorporate an appropriate vapor barrier for the Proposed Building into the design plan and submit it to DEP for review and approval;
- 2) Cover any excavated soils which are temporarily stockpiled on-site with polyethylene sheeting while disposal options are determined, not re-use such soils for grading purposes, and adhere to any additional testing of the soils as required by the disposal and/or recycling facility;
- 3) Remove and properly dispose of any petroleum-impacted soils (which display petroleum odors and/or staining) that are encountered in accordance with all DEC regulations;
- 4) Ensure that the contractor maintains dust suppression of the site;
- 5) Remove/close any known or found underground storage tanks or aboveground storage tanks (including dispensers, piping, and fill-ports) in accordance with all applicable DEC regulations;
- 6) Obtain a DEP Sewer Discharged Permit prior to the start any de-watering activities on the site if de-watering into New York City storm and/or sewer drains will occur; and

# MINUTES

- 7) Import a minimum of two feet of clean fill/top soil from an approved facility/source and grade it across all landscaped or grass covered areas of the site not capped with concrete or asphalt, upon written approval to use the clean fill/top soil from DEP;

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

THAT the building shall include double-glazed windows and an alternate means of ventilation to maintain interior noise levels of 45 dBA or lower in the classrooms and 30 dBA or lower on the north facade of the Proposed Building at West 28<sup>th</sup> Street;

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

THAT substantial construction shall be completed pursuant to ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar; 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, October 6, 2009.

-----

## 184-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Annie Daniel and Elliot Daniel, owners.

SUBJECT – Application June 4, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to open space, lot coverage and floor area (§23-141); side yards (§23-461; rear yard (§23-47) and perimeter wall height (§23-631) regulations. R3-2 zoning district.

PREMISES AFFECTED – 4072 Bedford Avenue, west side of Bedford Avenue, between Avenue S and Avenue T, Block 7303, Lot 37, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

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

**THE VOTE TO GRANT** –

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

**THE RESOLUTION** –

WHEREAS, the decision of the Brooklyn Borough

Commissioner, dated August 14, 2009, acting on Department of Buildings Application No. 320025281, reads in pertinent part:

“The proposed enlargement of existing one family residence in an R3-2 zoning district:

1. Creates non-compliance with respect to floor area by exceeding the allowable floor area ratio and is contrary to Section 23-141 of the Zoning Resolution.
2. Creates non-compliance with respect to the lot coverage and is contrary to Section 23-141 of the Zoning Resolution.
3. Creates non-compliance with respect to the side yards by not meeting the minimum requirements of Sections 23-461, 23-48 of the Zoning Resolution.
4. Creates non-compliance with respect to the open space ratio by not meeting the minimum requirements of Section 23-141 of the Zoning Resolution.
5. Creates non-compliance with respect to the rear yard by not meeting the minimum requirements of Section 23-47 of the Zoning Resolution.
6. Creates non-compliance with respect to the perimeter wall height by not meeting the maximum requirements of Section 23-631 of the Zoning Resolution;” and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, lot coverage, open space, side yards, rear yard, and perimeter wall height, contrary to ZR §§ 23-141, 23-461, 23-48, 23-47 and 23-631; and

WHEREAS, a public hearing was held on this application on July 21, 2009 after due notice by publication in *The City Record*, with continued hearings on August 11, 2009 and August 25, 2009, and then to decision on October 6, 2009; and

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

WHEREAS, Community Board 15, Brooklyn, recommended approval of the original application; and

WHEREAS, the Board notes that the applicant revised its plans during the pendency of the application, therefore the Board directed the applicant to return to the Community Board to present its revised plans; and

WHEREAS, Community Board 15 recommends approval of the revised proposal; and

WHEREAS, the subject site is located on the west side of Bedford Avenue, between Avenue S and Avenue T, in an R3-2 zoning district; and

WHEREAS, the subject site has a total lot area of 2,500 sq. ft., and is occupied by a single-family home with a floor area of 1,598 sq. ft. (0.64 FAR); and

WHEREAS, the premises is within the boundaries of a

---

# MINUTES

---

designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from approximately 1,598 sq. ft. (0.64 FAR) to approximately 2,586 sq. ft. (1.03 FAR); the maximum permitted floor area is 1,250 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide a lot coverage of 45 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to provide open space of 55 percent (65 percent is the minimum required); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yard with a width of 4'-6" along the southern lot line and will increase the existing non-complying side yard along the northern lot line from 2'-8" to 3'-0" (two side yards, with a total width of 10 feet and a width of at least five feet each, are the minimum required); 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, the applicant further seeks a waiver to ZR § 23-631 to allow an increase in the perimeter wall height; and

WHEREAS, the Board notes that a special permit under ZR § 73-622 allows a perimeter wall height to exceed the permitted height in an R3-2 zoning district, provided that the perimeter wall height is equal to or less than the perimeter wall height of an adjacent single- or two-family detached or semi-detached residence with an existing non-complying perimeter wall facing the street; and

WHEREAS, the applicant seeks an increase in the perimeter wall height to 22'-3" (a maximum perimeter wall height of 21'-0" is permitted); and

WHEREAS, in support of the request for the noted perimeter wall height, the applicant submitted a plan demonstrating that the perimeter wall height of the adjacent home to the south is 24'-9"; and

WHEREAS, the applicant represents that the perimeter wall of the proposed home therefore falls within the scope of the special permit; and

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

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

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

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

*Therefore it is resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 and 73-03, to permit, within an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, lot coverage, open space, side yards, rear yard and perimeter wall height, contrary to ZR §§ 23-141, 23-461, 23-48, 23-47 and 23-631; *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 June 4, 2009"-(1) sheet, "July 28, 2009"-(1) sheet, "August 19, 2009"-(2) sheets and "September 22, 2009"-(7) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a floor area of 2,586 sq. ft. (1.03 FAR); a lot coverage of 45 percent; an open space ratio of 55 percent; a side yard with a minimum width of 4'-6" along the southern lot line; a side yard with a minimum width of 3'-0" along the northern lot line; a rear yard with a minimum depth of 20'-0"; and a perimeter wall height of 22'-3", as illustrated on the BSA-approved plans;

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

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

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

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

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

Adopted by the Board of Standards and Appeals, October 6, 2009.

-----

## **73-06-BZ**

APPLICANT – Eric Palatnik, P.C., for John J. Freeda, owner; Elite Fitness, lessee.

SUBJECT – Application April 21, 2006 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (*Elite Fitness*) in a portion of cellar and first floor in a three-story building. C2-3 zoning district.

PREMISES AFFECTED – 111 Union Street, northwest corner of Union Street and Columbia Street, Block 335, Lot 7501, Borough of Brooklyn.

## **COMMUNITY BOARD #6BK**

APPEARANCES –

For Applicant: Eric Palatnik.

---

# MINUTES

---

## 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 October 27, 2009, at 1:30 P.M., for decision, hearing closed.

-----

## 195-07-BZ

APPLICANT – Greenberg Traurig by Deirdre A. Carson, for Bond Street Partners LLC (as to lot 64) c/o Convermat, owner.

SUBJECT – Application August 9, 2007 – Variance (§72-21) to allow hotel and retail uses below the floor level of the second story, contrary to use regulations (§42-14(d)(2)). M1-5B zoning district.

PREMISES AFFECTED – 8-12 Bond Street, Northwest corner of Bond and Lafayette Streets, Block 530, Lot 62 & 64, Borough of Manhattan.

### COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Diedra Carson and Jack Freeman.

**ACTION OF THE BOARD** – Laid over to October 27, 2009, at 1:30 P.M., for continued hearing.

-----

## 100-08-BZ & 101-08-A

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

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

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

### COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Harold McGough.

**ACTION OF THE BOARD** – Laid over to October 27, 2009, at 1:30 P.M., for continued hearing.

-----

## 171-08-BZ

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

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

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

### COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Howard Goldman.

**ACTION OF THE BOARD** – Laid over to November 10, 2009, at 1:30 P.M., for continued hearing.

-----

## 186-08-BZ

APPLICANT – Petrus Fortune, P.E., for Kevin Mast, Chairman, Followers of Jesus Mennonite Church, owner.

SUBJECT – Application July 10, 2008 – Special Permit (§73-19) to allow the legalization and enlargement of a school (*Followers of Jesus Mennonite Church & School*) in a former manufacturing building, contrary to ZR §42-10. M1-1 zoning district.

PREMISES AFFECTED – 3065 Atlantic Avenue, northwest corner of Atlantic Avenue and Shepherd Avenue, Block 3957, Lot 45, Borough of Brooklyn.

### COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: James E. Gochnauer.

**ACTION OF THE BOARD** – Laid over to November 17, 2009, at 1:30 P.M., for continued hearing.

-----

## 197-08-BZ

APPLICANT – Stuart A. Klein, for Carroll Gardens Realty, LLC, owner.

SUBJECT – Application July 23, 2008 – Variance (§72-21) to permit a four-story and penthouse residential building, contrary to §23-141 (FAR, open space ratio), §23-22 (number of dwelling units), §23-45 (front yard), §23-462 (side yard), and §23-631 (wall height). R4 district.

PREMISES AFFECTED – 341/349 Troy Avenue, aka 1515 Carroll Street, corner of Troy Avenue and Carroll Street, Block 1407, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #9BK

APPEARANCES –

For Applicant: Jay Goldstein.

**ACTION OF THE BOARD** – Laid over to November 10, 2009, at 1:30 P.M., for adjourned hearing.

-----

## 210-08-BZ

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

SUBJECT – Application August 15, 2009 – Variance (§72-21) to permit two-story enlargement to an existing two-story building for a UG 3 drug treatment facility with sleeping accommodations (*Samaritan Village*), contrary to use regulations (ZR §43-00). 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

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to October 20, 2009, at 1:30 P.M., for deferred decision.

-----

# MINUTES

## 260-08-BZ

APPLICANT – Eric Palatnik, for Moisei Tomshinsky, owner.

SUBJECT – Application October 21, 2008 – Special Permit (§73-622) to legalize and enlarge a single family home, contrary to floor area (§23-141) regulations. R3-1 zoning district.

PREMISES AFFECTED – 148 Oxford Street, between Shore Boulevard and Oriental Boulevard, Block 8757, Lot 3, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to November 24, 2009, at 1:30 P.M., for adjourned hearing.

-----

## 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, contrary to open space and floor area (§23-141(a)) and rear yard (§23-47) regulations. 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.

THE VOTE TO REOPEN HEARING –

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

Negative:.....0

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 October 20, 2009, at 1:30 P.M., for decision, hearing closed.

-----

## 23-09-BZ

APPLICANT – Eric Palatnik, P.C., for Alla Simirnov, owner.

SUBJECT – Application February 12, 2009 – Special Permit (§73-622) for the enlargement of an existing one family home, contrary to open space, lot coverage and floor area (§23-141(b)) and rear yard (§23-47) regulations. R3-1 zoning district.

PREMISES AFFECTED – 114 Amherst Street, west side of Amherst Street between Hampton Avenue and Oriental Boulevard, Block 8732, Lot 71, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to November 10, 2009, at 1:30 P.M., for adjourned hearing.

-----

## 29-09-BZ

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

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

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

### COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Lyra Altman.

**ACTION OF THE BOARD** – Laid over to November 17, 2009, at 1:30 P.M., for adjourned hearing.

-----

## 164-09-BZ

APPLICANT – Eric Palatnik, P.C., for Steve Palanker, owner.

SUBJECT – Application April 29, 2009 – Special Permit (§73-622) for enlargement of an existing two-family home, contrary to floor area, lot coverage and open space (§23-141) and rear yard (ZR §23-47) regulations. R3-1 zoning district.

PREMISES AFFECTED – 124 Irwin Street, between Hampton Avenue and Oriental Boulevard, Block 8751, Lot 416, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Boris Mantell, Francine Olk, Susan Klappe and Judith Baron.

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 November 10, 2009, at 1:30 P.M., for decision, hearing closed.

-----

## 225-09-BZ

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

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

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

---

# MINUTES

---

## COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Antonio S. Valenzino.

**ACTION OF THE BOARD** – Laid over to November 10, 2009, at 1:30 P.M., for continued hearing.

-----

## 226-09-BZ

APPLICANT – Mitchell S. Ross, Esq., for Fraydun Enterprises, LLC, owner; New York Health and Racquet Club, lessee.

SUBJECT – Application June 19, 2009 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (*New York Health & Racquet Club*) on the cellar through second floors of a six-story mixed-use building. C6-1 zoning district.

PREMISES AFFECTED – 24 East 13<sup>th</sup> Street, south side of East 13<sup>th</sup> Street, 142'-2 & ¾" west of University Place, Block 570, Lot 17, Borough of Manhattan.

## COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: David Reck.

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 October 27, 2009, at 1:30 P.M., for decision, hearing closed.

-----

*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*