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# BULLETIN

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

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February 4, 2010

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# DOCKET

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New Case Filed Up to January 26, 2010  
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**7-10-A**

93 Hillside Avenue, North side of Hillside Avenue, 130' east of the mapped Beach 18th Street., Block 16340, Lot(s) p/o 50, Borough of **Queens, Community Board: 14**. Construction within the mapped street, contrary to GCL. R4 district.  
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**8-10-BZ**

58-14 Beach Channel Drive, Northeast corner of the intersection of Beach 59th Street and Beach Channel Drive., Block 16004, Lot(s) 96, Borough of **Queens, Community Board: 14**. Variance to allow legalization of existing supermarket, contrary to use regulations R4 district.  
-----

**9-10-BZ**

231-10 Northern Boulevard, Northwest corner of 232nd Street., Block 8164, Lot(s) 30, Borough of **Queens, Community Board: 11**. Variance to permit proposed restaurant use to an existing one story building, contrary to use regulations. R1-2 district.  
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**10-10-A**

1882 East 12th Street, West side of East 12th Street, approximately 75' north of Avenue S., Block 6817, Lot(s) 41, Borough of **Brooklyn, Community Board: 15**. Appeal for common law vested rights to continue development under the prior zoning district. R4-1 district.  
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**11-10-BZ**

562 Court Street, Southwest corner of Court Street and Garnet Street., Block 382, Lot(s) 37, Borough of **Brooklyn, Community Board: 6**. Special Permit (73-36) to allow the operation of a physical culture establishment. C2-3(R6) district.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**FEBRUARY 9, 2010, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, February 9, 2010, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL ORDER CALENDAR**

**74-49-BZ**

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

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

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

**COMMUNITY BOARD #5M**

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**297-99-BZ**

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

SUBJECT – Application January 15, 2010 – Extension of Time to obtain a Certificate of Occupancy for a Gasoline Service Station (Mobil) which expires on February 12, 2010. C2-2/R6-B 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**

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**369-03-BZ**

APPLICANT – The Law Office of Fredrick A. Becker, for 99-01 Queens Boulevard LLC, owner; TSI Rego Park LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application December 3, 2009 – Amendment to a variance granted pursuant to §72-21 allowing the operation of a physical culture establishment (New York Sports Club) in a C1-2/R7-1 zoning district. Amendment seeks to allow a change in the owner/operator; a decrease in floor area, modification of the days and hours of operation, and eliminate a condition of the previous Board resolution requiring the applicant to enter into an agreement with a local parking facility to provide a minimum of 20 parking spaces on a monthly basis and provide first priority for up to ten additional spaces per day if required by PCE members.

PREMISES AFFECTED – 99-01 Queens Boulevard, Northwest corner of Queens Boulevard and 67th Street, Block 2118, Lot 1, Borough of Queens.

**COMMUNITY BOARD #1Q**

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**APPEALS CALENDAR**

**300-09-A**

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Seanna & John Tobin, lessees.

SUBJECT – Application October 29, 2009 – Reconstruction and enlargement of an existing single family dwelling and the upgrade of an existing non conforming private disposal system located in the bed of a mapped street is contrary to General City Law Section 35 and Department of Buildings Policy.

PREMISES AFFECTED – 635 Highland Place, east side Highland Place, partially in the bed of mapped Beach 202<sup>nd</sup> Street, Block 16350, Lot p/o300, Borough of Queens.

**COMMUNITY BOARD #14Q**

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**310-09-A**

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Lorraine & Terence Crossan, lessees.

SUBJECT – Application November 23, 2009 – Proposed reconstruction and enlargement of an existing single family home located within the bed of a mapped street. R4 zoning district.

PREMISES AFFECTED – 14 State Road, north side of Rockaway Point Boulevard, Block 16350, Lot p/o 50, Borough of Queens.

**COMMUNITY BOARD #14Q**

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**FEBRUARY 9, 2010, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, February 9, 2010, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**ZONING CALENDAR**

**270-09-BZ**

APPLICANT – Richard Lobel, for Jack Kameo, owner.

SUBJECT – Application September 21, 2009 – Variance (§72-21) for the construction of a single family home on a vacant corner lot, contrary to floor area (§23-141), side yards (§23-461) and front yard (§23-47). R4-1 zoning district.

PREMISES AFFECTED – 1910 Homecrest Avenue, Bound by East 12th Street and Homecrest Avenue, eastside of Avenue S, Block 7291, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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# CALENDAR

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**273-09-BZ**

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

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

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

**COMMUNITY BOARD #10Q**

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**329-09-BZ**

APPLICANT – Eric Palatnik, P.C., for Yevgenya Loffe, owner.

SUBJECT – Application December 18, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area (§23-141). R3-1 zoning district.

PREMISES AFFECTED – 26 Falmouth Street, Block 8744, Lot 16, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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**2-10-BZ**

APPLICANT – Akerman Senterfitt LLP, for The New York Eye & Ear Infirmary, owner.

SUBJECT – Application January 6, 2010 – Special Permit pursuant to ZR §73-641 to allow for the enlargement of a community facility (New York Eye and Ear Infirmary) within the required rear yard equivalent contrary to ZR §33-283. C1-6A/C1-7A Zoning Districts.

PREMISES AFFECTED – 310 East 14th Street, block front on east side of Second Avenue between 13th and 14th Streets, Block 455, Lot 1, 5, 7, 60, Borough of Manhattan.

**COMMUNITY BOARD #2M**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, JANUARY 26, 2010  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

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

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

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

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

**COMMUNITY BOARD #13Q**

APPEARANCES –

For Applicant: Eric Palatnik.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of the term of special permits for non-accessory radio towers and transmitting equipment on the roofs of three existing 33-story residential buildings, an extension of time to obtain a certificate of occupancy, and to amend the requirement for obtaining a new certificate of occupancy; and

WHEREAS, a public hearing was held on this application on June 23, 2009, after due notice by publication in *The City Record*, with continued hearings on July 28, 2009, September 15, 2009, October 27, 2009, and December 8, 2009, and then to decision on January 26, 2010; 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 13, Queens, recommends disapproval of this application, citing potential health and safety concerns; and

WHEREAS, Queens Borough President Helen Marshall provided written testimony in support of this application; and

WHEREAS, residents of the subject building provided written and oral testimony in opposition to this application (the “Opposition”); and

WHEREAS, the Opposition had the following primary concerns: (1) potential health risks associated with radio frequency emissions from the antennae; and (2) the applicant will exceed the limitation of 75 antennae per building; and

WHEREAS, the site is located on the northeast corner of Grand Central Parkway and 267<sup>th</sup> Street, within an R3-2 zoning district; and

WHEREAS, the site consists of three identical 33-story buildings; one building is located on the eastern portion of the site and is the subject of BSA Cal. No. 828-86-BZ (hereinafter, “Building 1”); a second building is located on the southern portion of the site and is the subject of BSA Cal. No. 827-86-BZ (hereinafter, “Building 2”), and a third building is located on the western portion of the site and is the subject of BSA Cal. No. 826-86-BZ (hereinafter, “Building 3”); and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 29, 1988 when, under the subject calendar numbers, the Board granted special permits under ZR § 73-30 for the legalization of non-accessory radio towers and transmitting equipment on the roofs of three existing 33-story residential buildings, for a term of ten years each; and

WHEREAS, on March 6, 2001, under the subject calendar numbers, the Board extended the terms of the special permits and granted an amendment to permit the legalization of the 62 existing antennae and the installation of 13 additional antennae on each building, to expire on March 28, 2008; and

WHEREAS, the applicant now requests another extension of the term; and

WHEREAS, as to the time period to obtain certificates of occupancy, the applicant states that new certificates of occupancy have not been obtained since the most recent extension of term, due in part to the fact that there are open Department of Buildings (“DOB”) applications within the buildings, unrelated to the special permit use, which precludes each building, as a whole, from being able to obtain a certificate of occupancy; and

WHEREAS, given the uncertainty as to if and when all open DOB applications will be resolved, the applicant seeks to amend the prior resolutions to remove the condition that a new certificate of occupancy be obtained; and

WHEREAS, the applicant states that, given the outstanding applications in the building, it is not feasible to obtain final certificates of occupancy for the buildings within any reasonable amount of time; and

WHEREAS, at the Board’s direction, the applicant has agreed to obtain temporary certificates of occupancy in lieu of final certificates of occupancy for each building; and

WHEREAS, the Board notes that pursuant to the prior grants, the site is currently limited to no more than 75 antennae per building; and

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WHEREAS, at the time of the applicant's initial filing, the number of antennae on the roofs of the buildings exceeded the limit from the prior grants; and

WHEREAS, at the Board's direction, the applicant reduced the number of antennae on the buildings and conducted testing of the radiofrequency emissions from each building; and

WHEREAS, the applicant submitted an analysis of the radiofrequency emissions (hereinafter, the "Radiofrequency Analysis") for each of the buildings, which found that an area on the roof of Building 1 exceeds the Federal Communication Commission ("FCC") general public standards but is within the occupational standards; and

WHEREAS, the Radiofrequency Analysis states that in order to comply with the FCC general population standards, the applicant is required to inform the general population, who may enter onto the rooftop areas, of the potential for increased exposure to radio emissions through the posting of appropriate notifications at all access points to the rooftop; and

WHEREAS, the applicant has submitted photographs of the required notice signs at each access door to the main rooftop area of Building 1, in addition to a warning sign at the affected area at the rooftop; and

WHEREAS, the Radiofrequency Analysis also states that the applicant has implemented the proper procedures on the rooftop of Building 1, and therefore the site remains in full compliance with all FCC standards and guidelines; and

WHEREAS, the applicant notes that the rooftop of Building 1 is only accessible to the general population in case of emergency and is currently managed as a secured area; and

WHEREAS, at hearing, the Board directed the applicant to install a barrier around the area of the rooftop of Building 1 that exceeds the general public standards to prevent access to that area by the general public; and

WHEREAS, in response, the applicant submitted revised plans reflecting the installation of a barricade around the area of the rooftop of Building 1 that exceeds the general public standards; and

WHEREAS, the applicant also submitted an affidavit from the principal of Continental Communications, the subject lessee, stating that the number of antennae on the general rooftop at each building will not exceed 75 and the emissions will not exceed the FCC guidelines for general population exposures, and that the FM Radio Broadcast Antenna located on the bulkhead above the rooftop of Building 1 will permanently remain in its current position on the bulkhead and the area which exceeds the general population limits will not be moved to any other location; and

WHEREAS, as to the safety and health concerns raised by the Opposition, the Board appreciates the concerns expressed by these neighbors, but notes that it may not consider arguments about health risks related to such installations, as such consideration is pre-empted by federal law, pursuant to Section 332(c) of the Federal Telecommunications Act of 1996; and

WHEREAS, the Board notes that, as discussed above, the site is in full compliance with all FCC standards and guidelines; and

WHEREAS, additionally, the Board notes that, as per the BSA-approved drawings, the number of antennae on each roof is limited to 75; and

WHEREAS, based upon the above, the Board finds that the requested extension of term, extension of time to obtain a temporary certificate of occupancy, and amendment to the requirement for obtaining a new certificate of occupancy are appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolutions, dated March 29, 1988, so that as amended this portion of the resolutions shall read: "to extend the term for five years from the date of this grant, to expire on January 26, 2015 and to grant an extension of time to obtain a temporary certificate of occupancy to July 26, 2010; *on condition* that all use and operations shall substantially conform to drawings filed with this application marked "Received December 7, 2009"-(3) sheets; and *on further condition*:

THAT the term of the grant shall expire on January 26, 2015;

THAT the number of accessory antennae on each building shall not exceed 75, in accordance with the BSA-approved drawings;

THAT no additional FM Radio Broadcast Antennae shall be installed on Building 1;

THAT no equipment shall overhang the parapet wall of the subject premises;

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

THAT a temporary certificate of occupancy shall be obtained by July 26, 2010;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Application No. 410070925)

Adopted by the Board of Standards and Appeals, January 26, 2010.

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## **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 an enlargement of an existing school (UG 3). The amendment would further enlarge the school, contrary 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 39<sup>th</sup> Avenue and 40<sup>th</sup>

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Avenue, Block 396, Lot 10 & 36, Borough of Queens.

## COMMUNITY BOARD #1Q

### APPEARANCES –

For Applicant: Fredrick A. Becker.

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

### THE VOTE TO GRANT –

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

Negative:.....0

### THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance which permitted, in an M1-3D zoning district, a five-story and cellar enlargement of an existing four-story and cellar non-conforming school with accessory uses (Use Group 3) which did not provide the required rear yard equivalent and exceeded the maximum height limit; and

WHEREAS, a public hearing was held on this application on October 27, 2009, after due notice by publication in *The City Record*, with continued hearings on November 24, 2009 and December 15, 2009, and then to decision on January 26, 2010; and

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

WHEREAS, Community Board 1, Queens, recommends approval of the proposed enlargement; and

WHEREAS, this application was brought on behalf of the Evangel Christian School (the “School”), a not-for-profit institution; and

WHEREAS, the subject site is a through lot bounded by Crescent Street to the north and 27<sup>th</sup> Street to the south, between 39<sup>th</sup> Avenue and 40<sup>th</sup> Avenue, partially within an M1-2/R5B zoning district and partially within an M1-2/R5D zoning district; and

WHEREAS, on May 9, 1995, the Board granted a variance pursuant to ZR § 72-21, which permitted, in an M1-3D zoning district, a five-story and cellar horizontal enlargement of an existing four-story and cellar non-conforming school with accessory uses (Use Group 3) which did not provide the required rear yard equivalent and exceeded the maximum height limit; and

WHEREAS, the applicant notes that since the time of the original grant the site has been rezoned from an M1-3D district to M1-2/R5B and M1-2/R5D zoning districts; as a result of the rezoning, there is no longer a use objection because the use conforms with the new zoning districts’ use regulations; and

WHEREAS, the School currently occupies 86,589 sq. ft. of floor area, comprising a four-story school portion fronting on Crescent Street, a five-story church portion fronting on 27<sup>th</sup> Street, and a two-story school portion fronting on 27<sup>th</sup> Street; and

WHEREAS, the School now proposes a four-story

vertical enlargement to the existing two-story school portion fronting on 27<sup>th</sup> Street, which will add 17,020 sq. ft. of floor area, for a total floor area of 103,609 sq. ft. (1.80 FAR), and will increase the wall height to 96’-1 ¾” (60’-0” is the maximum permitted) for that portion of the building; and

WHEREAS, the enlargement will be occupied by (1) a computer lab, four classrooms, and bathrooms on the third floor; (2) five classrooms and bathrooms on the fourth floor; (3) a science lab, a chapel/multi-function room, offices, and bathrooms on the fifth floor; and (4) a prayer room, a conference room, offices, and bathrooms on the sixth floor; and

WHEREAS, the applicant states that the proposed enlargement encroaches into the sky exposure plane, contrary to ZR § 43-43; and

WHEREAS, the applicant represents that since the time of the original grant, the student enrollment at the School has increased to 500 students, and that the requested enlargement is necessary to satisfy the School’s programmatic needs; and

WHEREAS, the applicant states that overcrowding has forced the School to convert accessory use rooms, such as the choir room, audio/visual room, and bookstore into classrooms, to convert a storage room into an office, and to convert a multi-function room into a cafeteria; and

WHEREAS, the applicant further states that the school serves students from first grade through high school, and there is a programmatic need to separate the younger students from the high school students, for both scholastic and safety interests; and

WHEREAS, the applicant represents that the proposed enlargement would alleviate the current overcrowded conditions and would also allow for the separation of the high school from the other grades; and

WHEREAS, the applicant states that the proposed enlargement would also provide proper offices and counseling space, as well as other accessory uses for the school; and

WHEREAS, accordingly, the Board finds that the applicant has provided sufficient evidence to establish that there is a programmatic need for the proposed enlargement; and

WHEREAS, the applicant represents that there are several other six-story and larger buildings in the surrounding area; and

WHEREAS, the applicant further represents that the easterly portion of the enlargement, which is closest to adjoining structures, will be set back from the street to minimize its impact; and

WHEREAS, the applicant notes that the use of the site is now in conformance with the zoning district regulations, and the proposed FAR of 1.8 is well below the maximum permitted FAR of 4.8; and

WHEREAS, the applicant also requests that the Board amend the previous grant to remove the conditions requiring (1) attended parking to minimize any potential traffic or parking impacts, and (2) crossing guards at each of the corners adjacent to the school to aid children walking to school; and

WHEREAS, as to the attended parking, the applicant

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represents that the parking lot use is limited during the week to teachers and staff, and on Sunday to parishioners; and

WHEREAS, the applicant further represents that most of the cars arrive to the site at the same time and that, due to there being limited on-site reservoir space, attended parking would lead to significant traffic congestion in the surrounding area as cars queued in the street; and

WHEREAS, at hearing, the Board questioned the number of parking spaces that should be provided if the condition for attended parking is removed, considering that many of the spaces are tandem parking spaces which generally require an attendant; and

WHEREAS, in response, the applicant submitted revised plans reflecting that the Department of Buildings (“DOB”) will review and approve the parking layout at the site; and

WHEREAS, as to the condition relating to crossing guards, the applicant represents that crossing guards are unnecessary because, of the 90 students under the age of ten that attend the School, 65 arrive by school buses, the majority of the remainder arrive by car, and the few who arrive by foot are accompanied by adults; and

WHEREAS, the applicant submitted a letter from the Department of Transportation School Safety Engineering Office, stating that it has no objection to the removal of the crossing guard because the School has adequate signs and markings such that the removal of the crossing guard will not affect the safety of the students; and

WHEREAS, the applicant represents that the Community Board has no objection to the proposed elimination of the conditions related to the use of attended parking and a crossing guard; and

WHEREAS, accordingly, the Board agrees that it is appropriate to eliminate the aforementioned conditions related to attended parking and crossing guards from the prior grant, on the condition that the parking layout is subject to DOB approval; and

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

WHEREAS, based upon its review of the evidence, the Board finds that the requested amendment does not alter the Board’s findings made for the original variance; and

WHEREAS, accordingly, the Board finds that the proposed variance, as amended, continues to reflect the minimum variance and the Board has determined that it is appropriate, with certain conditions set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated May 9, 1995, so that as amended this portion of the resolution shall read: “to permit the noted modification to the plans to reflect the four-story vertical enlargement of the existing two-story building, contrary to ZR § 43-43; *on condition* that all work shall substantially conform to drawings filed with this application and marked “Received January 20, 2010”-(8) sheets; and *on further condition*:

THAT the parking layout, including the number of spaces, is subject to DOB review and approval;

THAT substantial construction shall be completed in accordance with the BSA-approved plans by January 26, 2014;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 410183821)

Adopted by the Board of Standards and Appeals, January 26, 2010.

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## 818-59-BZ

APPLICANT – Akerman Senterfitt for 139 East 33<sup>rd</sup> Street Corporation, owner; Central Parking System of NY, Incorporated, lessee.

SUBJECT – Application July 24, 2009 – Extension of Term (§11-411) to permit the use of surplus parking spaces of an accessory garage to a multiple dwelling for transient parking which expired on July 6, 2001. C1-9 & C6-1 zoning district.

PREMISES AFFECTED – 139 East 33<sup>rd</sup> Street, north side of 33<sup>rd</sup> Street and north west corner of 220/226 Lexington Avenue, Block 889, Lot 15, Borough of Manhattan.

### COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Calvin Wong.

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 February 23, 2010, at 10 A.M., for decision, hearing closed.

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## 582-83-BZ

APPLICANT – Carole S. Slater for Torri Associates c/o LaSeven, Incorporated, owner.

SUBJECT – Application December 23, 2009 – Extension of Term for a previously granted Variance (§72-21) to permit the conversion of an existing six story building for commercial use with retail stores on the ground floor which expired on January 10, 2004; Amendment to permit (UG6) use in the cellar and to eliminate the Term; Waiver of the Rules. R8B zoning district.

PREMISES AFFECTED – 215 East 58th Street, North side of East 58th Street, between Second and Third Avenues. Block 1332, Lot 10, Borough of Manhattan.

### COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Carole Slater and Neil Weisbard.

THE VOTE TO CLOSE HEARING –

# MINUTES

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

**ACTION OF THE BOARD** – Laid over to February 2, 2010, at 10 A.M., for decision, hearing closed.

## 603-86-BZ

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

SUBJECT – Application September 3, 2009 – Extension of Term for a Variance (§72-21) allowing the construction of retail stores (UG 6), which expired on September 8, 2007; Amendment to the accessory open parking area and refuse area and request to eliminate the term; Waiver of the Rules. R7A (Downtown Jamaica Special District) zoning district. PREMISES AFFECTED - 88-34 Parsons Boulevard, a/k/a 88-26/34 Parsons Boulevard. North west corner of Parsons Boulevard and 89th Avenue, Block 9762, Lot 41, Borough of Queens.

## COMMUNITY BOARD #12Q

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to March 2, 2010, at 10 A.M., for adjourned hearing.

## 813-87-BZ

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

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

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

## COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Fredrick A. Becker.

**ACTION OF THE BOARD** – Laid over to March 2, 2010, at 10 A.M., for continued hearing.

## 21-91-BZ

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

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

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

Brooklyn.

## COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Josh Rhinesmith.

For Opposition: Ronald J. Dillon.

**ACTION OF THE BOARD** – Laid over to February 23, 2010, at 10 A.M., for continued hearing.

## 62-96-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 200 Madison LLC, owner; TSI East 36 LLC d/b/a The New York Sports Club, lessee.

SUBJECT – Application November 23, 2009 – Extension of Term of a previously granted Special Permit (§73-36) for the operation of a Physical Culture Establishment (*New York Sports Club*) which expired on February 4, 2007; Extension of Time to obtain a Certificate of Occupancy which expired on January 10, 2007 and Waiver of the Rules. C5-2 zoning district.

PREMISES AFFECTED – 200 Madison Avenue, west side of Madison Avenue between East 35<sup>th</sup> Street and East 36<sup>th</sup> Street, Block 865, Lot 14, Borough of Manhattan.

## COMMUNITY BOARD #5M

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 February 23, 2010, at 10 A.M., for decision, hearing closed.

## 75-00-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Matthew Realty LLC, c/o Nathan Katz Realty, LLC, owner; TVR Communications, lessee.

SUBJECT – Application October 26, 2009 – Extension of Term of a previously granted Variance (§72-21) to permit a real estate office (UG6) in a residential district which expires on July 25, 2010; amendment to change use (within the same UG6 office use). R5 zoning district.

PREMISES AFFECTED – 60-69 Woodhaven Boulevard, east side of Woodhaven Boulevard, north of Eliot Avenue, Block 3089, Lot 1, Borough of Queens.

## COMMUNITY BOARD #6Q

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 February 2, 2010, at 10 A.M., for decision, hearing closed.

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## 375-02-BZ

APPLICANT – Moshe M. Friedman, for Congregation Tzolsa D’Shlomo, owner.

SUBJECT – Application June 4, 2009 – Amendment to a variance to modify plans for a house of worship and rectory; Extension of time to complete construction and obtain a Certificate of Occupancy. R5 zoning district.

PREMISES AFFECTED – 1559 59<sup>th</sup> Street, north side of 59<sup>th</sup> Street, 400’ west from the intersection of 59<sup>th</sup> Street and 16<sup>th</sup> Avenue, Block 5502, Lot 54, Borough of Brooklyn.

### COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Moshe M. Friedman.

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 February 23, 2010, at 10 A.M., for decision, hearing closed.

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## 208-03-BZ

APPLICANT – Stuart A. Klein, Esq., for Shell Road, LLC, owner; Orion Caterers, Incorporated, lessee.

SUBJECT – Application November 9, 2009 – Extension of Term of a previously granted Variance (§72-21) for a UG9 catering hall which expired on October 19, 2009. R4/C1-2/M1-1 OP zoning district.

PREMISES AFFECTED – 255 Shell Road, east side of Shell Road, between Avenue X and Bouck Court, Block 7192, Lot 74, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Jay Goldstein.

**ACTION OF THE BOARD** – Laid over to February 23, 2010, at 10 A.M., for continued hearing.

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## 291-03-BZ

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

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

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

### COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Yaakov Goldstein.

THE VOTE TO REOPEN 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 March 16, 2010, at 10 A.M., for continued hearing.

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## 311-04-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for Block 2285 Lite Corporation, owner.

SUBJECT – Application July 8, 2009 – Amendment to a previously granted Variance (§72-21) for a proposed one family dwelling which is contrary to lot coverage (§105-33) and maximum height (§23-631) regulations. R1-2(NA-1) zoning district.

PREMISES AFFECTED – 380 Lighthouse Avenue, south side of Lighthouse Avenue, 579’ west of Winsor Avenue, Block 2285, Lot 1, Borough of Staten Island.

### COMMUNITY BOARD #2SI

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 February 2, 2010, at 10 A.M., for decision, hearing closed.

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## 111-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Alex Lyublinskiy, owner.

SUBJECT – Application to reopen pursuant to court remand (Appellate Division) to revisit the findings of a Special Permit (§73-622) for the in-part legalization of an enlargement to a single family residence. This application seeks to vary open space and floor area (§23-141); side yard (§23-48) and perimeter wall height (§23-631) regulations. R3-1 zoning district.

PREMISES AFFECTED – 136 Norfolk Street, west side of Norfolk Street between Shore Boulevard and Oriental Boulevard, Block 8756, Lot 14, Borough of Brooklyn.

### COMMUNITY BOARD# 15BK

APPEARANCES –

For Applicant: Richard Lobel.

**ACTION OF THE BOARD** – Laid over to March 9, 2010, at 10 A.M., for continued hearing.

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## 58-07-BZ

APPLICANT – Eric Palatnik, P.C., for Vito Savino, owner.

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

PREMISES AFFECTED – 18-02 Clintonville, Block 4731, Lot 9, Borough of Brooklyn.

### COMMUNITY BOARD #7BK

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## APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to March 9, 2010, at 10 A.M., for continued hearing.

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## 196-08-BZ

APPLICANT – Gage Parking Consultants, for 53-10 Associates, owner.

SUBJECT – Application October 13, 2009 – Amendment of a previous grant for public parking garage; amendment would enclose rooftop parking. C6-2 (Special Clinton District) zoning district.

PREMISES AFFECTED – 792 Tenth Avenue / 455 West 53<sup>rd</sup> Street, north east corner of Tenth Avenue and West 53<sup>rd</sup> Street, Block 1063, Lot 1, Borough of Manhattan.

## COMMUNITY BOARD #4M

### APPEARANCES –

For Applicant: Jeremiah Candean and John Meyer.

**ACTION OF THE BOARD** – Laid over to March 16, 2010, at 10 A.M., for continued hearing.

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## APPEALS CALENDAR

## 245-09-BZY

APPLICANT – Sheldon Lobel, P.C., for Adelphi Luxury Development, LLC, owner.

SUBJECT – Application August 21, 2009 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6 zoning district. R6B Zoning District.

PREMISES AFFECTED – 120 Adelphi Street, west side of Adelphi Street, 252’ north of the intersection of Adelphi Street and Myrtle Avenue, Block 2044, Lots 74 and 75, Borough of Brooklyn.

## COMMUNITY BOARD #2BK

### APPEARANCES –

For Applicant: Jordan Most.

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

### THE VOTE TO GRANT –

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

Negative:.....0

### THE RESOLUTION –

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

WHEREAS, a public hearing was held on this application on November 24, 2009, after due notice by publication in *The City Record*, with a continued hearing on January 12, 2010, and then to decision on January 26, 2010; 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, State Senator Velmanette Montgomery provided written testimony requesting that the Board give careful consideration to the objections of the residents of the community; and

WHEREAS, Council Member Letitia James provided written testimony in opposition to this application; and

WHEREAS, the Fort Greene Association provided written testimony in opposition to this application; and

WHEREAS, several members of the community, collectively known as the “Opposition,” provided written and oral testimony in opposition to this application; and

WHEREAS, the Opposition raised the following primary concerns: (1) the construction delays at issue were of the applicant’s own making; (2) substantial construction of the building has not been completed; and (3) that the applicant is not completing the work in a timely manner; and

WHEREAS, the subject site is located on the west side of Adelphi Street, between Myrtle Avenue and the Brooklyn-Queens Expressway, within an R6B zoning district; and

WHEREAS, the subject site has approximately 50 feet of frontage along Adelphi Street, a depth of 100 feet, and a total lot area of 4,973 sq. ft.; and

WHEREAS, the site is proposed to be developed with an 11-story residential building (the “Building”); and

WHEREAS, the Building is proposed to have a total floor area of 27,451 sq. ft.; and

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

WHEREAS, however, on July 25, 2007 (hereinafter, the “Enactment Date”), the City Council voted to adopt the Fort Greene / Clinton Hill Rezoning, which rezoned the site from R6 to R6B; and

WHEREAS, on November 3, 2004, Alteration Permit No. 301859246-01-EW-OT (hereinafter, the “Foundation Permit”) was issued by the Department of Buildings (“DOB”) permitting foundation work in connection with New Building Application No. 301952652; on July 12, 2007, New Building Permit No. 301952652-01-NB (hereinafter, the “New Building Permit”) was issued by DOB permitting construction of the Building; and

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

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

WHEREAS, accordingly, because the two-year time limit has expired and construction is still ongoing, the applicant seeks relief pursuant to ZR § 11-30 *et seq.*, which sets forth the regulations that apply to a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed development, which

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involves the construction of a single building which is non-complying under an amendment to the Zoning Resolution, as a "minor development"; and

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

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

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

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

WHEREAS, by letter dated September 3, 2009, DOB stated that the New Building Permit was lawfully issued, authorizing construction of the proposed Building prior to the Enactment Date; and

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

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

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

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

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

WHEREAS, the Board further notes that any work performed after the two-year time limit to complete construction and obtain a certificate of occupancy cannot be considered for vesting purposes; accordingly, only the work performed as of July 25, 2009 has been considered; and

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

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permit includes: 100 percent of the foundation; 90 percent of cinder block work; 70 percent of the elevator shaft; 50 percent of the steel structure, fire stairs and balconies; ten percent of work on the sewer, water main and sprinkler main; and two percent of the electrical roughing; and

WHEREAS, in support of this statement, the applicant has submitted the following: a construction schedule detailing the work completed since the issuance of the Foundation Permit; a payment report prepared by an independent consultant detailing construction progress at the site; a construction contract; a breakdown of the construction costs by line item and percent complete; an affidavit from the general contractor enumerating the completed work; copies of lien waivers evidencing payments made by the applicant; and photographs of the building's interior and exterior; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the aforementioned work was completed subsequent to the issuance of the valid permit and before July 25, 2009; and

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

WHEREAS, as to costs, the applicant represents that the total expenditures paid for the development are \$1,092,150, or 15 percent, of the \$7,460,000 cost to complete; and

WHEREAS, as noted, the applicant has submitted a construction contract, a lien waiver, and a payment report prepared by an independent consultant; and

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

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

WHEREAS, in response to concerns raised by the Opposition, the applicant states that the construction delays at issue were largely caused by a discrepancy between the stated deed dimensions of the tax lots comprising the zoning lot and

# MINUTES

the surveyed dimensions, as well as subsequent financing delays; and

WHEREAS, the applicant further states that the Opposition's claim regarding the owner's purported pattern of unfinished projects has no bearing on the findings of ZR § 11-332, and notes that the applicant has been working to develop three parcels in the area that was rezoned, and was forced to reallocate construction resources to best preserve its rights for each development, which was complicated due to financing issues; and

WHEREAS, the applicant represents that the project will be completed in a reasonable timeframe; and

WHEREAS, the Board has reviewed the amount construction performed pursuant to valid permits and does not find the Opposition's concerns about delays or the applicant's reasons for delays to be relevant to the analysis for vesting, pursuant to ZR § 11-332; and

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

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a two-year extension of time to complete construction, pursuant to ZR § 11-332; and *Therefore it is Resolved* that this application made pursuant to ZR § 11-332 to renew Building Permit No. 301952652-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on January 26, 2012.

Adopted by the Board of Standards and Appeals, January 26, 2010.

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## 300-08-A

APPLICANT – Blank Rome LLP by Marvin Mitzner, for Dutch Kills Partners, LLC, owner.

SUBJECT – Application December 9, 2008 – An appeal seeking a determination that the property owner has acquired a common law vested right to continue development under the prior M1-3 zoning district regulations. M1-2 /R5B zoning district.

PREMISES AFFECTED – 39-35 27<sup>th</sup> Street, east side of 27<sup>th</sup> Street, 125' northeast of the intersection of 27<sup>th</sup> Street and 40<sup>th</sup> Avenue, Block 397, Lot 2, Borough of Queens.

### COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Marvin Mitzner and Steven Baharestani.  
For Opposition: Steven Maffei, Claudia Chan, Barbara Lorine, Nicholas Sermoneta, Vienna Ferreri, Gerald Walsh, Geo L. Stamatiades, Noni Pratt, Mary Carallo, Megan Friedman, Melinda Parino, Dianne L. Martin.

**ACTION OF THE BOARD** – Laid over to March 16, 2010, at 10 A.M., for continued hearing.

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## 315-08-A

APPLICANT – Stuart A. Klein, Esq., for Bayrock/Sapir Organization, LLC., owner.

SUBJECT – Application December 23, 2008 – An appeal seeking the revocation of permits for a condominium hotel on the basis that the approved plans allow for exceedance of maximum permitted floor area. M1-6 zoning.

PREMISES AFFECTED – 246 Spring Street, between Varick Street and Hudson Street, block 491, Lot 36, Borough of Manhattan.

### COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Stuart A. Klein.

For Opposition: Mark Davis, DOB; Paul Selver.

**ACTION OF THE BOARD** – Laid over to March 16, 2010, at 10 A.M., for continued hearing.

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## 57-09-A thru 158-09-A

APPLICANT – Eric Palatnik, P.C. for Maguire Avenue Realty Corporation, owner.

SUBJECT – Application April 15, 2009 – An appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior zoning district regulations. R3-2 (SSRD) zoning district.

PREMISES AFFECTED – Maguire Woods, Santa Monica Lane, Moreno Court, El Camino Loop, Malibu Court, Foothill Court and Moreno Court, Maguire Woods in the Woodrow section of Staten Island. Block 6979, Lots 64 thru 362, Borough of Staten Island.

### COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to February 23, 2010, at 10 A.M., for continued hearing.

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

APPLICANT – Gouranga C. Kundu, for Isteak Rum, owner.

SUBJECT – Application September 9, 2009 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6 Zoning District. R5 Zoning District.

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

### COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Gouranga Kundu.

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 February

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9, 2010, at 10 A.M., for decision, hearing closed.  
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## 259-09-BZY & 261-09-BZY

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

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

### COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Gouranga Kundu.

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 February 9, 2010, at 10 A.M., for decision, hearing closed.  
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## 280-09-A

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 330 West 86<sup>th</sup> Street, LLC, owner.

SUBJECT – Application January 26, 2010 – Appeal challenging Department of Building's authority under the City Charter to interpret or enforce provisions of Article 16 of the General Municipal Law as it applies to the construction of a proposed 16 story+ penthouse. R10A Zoning district.

PREMISES AFFECTED – 330 West 86<sup>th</sup> Street, south side of West 86<sup>th</sup> street, 280' west of the intersection of Riverside Drive and West 86<sup>th</sup> Street, Block 1247, Lot 49, Borough of Manhattan.

### COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Al. Fredricks and Paul Selver.

For Opposition: Mark Davis.

**ACTION OF THE BOARD** – Laid over to March 9, 2010, at 10 A.M., for continued hearing.  
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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

## REGULAR MEETING TUESDAY AFTERNOON, JANUARY 26, 2010 1:30 P.M.

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

### 43-09-BZ

#### CEQR #09-BSA-100K

APPLICANT – Harold Weinberg, P.E., for Paul S. Grosman, owner.

SUBJECT – Application March 10, 2009 – Special Permit (§73-19) to allow a school (*Southside Charter High School*) in a recently constructed building, contrary to use regulations. M1-2 district.

PREMISES AFFECTED – 198 Varet Street, southside 170'-6" west of White Street, between White Street and Bushwick Avenue, Block 3117, Lot 24, Borough of Brooklyn.

### COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Harold Weinberg and Frank Sellitto.

**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 March 5, 2009, acting on Department of Buildings Application No. 301100671 reads in pertinent part:

“The proposed change in use to a school in Use Group 3 in an M1-2 zoning district is contrary to Section 42-00 of the Zoning Resolution;” and

WHEREAS, this is an application under ZR §§ 73-19 and 73-03 to permit, on a site within an M1-2 zoning district, the proposed operation of a high school (Use Group 3), contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on November 24, 2009, after due notice by publication in the *City Record*, with a continued hearing on December 15, 2009, and then to decision on January 26, 2010; 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, Brooklyn, recommends approval of this application; and

WHEREAS, City Council Member Diana Reyna provided testimony in support of this application; and

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WHEREAS, New York State Assemblyman Joseph Lentol provided testimony in support of this application; and

WHEREAS, the application is brought on behalf of The Williamsburg Charter High School (the "School"); and

WHEREAS, the site is located on the south side of Varet Street, between White Street and Bushwick Avenue, in an M1-2 zoning district; and

WHEREAS, the site has a lot area of 21,817 sq. ft.; and

WHEREAS, the site is currently occupied by an eight-story building with a floor area of approximately 104,722 sq. ft., which is occupied by commercial uses on the first floor and mezzanine, and which is otherwise vacant; and

WHEREAS, the applicant proposes to occupy the existing building for use as a high school (Use Group 3); and

WHEREAS, the applicant represents that the proposed school meets the requirements of the special permit authorized by ZR § 73-19 for permitting a school in an M1 zoning district; and

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

WHEREAS, the applicant states that the proposed building will serve an estimated 1,000 students from ninth through 12<sup>th</sup> grade in year one, and is anticipated to eventually reach a full capacity of 1,200 students; and

WHEREAS, the School's program includes 28 classrooms, art rooms, science labs, a student center, fitness center, multi-purpose room, and administrative offices; and

WHEREAS, the applicant states that the School's program requires a minimum lot area of 20,000 sq. ft., a building with a floor area of at least 104,000 sq. ft., and a flexible floor plate configuration; and

WHEREAS, the applicant further represents that close proximity to multiple sources of public transportation is necessary to accommodate the School's programmatic need of being easily accessible to students; and

WHEREAS, the applicant states that the School has an additional programmatic need to be located within either the 11211, 11222 or 11206 zip codes in the Williamsburg neighborhood of Brooklyn, as per the School's New York State Department of Education Charter; and

WHEREAS, the applicant further states that due to the School's Charter requirements and because the majority of the students are anticipated to live in the Williamsburg area, it conducted a search for a suitable location for the School in that area; and

WHEREAS, the applicant represents that it conducted a three-year search, during which it specifically evaluated the feasibility of six Brooklyn buildings: 268 Norman Avenue, 248 Kent Avenue, 77 Commercial Street, 28 Debevoise Street, 41 Varick Avenue, and 400 McGuinness Boulevard; and

WHEREAS, the applicant states that, of the six buildings it evaluated, only 28 Debevoise Street and 77

Commercial Street are located in zoning districts where the School would be permitted as-of-right; and

WHEREAS, the applicant further states that 28 Debevoise Street was found to be structurally unsuitable due to the building's narrow column widths which would have made it infeasible to build adequately sized classrooms, and 77 Commercial Street was found to be both economically infeasible due to its high acquisition costs and geographically remote and therefore not readily accessible by public transportation; and

WHEREAS, therefore, the applicant concluded that neither of the sites within zoning districts where the use would be permitted as of right, and none of the other sites, would be able to accommodate the proposed school; and

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

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

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

WHEREAS, the applicant submitted a land use map which reflects that the northeast corner of the subject lot is within 400 feet of an R6 zoning district where the proposed use would be permitted as-of-right; and

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

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

WHEREAS, the applicant represents that there are no industrial emission sources among the uses in the surrounding area; and

WHEREAS, the applicant states that adequate separation from noise, traffic and other adverse effects of the surrounding M1-2 zoning district will be provided through the building's existing metal stud walls with R22 insulation and the use of double-glazed windows; and

WHEREAS, the applicant represents that there will be little traffic entering Varet Street near the subject site because the site fronts upon a lightly traveled one-way street; and

WHEREAS, the Board finds that the conditions surrounding the site, the construction of the building, and the installation of double-glazed windows will adequately separate the School from noise, traffic and other adverse effects of any of the uses within the surrounding M1-2 zoning district; thus, the Board finds that the requirements of ZR § 73-19 (c) are met; and

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

WHEREAS, the applicant states that the School will

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not provide bus service and that the students, who are all of high school age, will travel independently by foot or mass transit; and

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

WHEREAS, by letter dated April 8, 2009, DOT states that it has no objection to the proposed school; and

WHEREAS, the Board finds that the above-mentioned measures maintain safe conditions for children going to and from the School; and

WHEREAS, the applicant submitted an Environmental Assessment Statement which indicated that the School will not generate a significant number of vehicle trips and will not have a significant adverse impact on traffic; and

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

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

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

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement (EAS) 09BSA100K, dated November 20, 2009; and

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

WHEREAS, the New York City Department of Environmental Protection’s (DEP) Bureau of Environmental Planning and Assessment reviewed the project for potential hazardous materials, air quality and noise impacts; and

WHEREAS, DEP approved the Construction Health and Safety Plan on December 28, 2009; and

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

WHEREAS, DEP reviewed the applicant’s stationary source screening analysis for the subject building’s proposed HVAC equipment and the pollutant concentrations associated with active industrial/manufacturing facilities within a 400-ft. radius of the subject site, and determined that the proposed project is not anticipated to result in significant stationary source air quality impacts relative to HVAC emissions and significant impacts from surrounding industrial/manufacturing uses on the proposed project are not anticipated; and

WHEREAS, based on the results of noise monitoring, a window-wall noise attenuation of 30 dBA with central air-conditioning or individual window air-conditioning units as an alternate means of ventilation are proposed in order to achieve an interior noise level of 45 dBA; and

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-19 and 73-03 and grants a special permit, to allow the proposed operation of a school (Use Group 3), on a site within an M1-2 zoning district; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received May 20, 2009” - (15) sheets and “Received June 17, 2009” - (2) sheets; and *on further condition*:

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

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 30 dBA of window-wall noise attenuation, with central air-conditioning or individual window air-conditioning units as an alternate means of ventilation, shall be maintained in the proposed building;

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

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

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

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

Adopted by the Board of Standards and Appeals, January 26, 2010.

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**180-09-BZ**  
**CEQR #09-BSA-114R**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Steven Smith, owner.

SUBJECT – Application June 1, 2009 – Variance (§72-21) to allow for a commercial building (UG6) contrary to use regulations (§22-00). R3-1 zoning district.

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PREMISES AFFECTED – 1735 Richmond Avenue, 296.35’ north of the intersection of Richmond Avenue and Croft Place, block 2072, Lot 28, Borough of Staten Island.

## COMMUNITY BOARD #2SI

### APPEARANCES –

For Applicant: Todd Dale.

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

### THE VOTE TO GRANT –

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

Negative:.....0

### THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated April 30, 2009, acting on Department of Buildings Application No. 510066232, reads in pertinent part:

“Proposed commercial use, zoning use group 6, is not permitted as-of-right in R3-1 residential zoning district, and is contrary to ZR 22-00, therefore, this application is referred to the Board of Standards and Appeals for approval;” and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R3-1 zoning district, the construction of a two-story commercial building (Use Group 6) which does not conform to district use regulations, contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on October 20, 2009 after due notice by publication in *The City Record*, with continued hearings on November 24, 2009 and December 15, 2009, and then to decision on January 26, 2010; and

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

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

WHEREAS, the subject site is located on the east side of Richmond Avenue, between Victory Boulevard and Croft Place, within an R3-1 zoning district; and

WHEREAS, the site has approximately 46’-0” of frontage on Richmond Avenue, a depth of approximately 305’-0”, and a lot area of 13,679 sq. ft.; and

WHEREAS, the site is currently occupied by a vacant one-and-one-half story home and detached garage, which will be demolished in anticipation of the proposed development; and

WHEREAS, the building is proposed to have a total floor area of 4,992 sq. ft. (0.36 FAR), with two retail spaces at the first floor, two offices at the second floor, and 19 accessory parking spaces at the rear of the site; and

WHEREAS, commercial use is not permitted in the subject R3-1 zoning district, thus the applicant seeks a use variance to permit the proposed Use Group 6 uses; and

WHEREAS, the applicant states that the following are unique physical conditions which create unnecessary hardship and practical difficulties in developing the site with a complying development: (1) the site’s irregular shape; (2) the

absence of a sanitary sewer connection; (3) the site’s location on a heavily-trafficked arterial road; and (4) the preponderance of adjacent commercial uses; and

WHEREAS, as to the site’s irregular shape, the applicant notes that the site has a depth of approximately 305 feet, which is more than six times its width of approximately 46 feet, for a total lot area of 13,679 sq. ft.; and

WHEREAS, the applicant represents that this width-to-depth ratio impedes the development of the site for a conforming use; and

WHEREAS, specifically, the applicant states that the irregular and unique configuration of the lot constrains the development of the site to its full density, as the yard requirements limit the site to two one-family homes despite the available floor area of 6,840 sq. ft., a significant amount for two homes which exceeds what would be marketable or contextual with nearby residential development; and

WHEREAS, the applicant represents that the development of two single-family homes on the site would require the establishment of a new connection to the nearest sanitary sewer; and

WHEREAS, therefore, the applicant represents that the only as-of-right schemes available at the site include: (1) one single-family home without a sewer connection; or (2) two single-family homes with a new connection to the nearest sanitary sewer; and

WHEREAS, the applicant submitted letters from two real estate brokers as well as the previous owner of the site, stating that the site has been marketed as a one-family home since October 2006 and there has been no interest in residential use of the property despite significant price reductions; and

WHEREAS, as to the lack of a sanitary sewer connection, the applicant states that the nearest available sanitary sewer is located in Croft Place, more than 350 feet from the site; and

WHEREAS, the applicant submitted a New York City sewer index map indicating the extension that would be necessary to connect the subject site to the nearest available sanitary sewer in Croft Place; and

WHEREAS, the applicant represents that extending the sanitary sewer in Croft Place to the subject site would be cost-prohibitive; and

WHEREAS, in support of this statement, the applicant submitted a cost estimate from its engineer, which stated that it would cost at least \$245,000 to extend the existing sanitary sewer in Croft Place to the subject site; and

WHEREAS, as to the site’s location, the applicant states that Richmond Avenue is an eight-lane north/south arterial roadway approximately 120’-0” in width; and

WHEREAS, the applicant represents that the high volume of traffic and the resultant noise on Richmond Avenue inhibits the residential use of the property; and

WHEREAS, the applicant asserts that an abundance of commercial uses in the surrounding area also diminishes the marketability of the site for a conforming residential use; and

WHEREAS, the applicant submitted a land use map of the area reflecting that, of the 17 lots fronting Richmond Avenue between Victory Boulevard and Carnegie Avenue, 12

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are occupied by commercial uses while the subject site is one of only two lots that are occupied by a residential use; and

WHEREAS, the land use map submitted by the applicant also reflected that the uses immediately adjacent to the subject site include a Use Group 6 telephone exchange to the south, a Use Group 16 automobile laundry and repair shop to the north, and an accessory parking lot for a diner located on Victory Boulevard to the east; and

WHEREAS, the Board does not find the location on an arterial roadway or the preponderance of adjacent commercial uses to be unique conditions to the site, however, when considered in combination with the irregular shape of the lot and the lack of a sewer connection, these conditions create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study which analyzed: (1) an as-of-right community facility development; and (2) the proposed Use Group 6 retail/office development; and

WHEREAS, the study concluded that the as-of-right scenario would not result in a reasonable return, but that the proposed building would realize a reasonable return; and

WHEREAS, at the Board's direction the applicant also examined two as-of-right residential scenarios; and

WHEREAS, the applicant concluded that neither of the residential scenarios were feasible because of the high cost associated with constructing an extension to the sanitary sewer in Croft Place and because they did not allow the development of the site to its full density; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with zoning 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 represents that the surrounding area is occupied by an abundance of commercial uses; and

WHEREAS, the applicant has submitted a land use map of the area indicating that within a 400-ft. radius of the site, nine out of 11 lots with frontage along the east and west sides of Richmond Avenue, including the subject site, have been developed for commercial uses; and

WHEREAS, the applicant states that the uses immediately adjacent to the rear portion of the site, which will be used for parking, include a Use Group 6 telephone exchange to the south, an accessory parking lot for a diner to the east, and a vacant commercial lot to the north; and

WHEREAS, the Board notes that the proposed 0.36 FAR complies with the maximum 0.50 FAR permitted for an as-of-right building in the subject zoning district; and

WHEREAS, the applicant notes that the proposed 19 parking spaces exceed the 17 spaces that would be required in the adjacent C1-2 zoning district; and

WHEREAS, the applicant initially proposed to set back

the subject commercial building approximately 100 feet from Richmond Avenue, with parking located at the front and rear of the building; and

WHEREAS, at the Board's direction, the applicant submitted revised plans reflecting that the subject building will be situated at the front of the site with all parking located at the rear; and

WHEREAS, at hearing, the Board requested that the applicant provide landscaped areas at the front of the site along Richmond Avenue, and at the rear of the site to provide a buffer for the adjacent lots; and

WHEREAS, in response, the applicant provided revised plans reflecting that there will be a landscaped area along Richmond Avenue and shrubbery planted along the rear of the site; and

WHEREAS, at hearing, the Board also requested that the applicant provide a pedestrian walkway from the front of the site to the rear of the site; and

WHEREAS, in response, the applicant submitted revised plans with a 3'-0" wide striped pedestrian walkway along the driveway to the rear parking lot; and

WHEREAS, at hearing, the Board questioned whether patrons would be able to make a right turn onto Richmond Avenue when exiting the site, due to a traffic control striping for a turning lane in front of the site that requires all traffic in that lane to proceed to Victory Boulevard; and

WHEREAS, in response, the applicant states that it will request that the Department of Transportation ("DOT") adjust the start of the turning lane, or it will require patrons to proceed to Victory Boulevard; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the site's unique physical conditions; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 09BSA114R, dated May 28, 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

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Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R3-1 zoning district, the proposed construction of a two-story commercial building, which does not conform with applicable zoning use regulations, contrary to ZR § 22-00; on condition that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 8, 2009"- six (6) sheets; and on further condition:

THAT the following are the bulk parameters of the proposed building: a total floor area of 4,992 sq. ft. (0.36 FAR); a rear yard with a depth of 186'-6"; a front yard with a depth of 10'-0"; a side yard with a depth of 16'-0" along the southern lot line; a total height of 23'-0"; and 19 parking spaces, as indicated on the BSA-approved plans;

THAT landscaping shall be provided and maintained as per the BSA-approved plans;

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

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

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

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

Adopted by the Board of Standards and Appeals, January 26, 2010.

## 224-09-BZ

### CEQR #10-BSA-008Q

APPLICANT – Sheldon Lobel, P.C., for Springfield-Hempstead Realty, LLC, owner; Walgreens Company, lessee.

SUBJECT – Application July 8, 2009 – Special Permit (§73-52) to allow for accessory commercial parking to be located in the residential portion of a split zoning lot. C2-3/R3-2 and R3-2 zoning districts.

PREMISES AFFECTED – 218-51 aka 218-59 Hempstead Avenue, Northwest corner of intersection of Hempstead Avenue, Block 10766, Lot 38, 46, 48, 51, Borough of Queens.

## COMMUNITY BOARD #13Q

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, January 26, 2010.

## 302-09-BZ

APPLICANT – Harold Weinberg, P.E., for Yi Fu Rong, owner.

SUBJECT – Application October 30, 2009 – Special Permit pursuant (§73-50) to legalize an encroachment within 30-foot open area required at a rear lot line coincident with a residential zoning district boundary line (§43-302). M1-2 zoning district.

PREMISES AFFECTED – 820 39<sup>th</sup> Street, south side, 150'0" east of 8<sup>th</sup> Avenue between 8<sup>th</sup> Avenue and 9<sup>th</sup> Avenue, Block 916, Lot 12, Borough of Brooklyn.

## COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Harold Weinberg and Frank Sellitto.

**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 October 20, 2009, acting on Department of Buildings Application No. 302349965, reads in pertinent part:

"The enlargement of a one story building in an M1-2 zoning district to a five story hotel in Use Group 5 abutting an R6 zoning district is required to provide an open area not higher than curb level and at least 30 feet in depth within the manufacturing district as per Section 43-302 Zoning Resolution;" and

WHEREAS, this is an application under ZR §§ 73-50 and 73-03, to permit, on a site within an M1-2 zoning district abutting an R6 zoning district, the legalization of a five-story hotel building which encroaches into a required 30-foot open area at the rear of the site, contrary to ZR § 43-302; and

WHEREAS a public hearing was held on this application on January 12, 2010, after due notice by publication in *The City Record*, and then to decision on January 26, 2010; and

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

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

WHEREAS, the site is located on the south side of 39<sup>th</sup> Street, between Eighth Avenue and Ninth Avenue; and

WHEREAS, the site has 75 feet of frontage on 39<sup>th</sup> Street, a depth of approximately 100 feet, and a total lot area of 7,508 sq. ft.; and

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

WHEREAS, the existing building has a floor area of 14,957 sq. ft. (1.99 FAR) and a height of 60 feet; and

WHEREAS, the subject site is located within an M1-2 zoning district that abuts an R6 zoning district to its rear; and

WHEREAS, the applicant notes that the subject hotel building was constructed pursuant to approved plans filed the Department of Buildings (“DOB”), and that DOB subsequently audited the plans and, during the review process, ultimately issued the noted objection; thus, the applicant now seeks to legalize the construction; and

WHEREAS, pursuant to ZR § 43-302, an open area not higher than curb level and at least 30 feet in depth is required on a zoning lot within an M1-2 zoning district with a rear lot line that abuts the rear lot line of a zoning lot in a residential district; and

WHEREAS, the existing five-story hotel building includes a one-story portion with a height of approximately 16 feet on the western side of the rear of the site, which results in an open area of approximately two feet; therefore, the existing building without the open area with a depth of 30 feet across the rear of the site does not comply with ZR § 43-302; and

WHEREAS, an open area with a depth of 30 feet is provided on the eastern side of the rear of the site, across approximately one-third of the site; and

WHEREAS, under ZR § 73-50, the Board may grant a waiver of rear yard requirements set forth in ZR § 43-302 in appropriate cases; and

WHEREAS, the applicant represents that an encroachment into the required open area at the rear of the site has existed continuously since 1927, when the Department of Buildings originally issued a certificate of occupancy for a one-story file factory and two car garage; and

WHEREAS, the applicant further represents that the existing and proposed Use Group 5 hotel use is allowed in many districts which are also zoned residential, and the hotel use is more compatible with the adjacent R6 zoning district than more noxious manufacturing uses that are permitted as-of-right in the subject M1-2 zoning district, including the Use Group 16 auto repair shop with an accessory Use Group 17 paint spraying booth, which formerly occupied the site; and

WHEREAS, the applicant notes that the maximum height of the existing one-story encroachment into the required open area is less than 23 feet and therefore would be considered a permitted obstruction as set forth in ZR § 43-23 within the subject zoning district if the lot did not abut

a residential zoning district, which triggers the open area requirement; and

WHEREAS, the applicant further notes that in residential districts, including the adjacent R6 zoning district, community facility uses may encroach into the rear yard up to a height of 23 feet; and

WHEREAS, the applicant states that the three homes abutting the rear of the site each have rear yards with a depth of 30 feet, such that the nearest residential use is 30 feet from the subject site’s rear lot line; and

WHEREAS, the applicant further states that the existing one-story encroachment into the required open area is entirely enclosed and is set back approximately two feet, thereby providing a buffer from the adjoining residential properties; and

WHEREAS, the Board finds that the rear yard waiver will not have an adverse affect on the surrounding area; and

WHEREAS, therefore the Board has determined that the application meets the requirements of ZR § 73-03(a) in that the disadvantages to the community at large are outweighed by the advantages derived from such special permit; and that the adverse effect, if any, will be minimized by appropriate conditions; and

WHEREAS, the proposed project will not interfere with any pending public improvement project and therefore satisfies the requirements of ZR §73-03(b); and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§73-50 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 to grant a special permit under ZR §§ 73-50 and 73-03, to permit, on a lot within an M1-2 zoning district abutting an R6 zoning district, the legalization of a five-story hotel building which encroaches within the 30-foot open area required by ZR § 43-302, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked “Received January 13, 2010” – (8) sheets, and “January 21, 2010” – (1) sheet; 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 the approved plans shall be considered approved only for the portions related to the specific relief granted;

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

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

Adopted by the Board of Standards and Appeals, January 26, 2010.

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## 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 – None.

**ACTION OF THE BOARD** – Laid over to February 9, 2010, at 1:30 P.M., for deferred decision.

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## 256-07-BZ

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

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

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

### COMMUNITY BOARD # 8BK

APPEARANCES –

For Applicant: Todd Dale.

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 March 2, 2010, at 1:30 P.M., for decision, hearing closed.

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## 97-08-BZ

APPLICANT – Eric Palatnik, P.C., for Chesky Berkowitz, owner; Central UTA, lessee.

SUBJECT – Application April 18, 2008 – Special Permit (§73-19) to allow the legalization of an existing school (*Central UTA*) (UG 3). M1-1 district.

PREMISES AFFECTED – 84 Sanford Street, between Park Avenue and Myrtle Avenue, Block 1736, Lot 14, Borough of Brooklyn.

### COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Eric Palatnik and Miram Rothkrug.

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 March 2,

2010, at 1:30 P.M., for decision, hearing closed.

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## 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 – None.

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

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## 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: Stuart A. Klein and Jay Goldstein.

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 March 16, 2010, at 1:30 P.M., for decision, hearing closed.

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## 28-09-BZ

APPLICANT – Moshe M. Friedman, P.E., for 133 Equity Corp., owner.

SUBJECT – Application February 17, 2009 – Variance (§72-21) to permit a four-story residential building on a vacant lot, contrary to use regulations (§42-10). M1-1 zoning district.

PREMISES AFFECTED – 133 Taaffe Place, east side of Taaffe Place, 142’-2.5” north of intersection of Taaffe Place and Myrtle Avenue, Block 1897, Lot 4, Borough of Brooklyn.

### COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Moshe M. Friedman.

For Opposition: Suellon L.

# MINUTES

**ACTION OF THE BOARD** – Laid over to March 16, 2010, at 1:30 P.M., for continued hearing.  
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## **162-09-BZ**

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

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

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

## **COMMUNITY BOARD #1Q**

**APPEARANCES** –

For Applicant: Elizabeth Safain.

**ACTION OF THE BOARD** – Laid over to February 23, 2010, at 1:30 P.M., for continued hearing.  
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## **235-09-BZ**

**APPLICANT** – Eric Palatnik, P.C., for Calvary Baptist Church of Jamaica, owner.

**SUBJECT** – Application July 24, 2009 – Variance (§72-21) to permit the development of a five-story not-for-profit residence for the elderly (*Calvary Baptist Church*). Proposal is contrary to floor area (§23-144), number of dwelling units (§23-221), height (§23-631), side yards (§23-462), rear yard (§23-471), and parking (§25-23). R3-2 zoning district.

**PREMISES AFFECTED** – 162-25 112<sup>th</sup> Road, Guy Brewer Boulevard and 112<sup>th</sup> Road, Block 12183, Lot 35 (tent), Borough of Queens.

## **COMMUNITY BOARD #12Q**

**APPEARANCES** –

For Applicant: State Senator Smiths Person, Eric Palatnik, Warren Gardner, Josh Mudikowski and Nelly Minella.

**ACTION OF THE BOARD** – Laid over to February 9, 2010, at 1:30 P.M., for continued hearing.  
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## **248-09-BZ**

**APPLICANT** – Sheldon Lobel, P.C., for Leemil's Petroleum, Incorporated, owner.

**SUBJECT** – Application August 26, 2009 – Special Permit (§11-411 & §11-412) for re-instatement of an automotive service station (UG16) which expired on July 24, 1991; Amendment to modify layout of the site; and Waiver of the Rules. R6 zoning district.

**PREMISES AFFECTED** – 3031 Bailey Avenue, northwest corner of Bailey Avenue and Albany Court, Block 3266, Lot 85, Borough of The Bronx.

## **COMMUNITY BOARD #8BX**

**APPEARANCES** –

For Applicant: Josh Rhinesmith.

**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 February 23, 2010, at 1:30 P.M., for decision, hearing closed.  
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## **264-09-BZ**

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

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

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

## **COMMUNITY BOARD #14BK**

**APPEARANCES** –

For Applicant: Moshe M. Friedman.

**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 February 23, 2010, at 1:30 P.M., for decision, hearing closed.  
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## **281-09-BZ**

**APPLICANT** – Marcie Kesner, Kramer Levin Naftalis & Frankel LLP, for Bayrock/Sapir Organization LLC, owner; WTS International, Incorporated, lessee.

**SUBJECT** – Application October 7, 2009 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*WTS International*) on the fifth and sixth floors in a building under construction. M1-6 zoning district.

**PREMISES AFFECTED** – 246 Spring Street, Spring Street, Sixth Avenue, Dominick Street, Varick Street. Block 491, Lot 36, Borough of Manhattan.

## **COMMUNITY BOARD #2M**

**APPEARANCES** –

For Applicant: Marcie Kesner.

**ACTION OF THE BOARD** – Laid over to February 23, 2010, at 1:30 P.M., for continued hearing.  
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## **292-09-BZ**

**APPLICANT** – Martyn & Don Weston, for Barbara Aal-Albar LLC, owner; Third Avenue Auto Corporation, lessee.

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

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# MINUTES

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zoning district.

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

**COMMUNITY BOARD #10BK**

APPEARANCES –

For Applicant: Don Weston.

**ACTION OF THE BOARD** – Laid over to February 23, 2010, at 1:30 P.M., for continued hearing.

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**293-09-BZ**

APPLICANT – Eric Palatnik, Esq., for Rami Esses, owner.

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

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

**COMMUNITY BOARD #8BK**

APPEARANCES –

For Applicant: Eric Palatnik.

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 February 23, 2010, at 1:30 P.M., for decision, hearing closed.

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**311-09-BZ**

APPLICANT – Eric Palatnik, P.C., for Michael Matalon, owner.

SUBJECT – Application November 24, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to open space and floor area (§23-141(a)), side yard (§23-461(a)) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED – 1092 East 22<sup>nd</sup> Street, between Avenue J and K, Block 7603, Lot 54, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Eric Palatnik.

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

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*