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# BULLETIN

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

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### DIRECTORY

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107-10-BZ            12-24 149<sup>th</sup> Street, Queens

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# DOCKET

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New Case Filed Up to April 12, 2011  
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**39-11-BZ**

2230-2234 Kimball Street, Kimball Street between Avenue U and Avenue V., Block 8556, Lot(s) 55, Borough of **Brooklyn, Community Board: 18**. Variance (§72-21) to legalize a mixed use building, contrary to floor area (§24-162), parking (ZR 25-31), permitted obstructions (§24-33/23-44), open space access (§12-10), side yard setback (§24-55), distance required from windows to lot line (§ 23-861). R4 zoning district. R4 district.  
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**40-11-A**

25 Central Park West, West side of Central Park West, West 62nd and West 63rd Streets., Block 1115, Lot(s) 7501 (29), Borough of **Manhattan, Community Board: 7**. Appeal challenging a determination by the Department of Building that the non conforming commercial use of a Condominium retail space was discontinued pursuant to §52-61 . C1-1, C-2 & C-3 Zoning district . R10A/C4-7 district.  
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**41-11-A**

1314 Avenue S, Between East 13th and East 14th Streets., Block 7292, Lot(s) 6, Borough of **Brooklyn, Community Board: 15**. Appeal seeking a determination that the owner has acquired a common law vested right to continue development under R-6 zoning district. R4-1 district.  
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**42-11-BZ**

135-11 40th Road, North side of 40th Road between Prince and Main Streets., Block 5036, Lot(s) 55, Borough of **Queens, Community Board: 7**. Special Permit (§73-44) to permit the reduction in required parking for an ambulatory or diagnostic treatment facility and for office uses. C4-2 zoning district. C4-2 district.  
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**43-11-BZ**

1926 East 21st Street, West side 220'-0" south of Avenue R between Avenue R and S., Block 6826, Lot(s) 19, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) for the enlargement of a single family home. R3-2 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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**MAY 10, 2011, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, May 10, 2011, 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**

**307-81-BZ**

APPLICANT – Francis R. Angelino, Esquire, for 50 East 69th Street Corporation, owner.

SUBJECT – Application March 14, 2011 – Extension of Term of a previously approved variance (§72-21) which permitted a five story medical office (UG 6) with an owner occupied penthouse apartment (UG 2). The term of the variance is set to expire on September 15, 2011. R8B (LH-1A) zoning district.

PREMISES AFFECTED – 50 East 69<sup>th</sup> Street, South side between Madison and Park Avenues. Block 1383, Lot 40, Borough of Manhattan.

**COMMUNITY BOARD #8M**

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**65-90-BZ**

APPLICANT – Gerald J. Caliendo, RA, AIA, for Street Retail Incorporated, owner; Meadows Spa, lessee.

SUBJECT – Application March 1, 2011 – Extension of Term to a previously granted Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (Meadows Spa) which expired on January 29, 2011; Amendment to eliminate the PCE from the first floor and relocate floor area in the cellar. C4-1/PC zoning district.

PREMISES AFFECTED – 61-19 190<sup>th</sup> Street, Northeast corner formed by the intersection of 190th Street and 64th Avenue. Block 7117, Lot 4, Borough of Queens.

**COMMUNITY BOARD #8Q**

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**145-99-BZ**

APPLICANT – Bryan Cave LLP/Frank E. Chaney, Esq., for Hudson Spring Partners, LLP, owners.

SUBJECT – Application March 24, 2011 – Application for a re-hearing, pursuant to BSA Rules Section 1-10(e), of a previously denied variance application. M1-6 zoning district.

PREMISES AFFECTED – 286 Spring Street, southeast corner of Spring Street and Hudson Street, Block 579, Lot 5, Borough of Manhattan.

**COMMUNITY BOARD #2M**

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**111-01-BZ**

APPLICANT – Eric Palatnik, P.C. for Barge Realty, Incorporated, owner; Wendy's International, lessee.

SUBJECT – Application February 23, 2011 – Extension of term of a previously granted Special Permit (§73-243) for an accessory drive thru facility at an eating and drinking establishment (Wendy's) which expired February 1, 2011; Amendment for minor modification to previous conditions on the site. C1-2 (R5) zoning district.

PREMISES AFFECTED – 9001 Ditmas Avenue, Corner of Ditmas Avenue and Remsen Avenue. Block 8108, Lot 6. Borough of Brooklyn.

**COMMUNITY BOARD #17BK**

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**APPEALS CALENDAR**

**202-10-BZY**

APPLICANT – Law Offices of Marvin B. Mitzner, for Long Island City Partners, LLC, owner.

SUBJECT – Application October 29, 2010 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior M1-3D zoning district. M1-2/R5D zoning district.

PREMISES AFFECTED – 29-11 39<sup>th</sup> Avenue, north side of 39<sup>th</sup> Avenue between 29<sup>th</sup> and 30<sup>th</sup> Street, Block 384, Lots 31 and 32, Borough of Queens.

**COMMUNITY BOARD #1Q**

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**MAY 10, 2011, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, May 10, 2011, 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**

**2-11-BZ**

APPLICANT – Cozen O'Connor, for 117 Seventh Avenue South Property Company, LP, owner.

SUBJECT – Application January 4, 2011 – Variance (§72-21) to allow for a residential and community facility enlargement to an existing commercial building, contrary to setback (ZR §33-432) and open space regulations (ZR §23-14). C4-5 zoning district.

PREMISES AFFECTED – 117 Seventh Avenue South, southeast corner of Seventh Avenue South and West 10<sup>th</sup> Street, Block 610, Lot 16, Borough of Manhattan.

**COMMUNITY BOARD #2M**

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# CALENDAR

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**25-11-BZ**

APPLICANT – Sheldon Lobel, P.C., for Health Science Center at Brooklyn Foundation, Incorporated, owner; Downstate Technology Center, Incorporated, lessee.

SUBJECT – Application March 9, 2011 – Variance (§72-21) to permit the enlargement of an existing medical research facility (Downstate Advanced Biotechnology Incubator), contrary to floor area (ZR §43-10), height and setback (ZR §43-20), required parking (ZR §43-21), parking space dimensions (ZR §44-42) and off street loading bay (ZR §44-52) regulations. M1-1 zoning district.

PREMISES AFFECTED – 760 Parkside Avenue, South side of Parkside Avenue, mid-block between New York Avenue and Nostrand Avenue. Block 4828, Lot 22, Borough of Brooklyn.

**COMMUNITY BOARD #9BK**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, APRIL 12, 2011  
10:00 A.M.**

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

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**SPECIAL ORDER CALENDAR**

**433-65-BZ**

APPLICANT – Andrea Claire/Peter Hirshman, for 15 West 72 Owner Corporation, owner; Mafair Garage Corporation, lessee.

SUBJECT – Application July 22, 2010 – Extension of Term of an approval pursuant to the Multiple Dwelling Law for transient parking, which expired on June 22, 2010. R8B/R10A zoning district.

PREMISES AFFECTED – 15 West 72<sup>nd</sup> Street, 200’-2½ west of Central Park West 72<sup>nd</sup> Street, Block 1125, Lot 24, Borough of Manhattan.

**COMMUNITY BOARD #7M**

APPEARANCES –

For Applicant: Peter Hirshman.

**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 extension of the term for a previously granted variance for a transient parking garage, which expired on June 22, 2010; and

WHEREAS, a public hearing was held on this application on November 16, 2010, after due notice by publication in *The City Record*, with continued hearings on January 11, 2011, February 8, 2011 and March 29, 2011, and then to decision on April 12, 2011; and

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

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

WHEREAS, the subject premises is located on a through lot bounded by West 73<sup>rd</sup> Street to the north and West 72<sup>nd</sup> Street to the south, partially within an R8B zoning district and partially within an R10A zoning district; and

WHEREAS, the site is occupied by a 34-story and penthouse residential building; and

WHEREAS, the cellar and sub-cellar are occupied by a 206-space accessory garage, with 96 spaces in the cellar and 110 spaces in the sub-cellar; and

WHEREAS, on June 22, 1965, under the subject calendar number, the Board granted a variance pursuant to Section 60(3) of the Multiple Dwelling Law (“MDL”) to permit a maximum of 50 surplus parking spaces to be used for transient parking, for a term of 15 years; and

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

WHEREAS, most recently, on December 5, 2000, the Board granted a ten-year extension of term, which expired on June 22, 2010; and

WHEREAS, the applicant submitted a photograph of the sign posted onsite, which states building residents’ right to recapture the surplus parking spaces; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution having been adopted on June 22, 1965, so that, as amended, this portion of the resolution shall read: “to permit the extension of the term of the grant for an additional ten years from June 22, 2010, to expire on June 22, 2020; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received December 29, 2010”- (1) sheet and “Received March 15, 2011”- (1) sheet; and *on further condition*:

THAT this term shall expire on June 22, 2020;

THAT all residential leases shall indicate that the spaces devoted to transient parking can be recaptured by residential tenants on 30 days notice to the owner;

THAT a sign providing the same information about tenant recapture rights be located in a conspicuous place within the garage, permanently affixed to the wall;

THAT the above conditions and all relevant conditions from the prior resolutions shall appear on the certificate of occupancy;

THAT the layout of the parking lot shall be as approved by the Department of Buildings;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 120405515)

Adopted by the Board of Standards and Appeals, April 12, 2011.

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# MINUTES

## 1069-27-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 6702 New Utrecht Avenue LLC by Frank Momando, owner.

SUBJECT – Application February 23, 2011– Extension of Term (§11-411) of for the continued operation of an automatic automobile laundry, simonizing room and offices which expired on March 6, 201; Extension of Time to obtain a Certificate of Occupancy. C1-2/R5 zoning district.

PREMISES AFFECTED – 6702-6724 New Utrecht Avenue, bounded by New Utrecht Avenue, 15<sup>th</sup> Avenue and Ovington Avenue/68<sup>th</sup> Street, Block 5565, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Lyra Altman.

**ACTION OF THE BOARD** – Laid over to May 10, 2011, at 10 A.M., for continued hearing.

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## 677-53-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for James Marchetti, owner.

SUBJECT – Application April 22, 2010 – Extension of Term (§11-411) of a Variance for the operation of a UG16 Auto Body Repair Shop (*Carriage House*) with incidental painting and spraying which expired on March 24, 2007; Extension of Time to Obtain a Certificate of Occupancy which expired on January 13, 1999; Amendment (§11-412) to enlarge the building; Waiver of the Rules. R4/C2-2 zoning district.

PREMISES AFFECTED – 61-26/30 Fresh Meadow Lane, west side of Fresh Meadow Lane, 289’ northerly of the intersection with 65<sup>th</sup> Avenue, Block 6901, Lot 48, Borough of Queens.

### COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Laid over to May 10, 2011, at 10 A.M., for continued hearing.

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## 827-55-BZ

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

SUBJECT – Application October 5, 2010 – Extension of Term (§11-411) for the continued operation of a Gasoline Service Station (*British Petroleum*) which expires on January 31, 2011. R3-2 zoning district.

PREMISES AFFECTED – 245-20 139<sup>th</sup> Avenue, southwest corner of Conduit Avenue, Block 13614, Lot 23, Borough of Queens.

### COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Laid over to June 7, 2011, at 10 A.M., for adjourned hearing.

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## 982-83-BZ

APPLICANT – H Irving Sigman, for Barone Properties, Inc., owner.

SUBJECT – Application February 22, 2011 – Extension of Term (§11-411) of a previously approved variance permitting retail and office use (UG 6), which expired on March 6, 2009; Extension of Time to obtain a Certificate of Occupancy which expired on May 25, 2006; Amendment (§11-412) to increase number of stores/offices from five to six; Waiver of the Rules. R3-2 zoning district.

PREMISES AFFECTED – 191-20 Northern Boulevard, southwest corner of 192<sup>nd</sup> Street, Block 5513, Lot 27, Borough of Queens.

### COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: I. Irving Sigman.

For Opposition: Terri Pouymari and Henry Euler.

**ACTION OF THE BOARD** – Laid over to May 24, 2011, 10 A.M., for continued hearing.

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## 964-87-BZ

APPLICANT – Sheldon Lobel, P.C., for Leemilt’s Petroleum Incorporated, owner.

SUBJECT – Application October 18, 2010 – Extension of Term for the continued operation of (UG16) Gasoline Service Station (*Getty*) which expired on February 6, 2010; Extension of Time to obtain a Certificate of Occupancy which expired on January 15, 2003; Amendment to the hours of operation and Waiver of the Rules. C1-3/R6 zoning district.

PREMISES AFFECTED – 780-798 Burke Avenue, southwest corner of Burke and Barnes Avenue, Block 4571, Lot 28, Borough of Bronx.

### COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Josh Rinesmith.

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 May 10, 2011, at 10 A.M., for decision, hearing closed.

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# MINUTES

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## APPEALS CALENDAR

*Jeff Mulligan, Executive Director*

### 222-10-A

APPLICANT – Laleh Hawa, for Yaelle Yorán – Wastin, owner.

*Adjourned: P.M.*

SUBJECT – Application December 6, 2010 – Appeal challenging the Department of Buildings’ revocation of a permit for a parking space and curb cut. R6B zoning district  
PREMISES AFFECTED – 97 Saint Marks Avenue, 392’ west of Saint Marks Avenue and Carlton Avenue, Block 1143, Lot 80, Borough of Brooklyn.

#### COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Laleh Hawa.

For Opposition: Patti Hagan.

For Administration: Lisa M. Orrantia, Department of Buildings.

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 May 10, 2011, at 10 A.M., for decision, hearing closed.

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### 228-10-BZY

APPLICANT – Akerman Senterfitt, for 180 Lidlow Development, LLC, owner.

SUBJECT – Application December 15, 2010 – Extension of time (§11-332) to complete construction under the prior C6-1 zoning district regulations. C4-4A zoning district.

PREMISES AFFECTED – 180 Ludlow Street, east side of Ludlow Street, 125’ south of Houston Street, Block 412, Lots 48-50, Borough of Manhattan.

#### COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Calvin Wong.

**ACTION OF THE BOARD** – Laid over to May 10, 2011, at 10 A.M., for continued hearing.

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### 229-10-BZY

APPLICANT – Akerman Senterfitt, for 163 Orchard Street, LLC, owner.

SUBJECT – Application December 17, 2010 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior C6-1 zoning district. C4-4A zoning district.

PREMISES AFFECTED – 163 Orchard Street, Orchard and Houson Streets, between Sytanton and Rivington Street, Block 416, Lot 58, Borough of Manhattan.

#### COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Calvin Wong.

**ACTION OF THE BOARD** – Laid over to May 10, 2011, at 10 A.M., for continued hearing.

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# MINUTES

**REGULAR MEETING  
TUESDAY AFTERNOON, APRIL 12, 2011  
1:30 P.M.**

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

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**ZONING CALENDAR**

**277-07-BZ**

**CEQR #10-BSA-078Q**

APPLICANT – Miele Associates, LLP, for Barnik Associates LLC & Lama Holdings, LLC, owner.

SUBJECT – Application December 3, 2007 – Variance (§72-21) for the development of a one-story automotive service station with accessory convenience store, contrary to §22-10. R3-1 zoning district.

PREMISES AFFECTED – 165-35 North Conduit Avenue, North west corner of North Conduit Avenue & Guy R, Brewer Boulevard. Block 12318, Lot 10, Borough of Queens.

**COMMUNITY BOARD #12Q**

APPEARANCES –

For Applicant: Hiram Rothkrug.

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

**THE VOTE TO GRANT** –

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

**THE RESOLUTION** –

WHEREAS, the decision of the Queens Borough Superintendent, dated July 15, 2009, acting on Department of Buildings Application No. 410078623, reads in pertinent part:

“Proposal to alter existing automotive service station to accommodate an automotive service station with an accessory convenience store in an R3-1 zoning district is contrary to 22-10 of the Zoning Resolution;” and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R3-1 zoning district, the re-establishment of an automotive service station (Use Group 16) with an accessory convenience store, which does not conform to district use regulations, contrary to ZR § 22-10; and

WHEREAS, a public hearing was held on this application on August 17, 2010 after due notice by publication in *The City Record*, with continued hearings on November 9, 2010, December 14, 2010, January 25, 2011, and February 15, 2011, and then to decision on April 12, 2011; and

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

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

WHEREAS, Council Member James Sanders, Jr. recommends approval of this application; and

WHEREAS, the subject site is located on the northwest corner of North Conduit Avenue and Guy Brewer Boulevard, within an R3-1 zoning district; and

WHEREAS, the site has 103’-11” of frontage on Guy Brewer Boulevard, 152’-3” of frontage on North Conduit Avenue, and a lot area of 11,190 sq. ft.; and

WHEREAS, on April 13, 1966, under BSA Cal. No. 697-59-BZ, the Board granted a variance for the subject site, to permit the construction of an automotive service station with accessory uses and accessory signs within a residential zoning district, for a term of 15 years; and

WHEREAS, subsequently, the grant was amended and the term extended by the Board until its expiration on April 13, 2001; and

WHEREAS, the applicant notes that, despite the expiration of the term of the variance, the site continued to operate as an automotive service station until January 2007; and

WHEREAS, the Board notes that the prior variance has expired and the automotive service station use is not grandfathered on the site; therefore the applicant filed the subject application for a new variance for the entire site; and

WHEREAS, the applicant states that the subject site is currently occupied by the vacant one-story automotive service station building with a floor area of 1,767 sq. ft.; and

WHEREAS, the applicant initially proposed to re-establish the automotive service station use and enlarge the existing building at the site for use as an accessory convenience store with a floor area of 2,100 sq. ft., with seven accessory parking spaces; and

WHEREAS, in response to concerns raised by the Board, the applicant submitted revised plans reflecting a reduction in the size of the proposed convenience store, the addition of landscaped buffering along the side and rear lot lines, and the elimination of one of the proposed accessory parking spaces; and

WHEREAS, the applicant now proposes to re-establish the automotive service station use and to enlarge the existing building at the site for use as an accessory convenience store with a floor area of 1,908 sq. ft., with six accessory parking spaces; and

WHEREAS, commercial use is not permitted in the subject R3-1 zoning district, thus the applicant seeks a use variance to permit the Use Group 16 use; and

WHEREAS, the applicant states that the following is a unique physical condition which creates unnecessary hardship and practical difficulties in developing the site with a conforming development: the history of development on the site and associated contamination; and

WHEREAS, the applicant states that the site’s history as an automotive service station has resulted in contamination that requires soil remediation which increases the costs associated with the construction of a conforming residential development; and

WHEREAS, the applicant submitted a report from its environmental consultant, stating that soil borings indicate that

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there is both soil and groundwater contamination present at the subject site that exceeds the New York State Department of Environmental Conservation (“DEC”) regulatory standards requiring remedial action; and

WHEREAS, the Board notes that the prior approved use of the site as an automotive service station pre-dates the enactment of modern environmental standards and regulations; and

WHEREAS, accordingly, the applicant states that, due to the contamination, the soil must be remediated before any development can occur on the site; and

WHEREAS, the applicant submitted a cost estimate for the soil remediation, which reflects a remediation cost for the development of any commercial use on the site of approximately \$253,000, which includes costs associated with excavating and disposing of backfilled concrete and contaminated soils, installation of monitoring wells, installation of vapor extraction and sparge systems with groundwater treatment, monthly operation and maintenance of the remedial systems, and quarterly sampling and testing; and

WHEREAS, the report submitted by the applicant’s environmental consultant states that the full extent of contamination at the site has not yet been determined because below grade obstructions in the areas where tanks were removed and pump islands were located prevented soil borings from being performed in those areas, which are likely areas of contamination; and

WHEREAS, the environmental consultant’s report also states that regulatory standards are more stringent for residential use than for commercial use, and therefore additional remediation services will apply if the site is developed with a conforming residential use, resulting in total remediation costs for residential use of approximately \$362,000; and

WHEREAS, the applicant represents that the requested use waiver is necessary to overcome the premium costs associated with soil remediation on the site; and

WHEREAS, the Board finds that the increased construction costs as a result of contamination is a unique physical condition which creates unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant initially submitted financial analyses of: (1) a conforming residential scenario consisting of a two-family home; (2) a lesser variance retail scenario; and (3) the proposed automotive service station and accessory convenience store building; and

WHEREAS, at hearing, the Board directed the applicant to analyze an alternative with a stand-alone owner-operated convenience store on the site; and

WHEREAS, in response, the applicant submitted a revised financial analysis which included a lesser variance scenario featuring a stand-alone owner-operated convenience store; and

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

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

WHEREAS, the applicant represents that the proposed development 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 characterized primarily by residential uses to the north, however a commercial storage yard and two retail stores are located on the lot immediately adjacent to the north of the site, and the area to the south of the site consists of the Southern Parkway and North and South Conduit Avenues, which operate as service roads to the Parkway; and

WHEREAS, the applicant states that North Conduit Avenue is a one-way, three-lane north/south arterial which serves as the service road for the Belt Parkway, and Guy R. Brewer Boulevard is a two-way, four-lane east/west arterial; and

WHEREAS, the applicant further states that there is heavy traffic along North Conduit Avenue and Guy R. Brewer Boulevard, and that the proposed automotive service station would be in character with other commercial and industrial uses located along these two streets; and

WHEREAS, the applicant submitted a pictorial location and zoning map which reflects that there are at least seven other automotive service stations currently in operation along North Conduit Avenue in the vicinity of the site; and

WHEREAS, the applicant notes that the proposal is consistent with the historical use of the site, which legally operated as an automotive service station for 35 years; and

WHEREAS, at hearing, the Board raised concerns about the effect of the proposed automotive service station on the surrounding residential uses, and requested that the applicant reduce the size of the proposed convenience store and provide landscaping and buffering at the site; and

WHEREAS, in response, the applicant submitted revised plans which reflect that the size of the proposed convenience store will be reduced and there will be a landscaped buffer with a width of nine feet between the convenience store and the North Conduit Avenue frontage and a landscaped buffer with a width of eight feet between the convenience store and the adjacent lot to the north; and

WHEREAS, the applicant notes that there is also a sidewalk with a width of 15 feet along North Conduit Avenue; thus, the proposed convenience store would be set back a total of 24 feet from the service road; and

WHEREAS, the applicant states that the site has been designed so that vehicular movements into or out of the site will cause minimum obstruction on streets and sidewalks, and submitted a detailed vehicle circulation plan depicting circulation patterns and a passing lane located within the pump island area, and reflecting that one of the existing curb cuts along North Conduit Avenue will be eliminated, and one existing curb cut along Guy R. Brewer Boulevard will be

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relocated; and

WHEREAS, at hearing, the Board directed the applicant to show that it meets the requirements of the special permit available under ZR § 73-211 for locating automotive service stations in certain commercial zoning districts; and

WHEREAS, in response, the applicant states that: (1) the lot area of 11,171 sq. ft. meets the lot area requirements of the special permit; (2) there are no lubrication or repair operations on the site; (3) as noted above, vehicular movement into or from the site will cause a minimum of obstruction on streets or sidewalks; (4) fencing (at least 50 percent opaque) is proposed along the rear and side lot lines; and (5) there is a total of approximately 99 sq. ft. of signage at the site, which complies with C1 district signage regulations; and

WHEREAS, as to the requirement under ZR § 73-211(b)(2), that the site is so designed as to provide reservoir space for five waiting automobiles within the zoning lot in addition to space available within an enclosed lubricatorium or at the pumps, the applicant represents that this condition is meant to pertain to lubricatoriums/repair facilities on the site rather than queuing space for gasoline, and that in any event there will be six accessory parking spaces for the convenience store; 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 notes that it does not regard the contaminated soil condition to be a self-created hardship because it can be attributed to a permitted use at the site which predated modern environmental regulations; and

WHEREAS, as noted above, the applicant originally proposed to provide an accessory convenience store with a floor area of 2,100 sq. ft., but revised its plans to reduce the size of the proposed convenience store to a floor area of 1,908 sq. ft., in response to concerns raised by the Board; and

WHEREAS, accordingly, 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 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") 10BSA078Q, dated March 31, 2011; 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, DEC reviewed the project for potential hazardous materials impacts; and

WHEREAS, DEC reviewed the September 24, 2010 Soil and Groundwater Investigation report prepared by Berninger Environmental, which identified petroleum contamination in the soil and groundwater on the site that exceeded the applicable regulatory guideline values (Spill Case No. 10-06820); and

WHEREAS, on March 30, 2011, DEC issued a letter which stated that the former tenants (Exxon/Mobil) of the subject site agreed to submit a Soil and Groundwater Management Plan to DEC for review and approval; 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, in an R3-1 zoning district, the re-establishment of an automotive service station (Use Group 16) with an accessory convenience store, which does not conform to district use regulations, contrary to ZR § 22-10; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received February 1, 2011"- (8) sheets; and *on further condition*:

THAT the former tenants (Exxon/Mobil) of the subject site shall submit a Soil and Groundwater Management Plan to DEC for review and approval;

THAT the term of the grant shall expire on April 12, 2021;

THAT all signage shall comply with C1 district regulations;

THAT all exterior lighting on the site shall be directed downward and away from nearby residential uses;

THAT landscaping and fencing shall be maintained in accordance with 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.

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Adopted by the Board of Standards and Appeals, April 12, 2011.

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**47-10-BZ**

**CEQR #10-BSA-060X**

APPLICANT – Eric Palatnik, P.C., for 2352 Story Avenue Realty Corporation, owner; Airgas-East, Incorporated, lessee.

SUBJECT – Application April 8, 2010 – Variance (§72-21) to allow a manufacturing use in a residential district, contrary to ZR §22-00. M1-1/R3-2 zoning district.

PREMISES AFFECTED – 895 Zerega Avenue, aka 2352 Story Avenue, Block 3698, Lot 36, Borough of The Bronx.

**COMMUNITY BOARD #9BX**

APPEARANCES –

For Applicant: Eric Palatnik.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Bronx Borough Commissioner, dated April 6, 2010, acting on Department of Buildings Application No. 220048160, reads:

“Manufacturing use within residential district is non-compliant with ZR 22-00;” and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site located partially within an M1-1 zoning district and partially within an R3-2 zoning district, the use of the portion of the site within the R3-2 zoning district for truck access and parking associated with the proposed Use Group 16 warehouse and gas storage facility on the portion of the lot within the M1-1 zoning district, which does not conform to district use regulations, contrary to ZR § 22-10; and

WHEREAS, a public hearing was held on this application on August 24, 2010 after due notice by publication in *The City Record*, with continued hearings on October 19, 2010, January 11, 2011, February 15, 2011 and March 15, 2011, and then to decision on April 12, 2011; and

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

WHEREAS, Community Board 9, Bronx, recommends approval of this application; and

WHEREAS, the subject site is located on the southwest corner of Zerega Avenue and Story Avenue, partially in an M1-1 zoning district and partially in an R3-2 zoning district, within the Zerega Industrial Business Zone (“Zerega IBZ”); and

WHEREAS, the site has approximately 103 feet of frontage on Zerega Avenue, 191 feet of frontage on Story Avenue, 15,462 sq. ft. of lot area located within the M1-1 zoning district, 4,270 sq. ft. of lot area located in the R3-2

zoning district, and a total lot area of 19,673 sq. ft.; and

WHEREAS, the applicant states that the subject site is currently occupied by a one-story and mezzanine warehouse building (Use Group 16) with a floor area of 9,485 sq. ft., located along Zerega Avenue on the easternmost side of the M1-1 portion of the site (the “Warehouse Building”); and

WHEREAS, the applicant proposes to renovate the Warehouse Building for use as a Use Group 16 warehouse and gas storage facility, and to use the R3-2 portion of the site for truck access and parking associated with the Use Group 16 use; and

WHEREAS, as to the need for truck access, the applicant submitted a letter from a commercial realtor which states that any future use of the site would likely be by a heavy industrial user that would require ingress to and egress from the site by an 18-wheel truck in order to make deliveries to the Warehouse Building; and

WHEREAS, the applicant’s original proposal contemplated that 18-wheel trucks would enter and exit the site from the curb cut that straddles the R3-2 and M1-1 district boundary along Story Avenue, and would maneuver within the available open space in the M1-1 portion of the site in order to make deliveries to the Warehouse Building; and

WHEREAS, at the Board’s direction, the applicant revised its plans to accommodate the delivery of goods within the Warehouse Building by entering the site directly from Zerega Avenue; however, the applicant states that the subject variance is still necessary for egress from the site through the curb cut that straddles the R3-2 and M1-1 district boundary along Story Avenue because an 18-wheel truck cannot exit the Warehouse Building by backing up onto Zerega Avenue; and

WHEREAS, the applicant represents that by providing a pass-through for 18-wheel trucks within the Warehouse Building, a significant portion of the existing open space within the M1-1 portion of the lot must be used to accommodate storage and operations that could otherwise be located within the building, and therefore use of the R3-2 portion of the site is required both for egress from the site by 18-wheel trucks and to accommodate operations such as the parking of smaller container trucks and vehicles that may otherwise have been located on the M1-1 portion of the site; and

WHEREAS, the commercial realtor’s letter submitted by the applicant also states that the Warehouse Building cannot be reduced in size in order to provide improved maneuverability on the site such that 18-wheel trucks could be accommodated wholly within the M1-1 portion of the site because any future user of the site would likely require a warehouse building capable of storing the large quantity of materials delivered by an 18-wheel truck; and

WHEREAS, the applicant represents that, therefore, a reduction in the size of the Warehouse Building, in conjunction with the storage space lost by providing a pass-through for 18-wheel trucks within the building, would result in a situation in which a large volume of materials could be delivered to the site, but could not be stored on the site; and

WHEREAS, at hearing, the Board questioned whether the applicant could relocate the existing curb cut to the east, so that it was situated solely within the M1-1 portion of the site, to

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allow an 18-wheel truck to exit from the site without entering onto the R3-2 portion of the site; and

WHEREAS, in response, the applicant submitted a vehicle circulation plan which shows how an 18-wheel truck would maneuver on the site if the existing curb cut on Story Avenue were relocated entirely within the M1-1 portion of the site; and

WHEREAS, the vehicle circulation plan reflects that the relocation of the curb cut would result in delivery trucks being unable to easily maneuver on the site and may require the trucks to back up within the premises in order to exit the site, which is not desirable when maneuvering an 18-wheel truck; and

WHEREAS, the circulation plan also reflects that relocating the curb cut would force the delivery trucks to maneuver in close proximity to goods and equipment that would be stored within the open area of the M1-1 portion of the site, and would also necessitate the removal of a street tree along Story Avenue; and

WHEREAS, accordingly, the applicant states that it cannot relocate the curb cut from the R3-2 portion of the site; and

WHEREAS, Use Group 16 use is not permitted in the R3-2 zoning district, thus the applicant seeks a use variance; 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 conforming development: (1) the history of commercial and manufacturing use of the site; (2) the site's location in the Zerega IBZ; and (3) the surrounding industrial and manufacturing uses; and

WHEREAS, the applicant represents that the R3-2 portion of the site has historically been occupied by commercial and industrial uses, rather than residential uses; and

WHEREAS, in support of this statement the applicant submitted Sanborn Maps reflecting that between 1919 and 1929 a contractor's storage yard was established on the portion of the site currently within the R3-2 district; and

WHEREAS, the Sanborn Maps submitted by the applicant indicate that between 1950 and 1977 the contractor's storage yard use ceased, and by 1986 the site was vacant; and

WHEREAS, the applicant also submitted records which reflect that the City of New York acquired title to the entire site by court order in 1976 and that the New York City Public Development Corporation disposed of the site in 1987, pursuant to a deed with a private party that specifically restricted the use of the site to "non-residential business operations" for at least five years; and

WHEREAS, the applicant represents that this deed restriction is evidence of the incompatibility of residential use at the site; and

WHEREAS, as to the site's location in the Zerega IBZ, the applicant submitted the Zerega IBZ Map, which reflects that the subject site is within the Zerega IBZ; and

WHEREAS, the applicant notes that the website for the Mayor's Office of Industrial and Manufacturing Businesses

("IMB") states that IBZs are geographic areas which "build upon the existing In-Place Industrial Parks to better reflect industrial land uses within the City;" and

WHEREAS, the IMB website further states that "IBZs reflect a commitment by the City not to support the re-zoning of industrial land within these areas for residential use;" and

WHEREAS, the applicant represents that, by including the subject site within the Zerega IBZ, the City recognizes that the site is part of an in-place industrial park; and

WHEREAS, as to the adjacent industrial and manufacturing uses, the applicant states that the site is surrounded on all sides by commercial and/or manufacturing uses; and

WHEREAS, specifically, the applicant submitted a 400-ft. radius diagram which reflects that directly across Story Avenue to the north is a FedEx Ground distribution center, directly across Zerega Avenue to the east is a power supply manufacturer, further south across Zerega is a Department of Sanitation garage, immediately adjacent to the south of the site is a vacant lot used to store construction equipment, and immediately adjacent to the west of the site are two commercial vehicle parking lots; and

WHEREAS, the applicant states that further from the site the remainder of the Zerega IBZ, which continues along Zerega Avenue for approximately six blocks to the south of Story Avenue and ten blocks to the north of Story Avenue, is characterized by manufacturing, warehouse/distribution, and garage/parking uses; and

WHEREAS, the applicant states that the surrounding commercial and manufacturing uses completely isolate the R3-2 portion of the site from the residential uses located further to the west on Story Avenue, and make residential use of the site infeasible; and

WHEREAS, the applicant represents that the requested use waiver is therefore necessary to overcome the hardship associated with the history of use of the site, its inclusion within the Zerega IBZ, and its location surrounded by commercial and manufacturing uses; and

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

WHEREAS, the applicant initially submitted financial analyses of: (1) a conforming scenario consisting of the Warehouse Building shortened by 19 feet to allow for 18-wheel truck activity solely within the M1-1 portion of the site, with the R3-2 portion of the site vacant; (2) a conforming scenario consisting of the Warehouse Building shortened by 19 feet to allow for 18-wheel truck activity solely within the M1-1 portion of the site, with a two-family home on the R3-2 portion of the site; (3) a conforming scenario consisting of the Warehouse Building without 18-wheel truck access and with a two-family home on the R3-2 portion of the site; and (4) the proposed warehouse use with 18-wheel truck access on the R3-2 portion of the site; and

WHEREAS, at hearing, the Board directed the applicant to analyze an existing condition scenario, which consists of the

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Warehouse Building and which allows for access by small trucks through only the M1-1 portion of the site and without residential development of the R3-2 portion of the site; and

WHEREAS, in response, the applicant submitted a revised financial analysis which included the requested existing condition scenario; and

WHEREAS, the financial analyses submitted by the applicant concluded that the as-of-right scenarios would not result in a reasonable return, but that the proposed scenario would realize a reasonable return; and

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

WHEREAS, the applicant represents that the proposed development 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 characterized by a mix of residential, commercial, and manufacturing uses; and

WHEREAS, the applicant submitted a 400-ft. radius diagram which reflects that, while there are residential uses located to the west and north of the site along Story Avenue, the site is immediately surrounded by commercial and manufacturing uses, including a FedEx Ground distribution center directly across Story Avenue to the north, a power supply manufacturer directly across Zerega Avenue to the east, a vacant lot used to store construction equipment immediately adjacent to the south, and two commercial vehicle parking lots immediately adjacent to the west; and

WHEREAS, as noted above, the site is located within the Zerega IBZ, which the City of New York has expressly recognized as being industrial in character; and

WHEREAS, the applicant notes that the Zerega IBZ also encompasses all of the sites bordering on Zerega Avenue up to six blocks south of Story Avenue and up to ten blocks north of Story Avenue, which are predominantly occupied by manufacturing, warehouse/distribution, and garage/parking uses; and

WHEREAS, the applicant represents that the proposed operations on the R3-2 portion of the site will be limited to one 18-wheel truck delivery per weekday, along with parking for smaller trucks; and

WHEREAS, the applicant states the 18-wheel trucks will use the R3-2 portion of the site solely for egress from the curb cut on Story Avenue, as the trucks will enter the site from Zerega Avenue and unload within the existing building on the M1-1 portion of the site; and

WHEREAS, at hearing, the Board raised concerns about the safety of materials proposed to be stored at the site; and

WHEREAS, in response, the applicant submitted a letter from its engineer stating that the proposed gas storage facility will comply with the performance standards regulating fire and explosive hazards within M1 zoning districts pursuant to ZR § 42-27; and

WHEREAS, at hearing, the Board directed the applicant to provide landscaping and new fencing along Story Avenue, to buffer the site from the nearby residential uses on Story Avenue; and

WHEREAS, in response, the applicant submitted revised plans reflecting the installation of three planting beds and a new fence with a height of eight feet along Story Avenue; 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, at hearing, the Board requested that the applicant provide evidence of the lot's history to establish that the hardship on the site was not self-created; and

WHEREAS, in response, the applicant submitted a series of Sanborn Maps and deeds to establish the history of the site; and

WHEREAS, the applicant points to the fact that the City of New York acquired the entire site in 1976 and subsequently conveyed it in 1987 subject to the requirement that the site be put to "non-residential business operations and corporate purposes" for at least five years, as evidence that the hardship on the site was not self-created; and

WHEREAS, accordingly, 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 notes that the proposed use will be as of right for the majority of the site, and that the requested use variance is only necessary to accommodate minor operations on the R3-2 portion of the site, including egress from the site by delivery trucks and the parking of smaller trucks, which will be buffered from the nearby residential uses by new landscaping and fencing along Story Avenue; and

WHEREAS, accordingly, 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. 10BSA060X, dated February 26, 2010; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; 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

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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 located partially within an M1-1 zoning district and partially within an R3-2 zoning district, the use of the portion of the site within the R3-2 zoning district for truck access and parking associated with the proposed Use Group 16 warehouse and storage facility on the portion of the lot within the M1-1 zoning district, which does not conform to district use regulations, contrary to ZR § 22-10; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received March 29, 2011" (7) sheets; and *on further condition*:

THAT fencing and landscaping shall be installed as per the BSA-approved plans;

THAT the storage facility shall comply with the performance standards of ZR § 42-27;

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, April 12, 2011.

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## 130-10-BZ

### CEQR #11-BSA-006K

APPLICANT – Sheldon Lobel, P.C., for John Ingravallo, owner.

SUBJECT – Application July 16, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area (§23-141) and perimeter wall height (§23-631) regulations. R3X zoning district.

PREMISES AFFECTED – 1153 85<sup>th</sup> Street, north side of 85<sup>th</sup> Street, between 11<sup>th</sup> and 12<sup>th</sup> Avenue, Block 6320, Lot 56, Borough of Brooklyn.

### COMMUNITY BOARD #10BK

APPEARANCES – None.

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated October 19, 2010, acting on Department of Buildings Application No. 310115862, reads in pertinent part:

1. The proposed Floor Area Ratio exceeds permitted maximum Floor Area Ratio and is contrary to Section 23-141 ZR
2. Height of New Extension above Base Plane exceeds the maximum permitted and is contrary to Section 23-631 ZR; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3X zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR") and perimeter wall height, contrary to ZR §§ 23-141, 23-631; and

WHEREAS, a public hearing was held on this application on December 7, 2010, after due notice by publication in *The City Record*, with continued hearings on January 11, 2011, February 1, 2011 and March 15, 2011, and then to decision on April 12, 2011; 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 10, Brooklyn, recommends disapproval of this application; and

WHEREAS, initially, a neighbor provided oral and written testimony in opposition to the proposal, citing concerns about (1) the measurement of the base plane and the associated perimeter wall height, (2) the front yard depth, and (3) the aesthetic character of the home; and

WHEREAS, during the course of the hearing process, the neighbor withdrew their opposition; and

WHEREAS, the subject site is located on the north side of 85<sup>th</sup> Street, between 11<sup>th</sup> Avenue and 12<sup>th</sup> Avenue, within an R3X zoning district; and

WHEREAS, the subject site has a total lot area of 6,000 sq. ft., and is occupied by a single-family home with a floor area of approximately 2,206 sq. ft. (0.36 FAR); and

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

WHEREAS, the applicant represents that the home is currently under construction pursuant to an alteration permit for an as of right enlargement, which is on hold pending the outcome of the special permit application before the Board, which reflects a modification to the current DOB-approved plans; and

WHEREAS, the applicant seeks an increase in the floor area from approximately 2,206 sq. ft. (0.36 FAR) to 3,647 sq. ft. (0.6 FAR); the maximum permitted floor area is 3,000 sq. ft. (0.50 FAR); and

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WHEREAS, the applicant proposes to provide a perimeter wall with a height of 23'-9", which it represents is equal to or less than the non-complying perimeter wall height of the home located to the east of the subject home (the maximum permitted perimeter wall height is 21'-0"); and

WHEREAS, the Board notes that a special permit under ZR § 73-622 allows a perimeter wall height to exceed the permitted height in an R3X zoning district, provided that the perimeter wall height is equal to or less than the perimeter wall height of an adjacent single- or two-family detached or semi-detached residence with an existing non-complying perimeter wall facing the street; and

WHEREAS, in support of the requested waiver for perimeter wall height, the applicant provided a survey establishing the height of the adjacent building; and

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

WHEREAS, additionally, the applicant notes that a portion of the pre-existing perimeter wall of the subject home has a height of 24'-11"; and

WHEREAS, the Board has determined that the applicant has submitted sufficient information to establish that applicant may match the pre-existing perimeter wall of the adjacent home, which exceeds a height of 21'-0"; and

WHEREAS, to address the Board's concerns about the accuracy of the base plane measurement, the applicant revised the plans to reflect the base plane elevation, which was approved by DOB in the context of the as of right plans; and

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

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

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

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

*Therefore it is resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R3X zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio or perimeter wall height, contrary to ZR §§ 23-141, 23-631; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted,

filed with this application and marked "Received March 1, 2011"-(13) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 3,647 sq. ft. (0.6 FAR), a maximum perimeter wall height of 23'-9" for the new portion of the home, and a front yard with a minimum depth of 18'-4", as illustrated on the BSA-approved plans;

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

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

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

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

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

Adopted by the Board of Standards and Appeals, April 12, 2011.

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## **149-10-BZ CEQR #11-BSA-015K**

APPLICANT – Eric Palatnik, P.C., for Chaya Singer, owner.

SUBJECT – Application August 13, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and lot coverage (§23-141); side yard (§23-461) and less than the minimum rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1415 East 29<sup>th</sup> Street, between Avenue N and Kings Highway, Block 7683, Lot 39, Borough of Brooklyn.

### **COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Eric Palatnik.

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 14, 2010, acting on Department of Buildings Application No. 320167467, reads in pertinent part:

1. Proposed floor area exceeds that which is permitted and is contrary to ZR 23-141.

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2. Proposed lot coverage exceeds that which is permitted and is contrary to ZR 23-141.
3. Proposed side yard does not meet min required contrary to ZR 23-461.
4. Proposed rear yard does not meet min required and is contrary to ZR 23-47; and

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

WHEREAS, a public hearing was held on this application on November 23, 2010, after due notice by publication in *The City Record*, with continued hearings on January 11, 2011, February 15, 2011 and March 15, 2011, and then to decision on April 12, 2011; and

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

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

WHEREAS, the subject site is located on the east side of East 29<sup>th</sup> Street, between Avenue N and Kings Highway, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 4,200 sq. ft., and is occupied by a single-family home with a floor area of approximately 1,522 sq. ft. (0.36 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from approximately 1,522 sq. ft. (0.36 FAR) to 4,200 sq. ft. (1.0 FAR); the maximum permitted floor area is 2,100 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide a lot coverage of 1,972 sq. ft. (the maximum permitted lot coverage is 1,260 sq. ft.); and

WHEREAS, the applicant proposes to maintain the existing side yard with a width of 4'-2" along the southern lot line (a minimum width of 5'-0" is required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 22'-0" (a minimum rear yard of 30'-0" is required); and

WHEREAS, at hearing, the Board raised concerns about (1) the location of a parking space within the front yard, (2) whether the proposed roof, second floor dormer, and perimeter wall were within the permitted building envelope, and (3) whether the front porch, which was included in the floor area calculations, and the applicant proposes to completely enclose, was considered to be a pre-existing legal encroachment into the front yard; and

WHEREAS, in response, the applicant submitted revised plans reflecting that the parking space would be located within the side yard, rather than the front yard and that the proposed building envelope is permitted; and

WHEREAS, as to the front porch, the applicant

represents that because it is more than 50 percent enclosed and because it has a roof, the porch is deemed to already include floor area and is a legal pre-existing condition in the required front yard; the applicant stated that it will confirm the legality of the front yard condition with DOB; and

WHEREAS, the Board informed the applicant that it would not take a position as to the status of the front porch condition; and

WHEREAS, accordingly, the applicant stated that after obtaining a special permit from the Board, it would request a determination from DOB as to whether or not the front porch may be fully enclosed and seek confirmation that the existing porch is deemed to already be enclosed for zoning purposes and, thus, the proposal to fully enclose the porch does not create any new non-compliance as to the front yard; the applicant would then seek an amendment to the plans approved under the special permit, if necessary; and

WHEREAS, the Board also stated that it would not assess whether all of the applicant's proposed floor area deductions are appropriate and directed the applicant to confirm the deductions with DOB; and

WHEREAS, portions of the existing foundation walls, first and second floor walls, and floor joists on the first floor will remain; and

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

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

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

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

*Therefore it is resolved,* that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR, lot coverage and, side and rear yards, contrary to ZR §§ 23-141, 23-461 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received March 22, 2011"-(11) sheets; and *on further condition:*

THAT the following shall be the bulk parameters of the building: a maximum floor area of 4,200 sq. ft. (1.0 FAR); a lot coverage of 1,972 sq. ft.; a side yard with a minimum width of 4'-2" along the southern lot line; a side

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yard with a minimum depth of 8'-0" along the northern lot line; and a rear yard with a minimum depth of 22'-0", as illustrated on the BSA-approved plans;

THAT DOB shall confirm the compliance of the front porch condition, the attic, and all mechanical deductions;

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

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

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

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

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

Adopted by the Board of Standards and Appeals, April 12, 2011.

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## 218-10-BZ

### CEQR #11-BSA-041K

APPLICANT – Simons & Wright LLC, for Bermuda Realty LLC, owner.

SUBJECT – Application November 19, 2010 – Special Permit (§73-19) for the construction of a four-story school (*Brownsville Ascend Charter School*). C8-2 zoning district.

PREMISES AFFECTED – 123 East 98<sup>th</sup> Street, aka 1 Blake Avenue, corner of the intersection of East 98<sup>th</sup> and Blake Avenue between Ralph Avenue and Union Street, Block 3531, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Emily Simons.

**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 November 18, 2010, acting on Department of Buildings Application No. 302217134, reads in pertinent part:

“The proposed educational facilities and accessory uses in schools are not permitted as-of-right in C8-2 zoning district as per Zoning Resolution Section ZR 32-12;” and

WHEREAS, this is an application under ZR §§ 73-19 and 73-03 to permit, on a site within a C8-2 zoning district, the

proposed operation of a school (Use Group 3), contrary to ZR § 32-12; and

WHEREAS, a public hearing was held on this application on February 15, 2011, after due notice by publication in the *City Record*, with a continued hearing on March 29, 2011, and then to decision on April 12, 2011; 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 16, Brooklyn, recommends approval of this application; and

WHEREAS, New York State Assemblyman William F. Boyland, Jr. provided testimony in support of this application; and

WHEREAS, the application is brought on behalf of The Brownsville Ascend Charter School (the “School”); and

WHEREAS, the site is located on the northeast corner of East 98<sup>th</sup> Street and Blake Avenue, within a C8-2 zoning district; and

WHEREAS, the site has a lot area of 11,535 sq. ft.; and

WHEREAS, the site is currently occupied by a vacant, newly-constructed four-story building with a floor area of 46,140 sq. ft.; and

WHEREAS, the applicant proposes to occupy the existing building for use as a 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 a C8 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 250 students from kindergarten through fourth grade in year one, and will expand its educational program in the next several years to include the fifth through eighth grades, with a total student body of approximately 500 students; and

WHEREAS, the School’s program includes classrooms, a music room, an art studio, a library, a cafeteria/multi-purpose room, a computer laboratory, science laboratories, offices, storage space, and rooftop recreation space; and

WHEREAS, the applicant states that the School’s program requires a building with a floor area of at least 40,000 sq. ft.; and

WHEREAS, the applicant states that the School has an additional programmatic need to be located within Community School District 23 in the Brownsville 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

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the students are anticipated to live in the Brownsville area, it conducted a search for a suitable location for the School in that area; and

WHEREAS, specifically, the applicant states that the parameters of its site search encompassed a 90-block area from Rockaway Parkway to the east, Livonia Avenue to the south, Junius Street to the west and East New York Avenue to the north; and

WHEREAS, the applicant represents that during the site search it specifically evaluated the feasibility of ten lots within the search parameters: 1620 Pitkin Avenue, 1797 Pitkin Avenue, 313 Powell Street, 365 Bristol Street, 633-635 Rockaway Avenue, 231 Livonia Avenue, 279 Grafton Street, 512 Saratoga Avenue, 402 Rockaway Avenue, and 69 Chester Street; and

WHEREAS, the applicant states that 231 Livonia Avenue, 279 Grafton Street, 512 Saratoga Avenue, 402 Rockaway Avenue, and 69 Chester Street are all vacant 5,000 sq. ft. lots which could only accommodate a school building with a maximum floor area of 24,000 sq. ft., which would not meet the School's programmatic needs or enrollment requirements; and

WHEREAS, the applicant further states that 1797 Pitkin Avenue consists of a vacant three-story commercial building located on an 8,000 sq. ft. lot, which the applicant determined to be infeasible because the building owner was not willing to enlarge the existing building to make it suitable to meet the School's programmatic needs, and because the maximum floor area on the lot is only 30,000 sq. ft.; and

WHEREAS, the applicant states that 313 Powell Avenue is occupied by a five-story commercial building with a floor area of 44,000 sq. ft., and while large enough to accommodate the School, the building is currently occupied by a community facility use and the owner was not willing to sell or lease the building to the School; and

WHEREAS, the applicant states that 633-635 Rockaway Avenue is occupied by a severely dilapidated three-story vacant former school building with a floor area of 27,000 sq. ft., which the owner was unwilling to renovate and enlarge in order to lease it to the School; and

WHEREAS, the applicant further states that the lots located at 1620 Pitkin Avenue, a 24,724 sq. ft. lot occupied by a one-story building with a floor area of 10,000 sq. ft., and 365 Bristol Street, a 15,000 sq. ft. vacant lot, were both of a sufficient size to construct a building that could accommodate the School, however, they were found to be economically infeasible due to their high acquisition costs; and

WHEREAS, therefore, the applicant concluded that none of the sites within zoning districts where the use would be permitted as of right 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 subject site is less than 400 feet from R6 zoning districts to the north, west and east, 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 states that adequate separation from noise, traffic and other adverse effects of the surrounding C8-2 zoning district will be provided through the use of sound attenuating exterior wall and window construction; and

WHEREAS, specifically, the applicant states that the building construction will include triple-glazed windows and an alternate means of ventilation, which will provide window/wall attenuation of 44 dBA for all facades of the building, and therefore result in interior noise levels of less than 45 dBA, in accordance with the New York City CEQR Technical Manual; and

WHEREAS, the applicant states that separation from noise and traffic will be further maintained by locating the entrance to the School on Blake Avenue, a lightly trafficked street; and

WHEREAS, the Board finds that the conditions surrounding the site and the construction of the building, including the installation of triple-glazed windows and an alternate means of ventilation, will adequately separate the School from noise, traffic and other adverse effects of any of the uses within the surrounding C8-2-2 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 all of the streets adjacent to the School are lightly trafficked, and therefore the students travelling to and from the School will not be affected by the movement of traffic on the adjacent streets; and

WHEREAS, the applicant states that approximately 85 percent of the students attending the School are expected to arrive and depart by school bus, mass transit, or walking; the remaining 15 percent are expected to be driven to and from the School's pick up/drop off location at the Blake Avenue entrance; and

WHEREAS, the applicant further states that it anticipates that school buses will be used primarily for the students from kindergarten through fourth grade, and for approximately 25 percent of the students from fifth grade

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through eighth grade; and

WHEREAS, accordingly, the applicant anticipates that two school buses will be provided for the 2011 school year, and that four to five school buses will be provided when the school reaches its full capacity of 500 students; and

WHEREAS, the applicant notes that it has requested that the Department of Transportation (“DOT”) install a “No Standing Zone” during school hours for the portion of Blake Avenue where school buses and cars will be dropping off and picking up students; and

WHEREAS, at hearing, the Board questioned whether a traffic signal should be installed at the intersection of Blake Avenue and East 98<sup>th</sup> Street; and

WHEREAS, in response, the applicant submitted an engineer’s report which states that it analyzed the subject intersection according to the criteria used by DOT for determining whether the installation of a traffic signal is warranted, and concluded that the intersection at Blake Avenue and East 98<sup>th</sup> Street does not meet the basic DOT requirements for installing a traffic signal; and

WHEREAS, the applicant represents that it will request that the local police precinct assign a crossing guard to the intersection of Blake Avenue and East 98<sup>th</sup> Street, which will be assessed by the New York City Police Department when the School formally opens; and

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

WHEREAS, by letter dated January 12, 2011, DOT Safety states that it has no objection to the proposed school; and

WHEREAS, the Board also referred the application to DOT’s Traffic Planning Office; and

WHEREAS, by letter dated March 31, 2011, DOT states that the proposed traffic improvement measures, including signal timing modifications, the installation of a “No Standing Zone” along the north curb of Blake Avenue between East 98<sup>th</sup> Street and Union Street, and the anticipated request for a crossing guard at the intersection of Blake Avenue and East 98<sup>th</sup> Street from NYPD, appear reasonable and feasible and DOT will investigate the need for implementing the improvement measures or similar measures when the project is built and occupied in 2011; 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 also 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 New York City Department of

Environmental Protection’s (“DEP”) Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials, air quality and noise impacts; and

WHEREAS, DEP reviewed the November 2009 Environmental Assessment Statement, September 2009 Phase I report, July 2009 Phase II Environmental Investigation Workplan, July 2009 Phase II Subsurface Investigation report, Health and Safety Plan, and November 2010 Supplemental Phase II report; and

WHEREAS, DEP requested that a Construction Health and Safety Plan (“CHASP”) be submitted for review and approval; and

WHEREAS, DEP accepted the February 2011 CHASP and requested that a professional engineer-certified Remedial Closure Report be submitted to DEP for review and approval upon completion of the proposed project; and

WHEREAS, DEP reviewed the applicant’s stationary and mobile sources air quality analyses and determined that significant impacts related to the proposed project are not anticipated; and

WHEREAS, DEP reviewed the March 28, 2011 noise assessment report and supplemental information regarding the specifications for the windows that would maintain the required interior noise level of 45 dBA, and determined that significant impacts related to the proposed project are not anticipated based on using an alternate means of ventilation (air-conditioning) to maintain a closed window condition; 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 construction of a school (Use Group 3), on a site within a C8-2 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 January 24, 2011” - (7) sheets and “Received April 7, 2011” - (5) sheets; and *on further condition*:

THAT prior to the issuance of any building permit that would result in grading, excavation, foundation, alteration, building or other permit respecting the subject site which permits soil disturbance for the proposed project, the applicant or successor shall obtain from DEP a Notice to Proceed;

THAT prior to the issuance by DOB of a temporary or permanent Certificate of Occupancy, the applicant or successor shall obtain from DEP a Notice of Satisfaction;

THAT an interior noise level of 45 dBA or less shall be maintained through the installation of double sets of fixed

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(non-operable) windows on each façade and an alternate means of ventilation throughout the building, in accordance with the BSA-approved plans;

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

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

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, April 12, 2011.

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## 240-09-BZ

APPLICANT – T-Mobile Northeast LLC f/k/a Omnipoint Communications Inc., for 452 & 454 City Island Avenue Realty Corp., owner; T-Mobile Northeast LLC, lessee.

SUBJECT – Application August 10, 2009 – Variance (§72-21) to construct a telecommunications facility on the rooftop of an existing building, contrary to height (Special City Island District (CD), §112-103, §33-431) and rear and side yard setback (§§23-47 and 23-464) requirements. R3A/C2-2/CD districts.

PREMISES AFFECTED – 454 City Island Avenue, east side of City Island Avenue bound by Browne Street, south and Beach Street to the north, Block 5646, Lot 3, Borough of Bronx.

### COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Adam Moss.

**ACTION OF THE BOARD** – Laid over to May 24, 2011, at 1:30 P.M., for adjourned hearing.

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## 31-10-BZ

APPLICANT – Eric Palatnik, P.C., for 85-15 Queens Realty, LLC, owner.

SUBJECT – Application March 16, 2010 – Variance (§72-21) to allow for a commercial building, contrary to use (§22-00), lot coverage (§23-141), front yard (§23-45), side yard (§23-464), rear yard (§33-283), height (§23-631) and location of uses within a building (§32-431) regulations. C1-2/R6, C2-3/R6, C1-2/R7A, R5 zoning districts.

PREMISES AFFECTED – 85-15 Queens Boulevard aka 51-35 Reeder Street, north side of Queens Boulevard, between Broadway and Reeder Street, Block 1549, Lot 28, 41, Borough of Queens.

### COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Eric Palatnik and Robert B. Pauls.

**ACTION OF THE BOARD** – Laid over to June 7, 2011, at 1:30 P.M., for continued hearing.

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## 46-10-BZ

APPLICANT – Eric Palatnik, P.C., for 1401 Bay LLC, owner.

SUBJECT – Application April 8, 2010 – Special Permit (§73-44) to permit a reduction in required parking for ambulatory and diagnostic treatment center. C4-2 zoning district.

PREMISES AFFECTED – 1401 Sheepshead Bay Road, Avenue Z and Sheepshead Bay Road, Block 7459, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik, Robert Palermo, George Krasanakis and Hiram Rothkrug.

**ACTION OF THE BOARD** – Laid over to June 7, 2011, at 1:30 P.M., for continued hearing.

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## 54-10-BZ

APPLICANT – Eric Palatnik, P.C., for Richard Valenti as Trustee, owner; Babis Krasanakis, lessee.

SUBJECT – Application April 19, 2010 – Special Permit (§73-44) to permit reduction in required parking for an ambulatory diagnostic or treatment center. C4-2 zoning district.

PREMISES AFFECTED – 150(c) Sheepshead Bay Road, aka 1508 Avenue Z, south side of Avenue Z, between East 15<sup>th</sup> and East 16<sup>th</sup> Street, Block 7460, Lot 3, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik, Robert Palermo, George Krasanakis and Hiram Rothkrug.

**ACTION OF THE BOARD** – Laid over to June 7, 2011, at 1:30 P.M., for continued hearing.

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## 90-10-BZ

APPLICANT – James Chin & Associates, LLC, for Chan Ahn, owner.

SUBJECT – Application August 14, 2010 – Variance (§72-21) to permit a house of worship (*Korean Central Presbyterian Church*), contrary to front yard (§24-34), side yard (§24-35), and rear yard (§24-36). R2A zoning district.

PREMISES AFFECTED – 58-06 Springfield Boulevard, corner of the west side of Springfield Boulevard, west north side of the Horace Harding Expressway, Block 7471, Lots 7 and 48, Borough of Queens.

### COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: James Chin and Mindy Chin.

THE VOTE TO CLOSE HEARING –

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

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**ACTION OF THE BOARD** – Laid over to May 17, 2011, at 1:30 P.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

**197-10-BZ thru 199-10-BZ**

APPLICANT – Antonio S. Valenziano, AIA, for John Merolo, owner.

SUBJECT – Application October 26, 2010 – Variance (§72-21) to allow three residential buildings in a manufacturing district, contrary to use regulations (§42-10). M1-1 zoning district.

PREMISES AFFECTED – 59, 63 & 67 Fillmore Street, 491.88' west of York Avenue, Block 61, Lot 27, 29, 31, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to May 17, 2011, at 1:30 P.M., for deferred decision.

**227-10-BZ**

APPLICANT – Eric Palatnik, P.C., for Power Test Realty Company Limited Partnership, owner.

SUBJECT – Application December 14, 2010 – Reinstatement (§11-411) of a previously approved variance permitting the operation of an automotive service station (UG 16B) (*Getty*) which expired on October 11, 2000; Amendment to legalize fuel dispensing islands; Extension of Time to obtain a certificate of occupancy which expired on November 17, 1993; Waiver of the rules. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 204-12 Northern Boulevard, Northern Boulevard and 204th Street. Block 7301, Lot 11, Borough of Queens.

**COMMUNITY BOARD #11Q**

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Henry Euler and Mandingo Tshaka.

**ACTION OF THE BOARD** – Laid over to May 17, 2011, at 1:30 P.M., for continued hearing.

**1-11-BZ**

APPLICANT – Martyn & Don Weston Architects, for RAC LLC Realty, owner; Sahadi Importing Company, lessee.

SUBJECT – Application January 3, 2011 – Variance (§72-21) to allow a ground floor enlargement to a pre-existing non complying commercial building, contrary to floor area regulations (§53-31). C2-3/R6 zoning district.

PREMISES AFFECTED – 189-191 Atlantic Avenue, north side of Atlantic Avenue, 240' east of Clinton Street, Block 276, Lot 7, Borough of Brooklyn.

**COMMUNITY BOARD #2BK**

APPEARANCES –

For Applicant: Don Weston, Pamela Weston and Robert Buxbarm.

**ACTION OF THE BOARD** – Laid over to June 7, 2011, at 1:30 P.M., for continued hearing.

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## \*CORRECTION

This resolution adopted on December 14, 2010, under Calendar No. 104-10-BZ and printed in Volume 95, Bulletin No. 51, is hereby corrected to read as follows:

### 104-10-BZ

#### CEQR #10-BSA-077K

APPLICANT – Moshe M. Friedman, P.E., for Congregation Ohr Yisroel Inc., owner.

SUBJECT – Application June 8, 2010 – Variance (§72-21) to permit the extension and conversion of an existing residential building to a synagogue and rectory, contrary to lot coverage and floor area (§24-11) front yard (§24-34), side yard (§24-35) and wall height and sky exposure plane (§24-521). R5 zoning district.

PREMISES AFFECTED – 5002 19<sup>th</sup> Avenue, aka 1880-1890 50<sup>th</sup> Street, south side of 50<sup>th</sup> Street, west of 19<sup>th</sup> Avenue, Block 5461, Lot 39, Borough of Brooklyn.

#### COMMUNITY BOARD #12BK

#### APPEARANCES –

For Applicant:

**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 May 13, 2010, acting on Department of Buildings Application No. 320152213 reads, in pertinent part:

“Proposed house of worship (UG 4) in an R5 district is contrary to:

- ZR 24-11 Floor Area & Lot Coverage
- ZR 24-521 Height
- ZR 23-34 Front Yard
- ZR 24-35 Side Yard
- ZR 23-521 Sky Exposure Plane

And requires a variance from the Board of Standards and Appeals as per Section 72-21;” and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site within an R5 zoning district, the conversion and enlargement of an existing residential building to a synagogue (Use Group 4), which does not comply with floor area, lot coverage, front yard, side yard, height and sky exposure plane requirements for community facilities, contrary to ZR §§ 24-11, 24-34, 24-35 and 24-521; and

WHEREAS, a public hearing was held on this application on October 5, 2010, after due notice by publication in *The City Record*, with a continued hearing on November 16, 2010, and then to decision on December 14, 2010; and

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

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

WHEREAS, certain neighborhood residents provided written testimony in support of this application; and

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

WHEREAS, the subject site is located on the southwest corner of 19<sup>th</sup> Avenue and 50<sup>th</sup> Street, within an R5 zoning district; and

WHEREAS, the subject lot has a width of 20’-2”, a depth of 100’-0”, and a lot area of 2,081 sq. ft.; and

WHEREAS, the subject site is currently occupied by a two-story residential building with a floor area of 3,464 sq. ft. (1.72 FAR); and

WHEREAS, the proposed building provides for a three-story synagogue with the following parameters: a floor area of 5,696 sq. ft. (the maximum permitted floor area is 4,162 sq. ft.), an FAR of 2.82 (the maximum permitted FAR is 2.0); lot coverage of 95 percent (the maximum permitted lot coverage is 60 percent); a front yard with a depth of 5’-0” along the eastern lot line and no front yard along the northern lot line (a front yard with a minimum depth of 10’-0” is required); no side yards (two side yards with minimum depths of 8’-0” and 9’-6”, respectively, are required); a front wall height of 40’-0” (the maximum permitted front wall height is 35’-0”); and encroachment into the sky exposure plane; and

WHEREAS, the proposal provides for the following uses: (1) a synagogue at the cellar level and first floor; (2) a women’s balcony on the second floor; and (3) a library and rabbinical study room on the third floor; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue which necessitate the requested variances: (1) to accommodate its growing congregation; and (2) to provide a separate space for men and women during religious services; and

WHEREAS, the applicant states that the congregation currently has a membership of 60 families and there are approximately 60 congregants who worship at the current rented facility on the Sabbath, between 30 and 40 congregants who attend daily services, and approximately 115 congregants who attend holiday services; and

WHEREAS, the applicant further states that the congregation currently worships in rented space and has to rent out additional space for holiday services, which attract a larger number of worshippers; and

WHEREAS, the applicant represents that the size, layout and design of the subject building is inadequate to serve the current congregation; and

WHEREAS, the applicant represents that the congregation is made up of many young families and has been growing steadily since its inception, and that the proposed synagogue is necessary to accommodate the future growth of the congregation; and

WHEREAS, the applicant states that the proposed building can accommodate its growing congregation as well as provide a separate worship space for men and women, as

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required by religious doctrine; and

WHEREAS, the applicant states that the requested waivers enable the Synagogue to provide adequate space for worship services in the cellar synagogue, first floor synagogue, and the women's balcony; and

WHEREAS, the applicant represents that worship space which separates men and women is critical to its religious practice; and

WHEREAS, the applicant further represents that the third floor study space is necessary to accommodate the religious traditions of the congregation, which require that the congregation set aside a study period during prayer times for the study of the Torah, Talmud, and other Jewish religious texts; and

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

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

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

WHEREAS, however, the applicant also represents that the narrow width of the site creates an unnecessary hardship in developing the site in compliance with applicable regulations; and

WHEREAS, the subject lot has a width of 20'-2"; and

WHEREAS, the applicant states that the site is too narrow to accommodate a complying synagogue building, as providing complying side yards would reduce the width of the building to 4'-9"; and

WHEREAS, the applicant represents that, therefore, the required floor area cannot be accommodated within the as-of-right lot coverage, floor area, and yard parameters and allow for efficient floor plates that accommodate the Synagogue's programmatic needs, thus necessitating the requested waivers of these provisions; and

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

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

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

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

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

WHEREAS, as to bulk, the applicant submitted a 400-ft. radius diagram reflecting that the residential character of the surrounding neighborhood includes one-, two- and three-family homes and three- and four-story apartment buildings; and

WHEREAS, the applicant states that the proposed three-story building is consistent with the surrounding area, as three-story residential buildings are permitted in the subject zoning district; and

WHEREAS, at hearing, the Board questioned whether the applicant needed the requested front yard waiver, and the effect it would have on the surrounding residences; and

WHEREAS, in response, the applicant submitted plans for a lesser variance alternative that eliminated the front yard waiver; and

WHEREAS, the plans submitted by the applicant reflect that the lesser variance scenario would limit the occupancy of both the proposed synagogue and balcony to 63 people, and would limit the occupancy of the cellar synagogue to 38 people; and

WHEREAS, the applicant states that while the lesser variance scenario would provide a temporary reprieve to the Synagogue's space requirements for weekday and Sabbath services, it would not meet the programmatic needs of the Synagogue because it would not provide adequate space to accommodate the current congregation during holiday services, and would not provide space to accommodate the anticipated growth of the congregation; and

WHEREAS, the applicant also submitted letters from the adjacent neighbors on 19<sup>th</sup> Avenue in support of the proposal, including the extension of the building into the front yard; and

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

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

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

WHEREAS, as noted above, the applicant submitted plans for a lesser variance scenario which was unable to meet the programmatic needs of the Synagogue; and

WHEREAS, accordingly, the Board finds the requested waivers to be the minimum necessary to afford the Synagogue the relief needed to meet its programmatic needs; and

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

WHEREAS, the project is classified as an Unlisted

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action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 10BSA077K, dated September 15, 2010; and

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

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an R5 zoning district, the conversion and enlargement of an existing residential building to a synagogue (Use Group 4), which does not comply with floor area, lot coverage, front yard, side yard, height and sky exposure plane requirements for community facilities, contrary to ZR §§ 24-11, 24-34, 24-35 and 24-521, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received June 8, 2010” – (9) sheets and “Received September 15, 2010” – (1) sheet; and *on further condition*:

THAT the building parameters shall be: a floor area of 5,696 sq. ft. (2.82 FAR); lot coverage of 95 percent; a front yard with a depth of 5’-0” along the eastern lot line; and a front wall height of 40’-0”, as illustrated on the BSA-approved plans;

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

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

THAT no commercial catering shall take place onsite;

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

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

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

THAT construction shall proceed in accordance with ZR

§ 72-23;

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

Adopted by the Board of Standards and Appeals, December 14, 2010.

**\*The resolution has been revised to correct the lot coverage which read: “94 percent” now reads: “95 percent”. Corrected in Bulletin No. 16, Vol. 96, dated April 21, 2011.**

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## \*CORRECTION

This resolution adopted on January 11, 2011, under Calendar No. 107-10-BZ and printed in Volume 96, Bulletin Nos. 1-3, is hereby corrected to read as follows:

### 107-10-BZ

APPLICANT – Akerman Senterfitt, for Associazione Sacchese D’America, owner.

SUBJECT – Application June 10, 2010 – Variance (§72-21) to allow for a community facility use (*Associazione Sacchese D’America*), contrary to side yard regulations (§24-35). R2 zoning district.

PREMISES AFFECTED – 12-24 149<sup>th</sup> Street, between 12<sup>th</sup> Avenue and Cross Island Parkway, Block 4466, Lot 21, Borough of Queens.

### COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Calvin Wong.

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

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Superintendent, dated May 15, 2010, acting on Department of Buildings Application No. 420092081, reads in pertinent part:

“As per ZR 24-35(a) minimum required side yards:

(a) two side yards shall be provided, each with a minimum required width of eight feet;” and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R2 zoning district the legalization of a community facility use on the first floor of an existing mixed-use community facility/residential building which does not comply with side yard regulations for community facility use, contrary to ZR § 24-35; and

WHEREAS, a public hearing was held on this application on November 16, 2010, after due notice by publication in the *City Record*, with a continued hearing on December 14, 2010 and then to decision on January 11, 2011; and

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

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

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

WHEREAS, State Senator Frank Padavan and State Assemblywoman Ann-Margaret Carrozza provided written testimony in support of the application; and

WHEREAS, two adjacent neighbors provided letters in support of the application; and

WHEREAS, Saint Luke’s Church provided written

testimony in support of the application, noting that the applicant works in conjunction with the church for religious events and community-based social service events; and

WHEREAS, the application is brought on behalf of the Associazione Sacchese D’America (the “Association”), a nonprofit religious organization; and

WHEREAS, the site is located on the west side of 149<sup>th</sup> Street, between Cross Island Parkway and 12<sup>th</sup> Avenue; and

WHEREAS, the site has a lot area of approximately 4,037 sq. ft. (.56 FAR) and is located within an R2 zoning district; and

WHEREAS, the site is occupied by a two-story building, built in 1915 for residential occupancy; the first floor of the building is occupied by the Association (Use Group 4) and the second floor is occupied by residential use (Use Group 2), both of which are proposed to remain; and

WHEREAS, the applicant now proposes to legalize the existing community facility use within the existing building without any physical changes to the building; and

WHEREAS, the existing building is non-complying as to side yards; specifically, the existing side yards have widths of 4’-0” and 1’-0” (a community facility use requires two side yards with minimum widths of 8’-0” each); and

WHEREAS, the side yards are pre-existing legal non-compliances for residential use, but a variance is required due to the change in use and the increased degree of non-compliance as to the side yards associated with the community facility use; and

WHEREAS, the applicant represents that the proposed legalization of the community facility use will not create any other non-compliances and that the building will remain at .56 FAR (a maximum FAR of 1.0 is permitted for the mixed-use building); and

WHEREAS, the applicant represents that the variance request is necessitated by unique conditions of the site that create a hardship, specifically: (1) the programmatic needs of the Association; and (2) the narrowness of the zoning lot; and

WHEREAS, specifically, the applicant states that the following are the programmatic needs of the Association which require the requested waivers: to provide a sufficiently-sized gathering place for its members to worship the Roman Catholic Patron Saints of Sacco, Italy, within walking distance of many of its members; and

WHEREAS, the applicant states that the Association conducts religious, cultural and civic functions related to the worship of its patron saint Maria Santissimo D’Angeli, usually conducting worship services in the evening; the Association also works closely with nearby St. Luke’s Church to provide services which the church cannot accommodate; and

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

WHEREAS, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution’s application is to be permitted unless it can be

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shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, the Board finds that the Association's programmatic needs are legitimate, and agrees that the existing first floor space is required to accommodate the Association's programmatic needs at the subject site; and

WHEREAS, the applicant represents that the building was built as a residential building nearly 100 years ago and that it cannot be occupied by a community facility in strict compliance with zoning district regulations; and

WHEREAS, as to the site's narrow width, the applicant notes that the site has a width of 25 feet and that if a new building were constructed at the site to accommodate the community facility use with two complying side yards with widths of 8'-0", the exterior width of the building would be 9'-0", an insufficient width to accommodate the Association's programmatic needs; and

WHEREAS, as to the uniqueness of the site condition, the Board notes that the 400-ft. radius diagram reflects that there are only approximately two lots with similar or narrower widths that are occupied by detached buildings with two side yards; and

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

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

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

WHEREAS, the applicant notes that community facility use is permitted within the zoning district; and

WHEREAS, the applicant states that the existing 1915 building with non-complying side yards will not be changed and is compatible with the context of the immediate area; and

WHEREAS, the applicant notes that the building is compatible in size with the other buildings in the area, including many similar two-story residential buildings; and

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

WHEREAS, the applicant states that the hardship was not self-created and that no construction that would meet the programmatic needs of the Association could occur on the

existing lot; and

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

WHEREAS, the applicant represents that the requested side yard waivers are the minimum necessary to accommodate the Association's programmatic needs; and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary to allow the Association to fulfill its programmatic needs on the narrow site; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21 to permit, within an R2 zoning district, the legalization of a community facility use on the first floor of an existing mixed-use community facility/residential building which does not comply with side yard regulations for community facility use, contrary to ZR § 24-35, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 10, 2010" – two (2) sheets and "Received November 9, 2010" – one (1) sheet and *on further condition*:

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

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

THAT the use of the building shall be as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) 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 11, 2011.

**\*The resolution has been revised to correct the Application Date which read: "September 10, 2010" now reads: "June 10, 2010". Corrected in Bulletin No. 16, Vol. 96, dated April 21, 2011.**