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# BULLETIN

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

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Volume 95, No. 12

March 24, 2010

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### DIRECTORY

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**Affecting Calendar Numbers:**

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11-10-BZ	562 Court Street, Brooklyn
13-10-BZ	79 Amherst Street, Brooklyn

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# DOCKET

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New Case Filed Up to March 16, 2010  
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**31-10-BZ**

85-15 Queens Boulevard, North side of Queens Boulevard between Broadway and Reeder Street., Block 1549, Lot(s) 28,41, Borough of **Queens, Community Board: 4**. Variance to allow a commerical building, contrary to use regulations. C1-2/R6,C2-3/R6 district.  
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**32-10-BZ**

30-30 Northern Boulevard, Northern Boulevard; Sunnyside Yards; 41 Avenue;Honeywell Street., Block 239, Lot(s) 60, Borough of **Queens, Community Board: 1**. Variance to permit a 19 story mixed use buildings. M1-5 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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**APRIL 13, 2010, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, April 13, 2010, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL ORDER CALENDAR**

**16-92-BZ**

APPLICANT – NYC Board of Standards and Appeals.  
OWNER: High Tech Park, Inc.  
SUBJECT – Application April 25, 2008 – Dismissal for lack of prosecution for an extension of time to obtain a Certificate of Occupancy and a clarification of the BSA Resolution. R5/C1-3 zoning district.  
PREMISES AFFECTED – 72/84 Sullivan Street, north side of Sullivan Street, east of Van Brunt Street, Block 556, Lot Tent.43, Borough of Brooklyn.  
**COMMUNITY BOARD #6BK**

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**280-98-BZ**

APPLICANT – Rampulla Associates Architects, for MARS Holding, LLC, owner.  
SUBJECT – Application February 13, 2010 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a UG4 Dental Office which expired on February 8, 2010; an Amendment to convert the basement garage into UG4 dental office floor area. R-2 zoning district.  
PREMISES AFFECTED – 2936 Hylan Boulevard, east side of Hylan Boulevard, 100' north of Isabella Avenue, Block 4015, Lot 14, Borough of Staten Island.  
**COMMUNITY BOARD #3SI**

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**72-99-BZ**

APPLICANT – Rothkrug Rothkrug & Spector, for PGREF I 1633 Broadway Tower, L.P., owner; Equinox 50th Street, Incorporated, lessee.  
SUBJECT – Application January 12, 2010 – Extension of Term to permit the continued operation of a Physical Cultural Establishment (Equinox Fitness) which expired on January 11, 2010. C6-7 (MID) zoning district.  
PREMISES AFFECTED – 1633 Broadway, 215 West 50th Street; 210 West 51st Street, west side of Broadway between West 50th and West 51st Streets, Block 1022, Lot 43, Borough of Manhattan.  
**COMMUNITY BOARD #5M**

**51-06-BZ**

APPLICANT – Sheldon Lobel, P.C., for Rivoli Realty Corporation, owner.  
SUBJECT – Application February 4, 2010 – Amendment of variance (§72-21) which permitted, in a C1-2/R2 zoning district, the operation of a Physical Culture Establishment (PCE) contrary to ZR §32-00, and the legalization of an existing dance studio (Use Group 9), contrary to ZR §32-18.  
The amendment seeks to enlarge the PCE to occupy 1,072 sf of the first floor and amend the resolution to reflect a change in ownership of the PCE.  
PREMISES AFFECTED – 188-02/22 Union Turnpike, Located on the south side of Union Turnpike between 188th and 189th Streets, Block 7266, Lot 1, Borough of Queens.  
**COMMUNITY BOARD #1Q**

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**92-08-BZ**

APPLICANT – Riker Danzig, for Boquen Realty, LLC, owner.  
OWNER: Boquen Realty, LLC.  
SUBJECT – Application April 14, 2008 – Dismissal for lack of prosecution for a Variance to allow the residential conversion and enlargement, contrary to bulk regulations. M1-5B zoning district.  
PREMISES AFFECTED – 13 Crosby Street, east side of Crosby Street between Grand and Howard Street, Block 233, Lot 4, Borough of Brooklyn.  
**COMMUNITY BOARD #4BK**

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**APPEALS CALENDAR**

**274-09-A**

APPLICANT – Fire Department of New York, for Di Lorenzo Realty, Co, owner; 3920 Merritt Avenue, lessee.  
SUBJECT – Application September 25, 2009 – Application filed by the Fire Department seeking to modify Certificate of Occupancy No. 71956 to require additional fire protection for a commercial use in the form of automatic wet sprinkler system throughout the entire building.  
PREMISES AFFECTED – 3920 Merritt Avenue, aka 3927 Mulvey Avenue, 153' north of Merritt and East 233<sup>rd</sup> Street, Block 4972, Lot 12, Borough of Bronx.  
**COMMUNITY BOARD #12BX**

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**1-10-A**

APPLICANT – Elizabeth Safian, for Ciro Faiella & Joseph Faiella, owner.  
SUBJECT – Application January 4, 2010 – Appeal contesting an Order of Closure issued by the Department of Buildings that the storage of commercial vehicles, use as public parking lot, trucking terminal and a salvage yard constitutes an illegal use in a residential district pursuant to Administrative Code Section 28-212.2. R5 zoning district.  
PREMISES AFFECTED – 527 East 86<sup>th</sup> Street, 116' east of Foster Avenue, fronting East 86<sup>th</sup> Street, Block 7965, Lot

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# CALENDAR

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33, Borough of Brooklyn.

**COMMUNITY BOARD #18BK**

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**APRIL 13, 2010, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, April 23, 2010, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**ZONING CALENDAR**

**31-09-BZ**

APPLICANT – Eric Palatnik, PC, for R & R Auto Repair & Collision, owner.

SUBJECT – Application February 27, 2009 – Special Permit (§11-411, §11-412 & §11-413) for re-instatement of previous variance, which expired on November 12, 1990; amendment for a change of use from a gasoline service station (UG16b) to automotive repair establishment and automotive sales (UG16b) and the enlargement of the existing one story structure; and Waiver of the Rules. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 117-04 Sutphin Boulevard, southwest corner of Foch Boulevard, Block 1203, Lot 13, Borough of Queens.

**COMMUNITY BOARD #12Q**

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**20-10-BZ**

APPLICANT – Francis R. Angelino, Esq., for Lerad Company, owner; Soul Cycle East 83<sup>rd</sup> Street, LLC, lessee.

SUBJECT – Application February 8, 2010 – Special Permit (§73-36) to allow the legalization of an existing physical culture establishment (*Soul Cycle*) on the ground floor of an existing six-story building. C1-9 zoning district.

PREMISES AFFECTED – 1470 Third Avenue, a/k/a 171-173 East 83<sup>rd</sup> Street, northwest corner of East 83<sup>rd</sup> Street and Third Avenue, Block 1512, Lot 33, Borough of Manhattan.

**COMMUNITY BOARD #8M**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, MARCH 16, 2010  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**21-91-BZ**

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

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

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

**COMMUNITY BOARD #5BK**

APPEARANCES –

For Applicant: Josh Rinesmith.

For Opposition: Ronald J. Dillon.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a waiver, a reopening, and an extension of term for an automotive glass and mirror repair establishment (Use Group 7) and used car sales (Use Group 16), which expired on July 24, 2009; and

WHEREAS, a public hearing was held on this application on December 8, 2009, after due notice by publication in *The City Record*, with continued hearings on January 26, 2010 and February 23, 2010, and then to decision on March 16, 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 5, Brooklyn, recommends disapproval of this application; and

WHEREAS, a representative of the Concerned Homeowners Association provided testimony in opposition to the application, citing the following concerns: (1) the site can be developed with an as of right use and thus a extension of term for the variance is not required; (2) the conditions will not be maintained after the renewal of the grant; (3) there is not an

active use at the site; and (4) there is a trailer onsite that is not permitted; and

WHEREAS, the site is located on the northeast corner of Linden Boulevard and Montauk Avenue, within an R5 zoning district; and

WHEREAS, the site is occupied by an automotive glass and minor repair establishment with used car sales; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 29, 1958 when, under BSA Cal. No. 963-57-BZ, the Board granted a variance to permit the construction and operation of a gasoline service station, with accessory uses for a term of 15 years; and

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

WHEREAS, on June 29, 1995, under the subject calendar number, the Board granted a new variance to permit the legalization of a change in use from automobile service station (Use Group 16) to an automobile glass and mirror establishment (Use Group 7) with sales of used cars (Use Group 16) for a term of ten years, to expire on June 20, 2005; the term of the grant was extended to July 24, 2009; and

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

WHEREAS, at hearing, the Board directed the applicant to address the following concerns: (1) the existence of a trailer not reflected on the approved plans; (2) the requirement for a shed at the rear of the building; (3) the compliance with the approved hours of operation; (4) the absence of required landscaping and fencing; (5) sign compliance including sign brackets on the sidewalk; (6) inconsistency in the curbcut widths per the approved plans; and (7) parking that is not in compliance with the approved site plan; and

WHEREAS, in response, the applicant (1) stated that the trailer has been removed; (2) stated that the shed is required for the storage of automotive glass; (3) stated that the hours of operation are 8:00 a.m. to 5:00 p.m., Monday through Saturday and closed on Sunday; (4) stated that the fencing and landscaping would be as reflected on the approved plans; (5) provided a sign analysis which reflects that the signage complies with C1 zoning district regulations; (6) submitted architectural plans, which reflect that the eastern curb cut, including splays, shall have a total width of 28'-6" and the western curb cut, including splays, shall have a total width of 33'-6" ; and (7) submitted photographs which reflect that the trailer and the sign brackets along the fence have been removed and the parking layout onsite is consistent with the layout on the site plan; and

WHEREAS, in response to the Concerned Homeowners Association's concerns, the applicant notes that this is an application for an extension of term and, thus, there is not a requirement to make the variance findings and that there has been continuous use of the site for the designated purposes; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*,

# MINUTES

and *amends* the resolution, dated June 20, 1995, so that as amended this portion of the resolution shall read: “to extend the term for a period of five years from the date of this grant, to expire on March 16, 2015; *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 9, 2010’-(5) sheets; and *on further condition*:

THAT the term of this grant shall expire on March 16, 2015;

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

THAT opaque fencing and a landscape buffer shall be provided along the northwest property line;

THAT the site conditions shall conform to the BSA-approved plans;

THAT the number of cars for sale at the site shall be limited to 13 and the parking layout shall be as reflected on the approved plans;

THAT there shall be no parking of vehicles on the sidewalk;

THAT all signage shall comply with C1 zoning district regulations;

THAT the hours of operation shall be limited to 8:00 a.m. to 5:00 p.m., Monday through Saturday and closed on Sunday;

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

THAT the site shall be brought into compliance with all conditions of this grant and a certificate of occupancy shall be obtained by March 16, 2011;

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

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

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

(DOB Application No. 302033396)

Adopted by the Board of Standards and Appeals, March 16, 2010.

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## 280-01-BZ

APPLICANT – Cozen O’Connor, Esqs., for Perlbindler Holdings, LLC, owners.

SUBJECT – Application February 3, 2010 – Extension of Time to Complete Construction and Extension of Time to obtain a Certificate of Occupancy of a previously granted Variance (§72-21) for the construction of a mixed-use building which expires on May 7, 2010. C1-9 zoning district.

PREMISES AFFECTED – 663-673 Second Avenue, west side of Second Avenue from 36<sup>th</sup> Street to 37<sup>th</sup> Street, Block 917, Lot 21, 24, Borough of Manhattan.

## COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Peter Geis.

**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 .....

Negative:.....5

THE RESOLUTION –

WHEREAS, this is an application for a waiver, a reopening, and an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on February 23, 2010, after due notice by publication in *The City Record*, and then to decision on March 16, 2010; and

WHEREAS, the subject site is located on the west side of Second Avenue, between East 36<sup>th</sup> Street, and East 37<sup>th</sup> Street, within a C1-9 zoning district; and

WHEREAS, on May 7, 2002, the Board granted a variance under the subject calendar number pursuant to ZR § 72-21, to permit the development of a mixed use building; and

WHEREAS, on September 24, 2002, the Board granted an amendment to the resolution, under the subject calendar number; and

WHEREAS, most recently, on April 11, 2006, the Board granted an extension of time of four years to complete construction and obtain a certificate of occupancy; and

WHEREAS, the applicant represents that due to unforeseen construction delays related to its adjacency to the Queens-Midtown Tunnel and the associated complex engineering methods, the construction has not begun since the grant date, however, the applicant stated that the project is proceeding and construction is expected to begin this year; and

WHEREAS, the applicant notes that the majority of the site is improved with a recessed roadway exit for the Queens-Midtown Tunnel; and

WHEREAS, the applicant represents that the conditions in the area have remained the same since the initial Board approval and thus the proposal, which provides a residential density that is within the as-of-right limits for C1-9 development, remains appropriate; and

WHEREAS, the applicant submitted photographs which reflect that the surrounding area today is consistent with the conditions at the time of the original grant; and

WHEREAS, based upon the above, the Board finds it appropriate to grant the requested extension of time.

*Therefore it is Resolved* that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on May 7, 2002, so that as amended this portion of the resolution shall read: “to permit an extension of time to complete construction and obtain a certificate of occupancy, for an additional period of four years from the date of the prior grant’s expiration, to expire on May 7, 2014; *on condition*:

# MINUTES

THAT construction shall be completed and a new certificate of occupancy shall be obtained by May 7, 2014;

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

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

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

(DOB Application No. 102973926)

Adopted by the Board of Standards and Appeals March 16, 2010.

## 1045-67-BZ

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

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

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

### COMMUNITY BOARD #10Q

APPEARANCES –

For Applicant: Michael A. Cosentino.

**ACTION OF THE BOARD** – Laid over to April 20, 2010, at 10 A.M., for continued hearing.

## 223-98-BZ

APPLICANT – Andrea Claire/Peter Hirshman for Jilda Realty Corporation, owner.

SUBJECT – Application October 29, 2009 – Extension of Term of a previous variance that permits the operation of an automotive service station (UG 16B) which will expire on February 1, 2010; Amendment to allow used car sales (UG 16B); Extension of Time to obtain a Certificate of Occupancy which expired on June 10, 2003; Waiver of the Rules. R6B zoning district.

PREMISES AFFECTED – 51-59 Maujer Street, aka 451-459 Lorimer Street, northeast corner of the intersection of Maujer Street and Lorimer Street, Block 2785, Lot 31 & 32, Borough of Brooklyn.

### COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Peter Hirshman and Mario Avollone.

**ACTION OF THE BOARD** – Laid over to April 13, 2010, at 10 A.M., for continued hearing.

## 208-03-BZ

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

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

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

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Jay Goldstein.

**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 April 13, 2010, at 10 A.M., for decision, hearing closed.

## 291-03-BZ

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

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

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

### COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Jay Goldstein.

**ACTION OF THE BOARD** – Laid over to April 27, 2010, at 10 A.M., for adjourned hearing.

## 196-08-BZ

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

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

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

### COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Jeremiah Candeanu.

**ACTION OF THE BOARD** – Laid over to April 13, 2010, at 10 A.M., for continued hearing.



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# MINUTES

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## APPEALS CALENDAR

### 62-08-A

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

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

#### COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to May 18, 2010, at 10 A.M., for adjourned hearing.

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### 300-08-A

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

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

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

#### COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Marvin Mitzner.

For Opposition: Steven Harrison, Barbara Lorine, Vienna Ferreri, Gerald Walsh, George L. Stamatiades, Noni Pratt, Melinda Parino.

**ACTION OF THE BOARD** – Laid over to April 20, 2010, at 10 A.M., for continued hearing.

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### 315-08-A

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

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

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

#### COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Jay Goldstein.

**ACTION OF THE BOARD** – Laid over to April 27, 2010, at 10 A.M., for adjourned hearing.

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

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

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

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

#### COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Eric Palatnik and Otto Savo.

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 April 13, 2010, at 10 A.M., for decision, hearing closed.

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### 295-09-A & 296-09-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Karen Murphy, Trustee.

SUBJECT – Application October 20, 2009 – Proposed construction of one family home located within the bed of a mapped street (Bache Street), contrary to Section 35 of the General City Law. R3A Zoning District

PREMISES AFFECTED – 81 and 83 Cortlandt Street, south side of Cortlandt Street, bed of Bache street, Block 1039, Lot 25 & 26, Borough of Staten Island.

#### COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to April 20, 2010, at 10 A.M., for continued hearing.

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### 306-09-A

APPLICANT – New York City Department of Buildings

OWNER – Luis Cuji

SUBJECT – Application November 9, 2009 – Appeal seeking to revoke the Certificate of Occupancy for failure to comply with provisions of the Zoning Resolution, Building Code and Multiple Dwelling Law. R5 Zoning district.

PREMISES AFFECTED – 37-48 60<sup>th</sup> Street, West side of 60th Street 38th and 37th Avenues. Block 1214, Lot 84, Borough of Queens.

#### COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: John Egnatios-Beene.

For Opposition: Richard Soleymanzadeh.

THE VOTE TO CLOSE HEARING –

# MINUTES

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

**ACTION OF THE BOARD** – Laid over to April 13, 2010, at 10 A.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

**REGULAR MEETING  
TUESDAY AFTERNOON, MARCH 16, 2010  
1:30 P.M.**

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

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**ZONING CALENDAR**

**97-08-BZ**

**CEQR #08-BSA-073K**

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

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

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

**COMMUNITY BOARD #3BK**

**APPEARANCES –**

For Applicant: Moshe Friedman.

**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 April 10, 2008, acting on Department of Buildings Application No. 302356689 reads in pertinent part:

“Proposed Use Group 3 use is not permitted as of right within manufacturing zoning district, and is contrary to ZR Section 42-00 and therefore requires a special permit from the NYC BSA pursuant to ZR Section 73-19;” and

WHEREAS, this is an application under ZR §§ 73-19 and 73-03 to permit, on a site within an M1-1 zoning district, the legalization of a six-story yeshiva (Use Group 3), contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on March 24, 2009, after due notice by publication in the *City Record*, with continued hearings on April 21, 2009, June 9, 2009, July 14, 2009, August 25, 2009, September 22, 2009, November 10, 2009, and January 26, 2010, and then to decision on March 16, 2010; and

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

WHEREAS, Community Board 3, Brooklyn, recommends disapproval of this application, citing concerns with potential environmental hazards, the safety of the interior of the building, the lack of a proper means of egress, and the traffic in the surrounding area; and

WHEREAS, the application is brought on behalf of the Central United Talmudical Association (the “Yeshiva”); and

WHEREAS, the site is located on the west side of Sanford Street, between Park Avenue and Myrtle Avenue, within an M1-1 zoning district; and

WHEREAS, the site has 100 feet of frontage on Sanford Street, a depth of 100 feet, and a lot area of 10,000 sq. ft.; and

WHEREAS, the subject building is six stories with a floor area of approximately 40,742 sq. ft. (4.07 FAR), and was formerly occupied by a factory; and

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

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

WHEREAS, the applicant states that the school will serve an estimated 850 students from fifth grade through 12<sup>th</sup> grade; and

WHEREAS, the Yeshiva’s program includes 37 classrooms, including art rooms and computer labs, and administrative offices; and

WHEREAS, the applicant states that the Yeshiva’s program requires a minimum lot area of 5,000 sq. ft. and a building with a floor area of approximately 40,000 sq. ft.; and

WHEREAS, the applicant represents that it specifically evaluated the feasibility of nine Brooklyn buildings: 452 Berry Street, 50 South 11<sup>th</sup> Street, 137 North 10<sup>th</sup> Street, 72 Berry Street, 224 Grand Street, 315 Berry Street, 390 Wythe Avenue, 334 Berry Street, and 100 South 4th Street; and

WHEREAS, the applicant states that, of the nine sites it evaluated, four of the properties are occupied by buildings that are smaller than the approximately 40,000 sq. ft. building required by the applicant, while four others greatly exceed that amount; and

WHEREAS, the applicant submitted a letter from a real estate broker stating that the Yeshiva was also competing with a very active residential market that

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rendered the occupancy of such buildings for school use cost-prohibitive; and

WHEREAS, the applicant also provided a survey of vacant land or under-developed properties within the catchment area of the school, and found approximately 11 sites that were either vacant or under-developed which could potentially be redeveloped for a school that could accommodate the projected enrollment of 850 students; and

WHEREAS, however, the applicant represents that in almost all cases, an adequately sized site with a width of at least 50 feet and a lot area of 5,000 sq. ft. could only be realized with the merger of several lots or an assemblage where the lots are in separate ownership; and

WHEREAS, the applicant further represents that the sites that were in single ownership were either being developed or planned for residential development; and

WHEREAS, the applicant maintains that the results of the site search reflects 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 radius diagram which reflects that an R6 zoning district is located two blocks east of the subject lot, and therefore the site is within 400 feet of a zoning district where the proposed use would be permitted as-of-right; and

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

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

WHEREAS, the applicant states that adequate separation from noise, traffic and other adverse effects of the surrounding M1-1 zoning district will be provided through the building's 12-inch thick masonry walls and double-paned glass windows; and

WHEREAS, the noise analysis submitted by the applicant indicates that the existing windows comply with the required noise attenuation and no additional mitigation measures are recommended; and

WHEREAS, the applicant represents that adequate separation from the surrounding M1-1 zoning district is further provided because the building wall is setback from the property line by approximately ten feet at the rear and approximately 24 feet along the side lot line where windows are located along the building; and

WHEREAS, the Board finds that the exterior wall and window construction of the building and the open areas along the lot lines of the site will adequately separate the Yeshiva from noise, traffic and other adverse effects of any of the uses within the surrounding M1-1 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 approximately 674 of the 850 total students arrive by bus, and that the school operates approximately 13 buses; and

WHEREAS, the applicant further states that the buses arrive between 8:15 a.m. and 8:45 a.m., and that their arrival is spread out so that the buses arrive at the school in groups of three, staggered five to seven minutes apart; and

WHEREAS, the applicant further states that designated staff members at the Yeshiva supervise the students when they arrive and depart on the buses; and

WHEREAS, specifically, the applicant states that one staff member is assigned to each bus to assist the students as they get on or off the bus, and approximately four staff members are assigned to oversee the arrivals and departures; and

WHEREAS, the Board directed the applicant to have the Department of Transportation ("DOT") perform a site inspection to address any traffic-related issues with the Yeshiva's operation; and

WHEREAS, the Board notes that it received a letter from DOT dated October 1, 2009, stating that it performed a site inspection and found no issues with the way the school operates the arrivals and dismissals of children attending the facility; and

WHEREAS, the applicant represents that there is limited local traffic activity on the subject blockfront because Sandford Street is a narrow, dead end street which does not attract anything other than local traffic; and

WHEREAS, the Board notes that the applicant provided a lot-by-lot traffic study of the surrounding area, which indicated that most of the surrounding sites are under-developed or have open uses, and therefore the traffic along Sandford Street is not significant; and

WHEREAS, the applicant submitted a letter from the owner of the premises across the street from the site, a book publishing company, stating that it will not accept deliveries or send out orders during the hours when children are scheduled to arrive and depart the school; and

WHEREAS, the Board finds that the above-mentioned measures maintain safe conditions for children going to and from the School; 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, as to the egress concern raised by the Community Board, the Board notes that the applicant proposes to construct an interior stairwell at all levels to provide a secondary means of egress without impacting the bulk of the structure; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the

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community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) 08BSA084K, dated March 12, 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, the New York City Department of Environmental Protection's ("DEP") Bureau of Environmental Planning and Assessment has reviewed the project for potential hazardous materials, air quality and noise impacts; and

WHEREAS, the applicant installed a sub-slab depression ("SSD") system in January 2010 beneath the slab of the subject building to address the indoor contamination due to elevated volatile organic carbon ("VOC") levels; and

WHEREAS, DEP determined on January 27, 2010 that the January 2010 Site Investigation Report (indoor air sample results) is acceptable based on the air monitoring results that occurred simultaneously with the operation of the SSD system, which showed that the VOC levels were either non-detectable or below the New York State Department of Health Guidance levels; therefore, DEP determined that there are no hazardous materials issues; and

WHEREAS, DEP reviewed the applicant's air permit searches and field survey of surrounding industrial and auto-related uses within a 400-ft. radius of the subject site and determined that the proposed project is not anticipated to result in significant stationary source air quality impacts; and

WHEREAS, the proposed project would not generate sufficient traffic to have the potential to result in a significant air quality impact from mobile sources; and

WHEREAS, based on the results of noise monitoring and the existing windows' specifications, a window-wall noise attenuation of 35 dBA is achieved on the front façade of the subject building and a window-wall noise attenuation of 30 dBA is achieved on all other facades of the subject building; and

WHEREAS, the following two alternate means of ventilation are provided in the school: central air conditioning in the basement, and a unit air-conditioner with a HUD-

approved sleeve in each classroom; and

WHEREAS, the window-wall attenuation and alternate means of ventilation achieve an interior noise level of 45 dBA; and

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-19 and 73-03 and grants a special permit, to allow the legalization of a six-story yeshiva (Use Group 3), on a site within an M1-1 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 February 3, 2009" - Nine (9) sheets; and *on further condition*:

THAT 35 dBA of window-wall noise attenuation shall be provided on the front façade of the building and 30 dBA of window-wall noise attenuation shall be provided on all other facades of the building, and that alternate means of ventilation (central air conditioning in the basement and a unit air-conditioner with a HUD-approved sleeve in each classroom) shall be provided in the subject building;

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

THAT a certificate of occupancy shall be obtained by March 16, 2012;

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

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

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

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

Adopted by the Board of Standards and Appeals, March 16, 2010.

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**187-08-BZ**

**CEQR #09-BSA-006K**

APPLICANT – Sheldon Lobel, P.C., for Congregation and Yeshiva Machzikei Hadas, Inc., owner.

SUBJECT – Application July 11, 2008 – Variance (§72-21) to permit the construction of a six-story community facility building (*Congregation & Yeshiva Machzikei Hadas*),

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contrary to ZR §42-00. M2-1 zoning district.  
PREMISES AFFECTED – 1247 38<sup>th</sup> Street, east side of 38<sup>th</sup> Street, between 13<sup>th</sup> and 12<sup>th</sup> Avenue, Block 5295, Lot 52, Borough of Brooklyn.

## COMMUNITY BOARD #12BK

### APPEARANCES –

For Applicant: Richard Lobel.

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

### THE VOTE TO GRANT –

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

Negative:.....0

### THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated June 12, 2008, acting on Department of Buildings Application No. 302269925 reads, in pertinent part:

“Proposed school, community facility, is not permitted in an M2-1 manufacturing zoning district, as per ZR 42-00;” and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site within an M2-1 zoning district, a proposed five-story yeshiva which does not conform to district use regulations, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on September 15, 2009, after due notice by publication in *The City Record*, with continued hearings on November 24, 2009, January 12, 2010 and March 2, 2010, and then to decision on March 16, 2010; and

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

WHEREAS, Community Board 12, Brooklyn, recommends approval of this application, on condition that there be no commercial catering allowed on the site; and

WHEREAS, this application is being brought on behalf of Congregation and Yeshiva Machzikei Hadas (the “Yeshiva”), a not-for-profit religious and educational entity; and

WHEREAS, the subject premises is located on the east side of 38<sup>th</sup> Street, between 12<sup>th</sup> Avenue and 13<sup>th</sup> Avenue, within an M2-1 zoning district; and

WHEREAS, the site is currently vacant; and

WHEREAS, the Yeshiva is proposed to have a total floor area of 99,200 sq. ft. (4.1 FAR), lot coverage of 80 percent, a total height of 60 feet, and a rear yard with a depth of 15 feet; and

WHEREAS, community facility use is not permitted in the subject M2-1 zoning district, thus the applicant seeks a use variance to permit the proposed Yeshiva; and

WHEREAS, the applicant notes that the site is immediately adjacent to the “Culver El” at the rear, which is city-owned land formerly occupied by the Culver elevated line on 37<sup>th</sup> Street; and

WHEREAS, the applicant states that the Department of City Planning (“DCP”) is planning to rezone the Culver El

land, which will include a rezoning of the premises from an M2-1 zoning district to an M1-2/R6B zoning district; and

WHEREAS, the Board’s review of the application is based on the programmatic needs of the Yeshiva, which cannot be accommodated within the use regulations of the current zoning district or the bulk regulations of the proposed zoning district; and

WHEREAS, the applicant originally proposed to construct a six-story yeshiva with a floor area of 135,390 sq. ft. (5.6 FAR), a total height of 80’-6”, and no rear yard; and

WHEREAS, at the direction of the Board, the applicant revised its proposal and provided an interim plan for a six-story yeshiva with a floor area of 106,835 sq. ft. (4.4 FAR), and a total height of 71’-4”; and

WHEREAS, in light of the proposed rezoning of the site, the Board directed the applicant to further revise its proposal to more closely comply with the R6B zoning district that is contemplated for the site; and

WHEREAS, in response, the applicant provided revised plans reflecting the proposed building; and

WHEREAS, the Board notes that in an R6B zoning district, the relevant bulk requirements for the building would be as follows: a maximum floor area of 48,112 sq. ft. (2.0 FAR); a maximum lot coverage of 60 percent; a maximum base height of 40 feet; a maximum building height of 50 feet; and a rear yard with a minimum depth of 30 feet; and

WHEREAS, the proposal provides for the following uses: (1) a multi-purpose room, two kitchens, an office, bathrooms and mechanical space in the cellar; (2) a multi-purpose room, offices, kindergarten classrooms, a conference area, an administrative office and bathrooms on the first floor; (3) classrooms, a conference area, computer labs, an administrative office, teacher’s lounge, bathrooms and janitorial rooms on the second floor; (4) classrooms, general offices, computer labs, bathrooms and janitorial rooms on the third and fourth floors; (5) classrooms, resource rooms, computer labs, a high school study area, bathrooms and janitorial rooms on the fifth floor; and (6) a play area on the roof; and

WHEREAS, the applicant states that the Yeshiva currently operates in two separate buildings: the elementary school is located at 4107 16<sup>th</sup> Avenue and the high school is located at 695 Sixth Avenue; and

WHEREAS, the applicant represents that the existing buildings operated by the Yeshiva have approximately 983 enrolled students in elementary through high school and that both buildings have substandard classroom sizes that are filled to capacity and are no longer adequate to accommodate the Yeshiva’s current and projected enrollment; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Yeshiva: (1) accommodating the current enrollment while allowing for future growth; (2) relieving overcrowded classroom conditions; and (3) accommodating all grades in one centralized location within walking distance of most students’ homes; and

WHEREAS, the applicant represents that the Yeshiva has outgrown the existing buildings, which are located several blocks from the subject site and do not adequately

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serve an existing enrollment of 983 students nor does it allow for any increase in enrollment; and

WHEREAS, the proposed building will allow the Yeshiva to consolidate the enrollment of the two separate buildings and permits a projected enrollment of approximately 1,500 students; and

WHEREAS, the applicant represents that the proposed floor area and building design are required to accommodate the space needs associated with the projected student body; and

WHEREAS, the applicant states that the classrooms in the Yeshiva's existing buildings have an average size of approximately 300 sq. ft. and are filled to capacity; and

WHEREAS, the applicant represents that the proposed school building will allow for larger floor plates that can provide classrooms with an average size of over 600 sq. ft., which will relieve the overcrowded classroom conditions; and

WHEREAS, the applicant represents that the proposed building is necessary to accommodate the required number of classrooms as well as auxiliary uses such as dining and recreation space, stairwells, restrooms, and office space; and

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

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

WHEREAS, based upon the above, the Board finds that the limitations of the existing zoning, when considered in conjunction with the programmatic needs of the Yeshiva, creates 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 Yeshiva 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 notes that the proposed use is permitted as-of-right in the nearby R6 zoning district and by special permit within the adjacent M1-2 zoning district; and

WHEREAS, as noted above, DCP is contemplating a rezoning of the area that would change the site from an M2-1 zoning district to an M1-2/R6B zoning district, where the proposed use would be permitted as-of right; and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by a mix of residential, community facility, and warehouse uses; and

WHEREAS, the applicant submitted a 400-ft. radius diagram reflecting that there is a four-story school located immediately adjacent to the east of the subject site; and

WHEREAS, at hearing, the Board raised concerns regarding potential traffic impacts at the site; and

WHEREAS, in response, the applicant submitted a chart reflecting the maximum bus use and capacity for the proposed school at the site, which reflects that at the maximum capacity of 1,500 students, no more than four buses would arrive or leave the site during any given hour, thus minimizing any traffic conflicts; and

WHEREAS, the applicant states that the proposed school's proximity to the homes of many of its students minimizes the use of buses, as many students arrive on foot; and

WHEREAS, the applicant states that the school will be able to park its four buses directly in front of the school building, in the spaces indicated on the proposed site plan; and

WHEREAS, the applicant represents that the adjacent school will not significantly impact bus traffic on 38<sup>th</sup> Street because that school maintains only one bus; and

WHEREAS, the Board notes that it received a letter from the Department of Transportation's School Safety Engineering Office dated August 27, 2008, indicating that it has no objection to the proposed building and will prepare a school map with additional signage and markings upon approval of the application and construction of the building; and

WHEREAS, the applicant further states that approximately 85 percent of the staff at the proposed school will not drive, and will arrive at the site by a combination of public transportation and walking; and

WHEREAS, the applicant represents that approximately 12 staff members are anticipated to drive to the site, and the school currently maintains a lot at 1612 41<sup>st</sup> Street with sufficient capacity to accommodate staff vehicles; and

WHEREAS, the applicant further represents that the school is currently working with DCP on the disposition of the Culver El property adjacent to the site with the intent of using the property as an accessory parking lot for a total of 15 parking spaces for existing staff cars and a small number of visitors, as well as for bus parking; 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 in full compliance with zoning would meet the programmatic needs of the Yeshiva at the site; 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 originally proposed a six-story yeshiva with a floor area of 135,390 sq. ft. (5.6 FAR), a total height of 80'-6", and no rear yard, which was reduced to a six-story yeshiva with a floor area of 106,835

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sq. ft. (4.4 FAR), and a total height of 71'-4"; and

WHEREAS, at hearing, the Board directed the applicant to further revise its proposal to more closely comply with the R6B zoning district that is contemplated for the site, which resulted in the subject five-story yeshiva with a floor area of 99,200 sq. ft. (4.1 FAR), a total height of 60'-0", and a rear yard with a minimum depth of 15'-0"; and

WHEREAS, accordingly, the Board finds the requested waivers to be the minimum necessary to meet the programmatic needs of the Yeshiva and to construct a building that is compatible with the character of the neighborhood; and

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

WHEREAS, the 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") 09BSA006K, dated March 10, 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, the New York City Department of Environmental Protection's ("DEP") Bureau of Environmental Planning and Assessment has reviewed the project for potential hazardous materials and air quality impacts; and

WHEREAS, DEP approved the Remedial Action Plan and Construction Health and Safety Plan on October 16, 2009; and

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

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

WHEREAS, the applicant proposes 30 dBA of window-wall noise attenuation in the proposed building which would achieve an interior noise level of 45 dBA; and

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

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

environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an M2-1 zoning district, a proposed five-story yeshiva, which does not conform with applicable zoning use regulations, contrary to ZR § 42-00, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received March 16, 2010" – (10) sheets; and *on further condition:*

THAT the following are the bulk parameters of the proposed building: five stories, a floor area of 99,200 sq. ft. (4.1 FAR); a lot coverage of 80 percent; a total height of 60'-0"; and a rear yard with a minimum depth of 15'-0"; as reflected on the BSA-approved plans;

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

THAT no commercial catering use shall take place onsite;

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

THAT 30 dBA of window-wall noise attenuation shall be provided in the proposed building; and

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

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

THAT substantial construction be completed in accordance with ZR § 72-23;

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

Adopted by the Board of Standards and Appeals, March 16, 2010.

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**197-08-BZ  
CEQR #09-BSA-011K**

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

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

PREMISES AFFECTED – 341/349 Troy Avenue, aka 1515 Carroll Street, corner of Troy Avenue and Carroll Street,

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Block 1407, Lot 1, Borough of Brooklyn.

## COMMUNITY BOARD #9BK

### APPEARANCES –

For Applicant: Jay Goldstein.

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

### THE VOTE TO GRANT –

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

Negative:.....0

### THE RESOLUTION –

WHEREAS, decision of the Brooklyn Borough Commissioner, dated June 23, 2008, acting on Department of Buildings Application No. 301575472, reads in pertinent part:

- “1. Proposed residential Floor Area Ratio, lot coverage, and open space are contrary to ZR Section 23-141(b).
2. Proposed residential density requirement is contrary to ZR Section 23-22.
3. Proposed residential front yard requirement is contrary to ZR Section 23-45.
4. Proposed residential side yard requirement is contrary to ZR Section 23-462(a).
5. Proposed residential perimeter wall height, total building height and sky exposure plane are contrary to ZR 23-631(b);” and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R4 zoning district, a proposed five-story (including penthouse) residential building with 34 dwelling units and 35 accessory parking spaces, which exceeds the maximum permitted FAR, lot coverage, wall height, total height, and number of dwelling units and, does not provide the minimum required front or side yards, contrary to ZR §§ 23-141, 23-462(a), 23-631(b), 23-22, and 23-45; and

WHEREAS, a public hearing was held on this application on July 21, 2009, after due notice by publication in the *City Record*, with continued hearings on November 10, 2009, December 15, 2009 and January 26, 2010, and then to decision on March 16, 2010; and

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

WHEREAS, Community Board 9, Brooklyn, recommends disapproval of this application; and

WHEREAS, City Council Member Letitia James recommends approval of this application; and

WHEREAS, certain community members provided testimony in opposition to the application, citing concerns about neighborhood character and traffic; and

WHEREAS, certain community members provided testimony in support of the application, stating that a building on the lot would be an improvement to the existing vacant lot; and

WHEREAS, the subject site is located on the northeast corner of Troy Avenue and Carroll Street, within an R4 zoning district; and

WHEREAS, the site has 116 feet of frontage on Troy Avenue and 138’-11” of frontage on Carroll Street, and a total lot area of approximately 16,114 sq. ft.; and

WHEREAS, the site, which was formerly occupied by a one-story industrial building, is currently vacant; and

WHEREAS, the site is the subject of two prior variance applications; first, under BSA Cal. No. 173-00-BZ, the applicant sought to construct 72 dwelling units on the site, but later withdrew the application; under BSA Cal. No. 290-04-BZ, the applicant proposed to construct a six-story (including penthouse) residential/commercial building with 62,634 sq. ft. of floor area (3.89 FAR) and the application was also withdrawn; and

WHEREAS, under the subject application, the applicant initially proposed a five-story (including penthouse) residential building with a streetwall height of 47’-0”, a height of 57’-6”, a total floor area of 48,342 sq. ft. (3.0 FAR), a lot coverage of 72 percent, 34 dwelling units, one front yard with a depth of 6’-0”, and one side yard with a width of 6’-0”, and with 31 parking spaces; and

WHEREAS, the applicant now proposes a five-story (including penthouse) residential building with a streetwall height of 44’-6”, a total height of 54’-6” (the maximum permitted street wall and total height are 25’-0” and 35’-0”, respectively); a floor area of 48,342 sq. ft. (3.0 FAR) (the maximum permitted floor area is 21,754 sq. ft. (1.35 FAR)) one front yard with a depth of 6’-0”, and one side yard with a width of 6’-0” (a front yard with a depth of 18’-0” and side yards with widths of 8’-0” and 10’-0” are required); a lot coverage of 72 percent (the maximum permitted lot coverage is 55 percent); 34 dwelling units (the maximum permitted number of dwelling units is 24); and 35 parking spaces; and

WHEREAS, the applicant proposes to provide (1) 35 parking spaces and storage in the cellar, (2) a recreation area, a lobby, and dwelling units on the first floor, and (3) dwelling units on the four upper floors; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in compliance with applicable zoning district regulations: due to a history of industrial uses at the site, the soil is contaminated and requires extensive remediation; and

WHEREAS, as to the soil condition, the applicant represents that soil tests reflect that there is contamination from several chemical pollutants as a result of its prior use; and

WHEREAS, specifically, the soil boring analysis reflects that there are approximately ten volatile organic compounds (VOCs), five semi-volatile organic compounds (SVOCs), and five metals found in the soil, which exceed each compound’s respective Recommended Soil Cleanup Objective from the New York State Department of Environmental Conservation’s Technical Guidance Memorandum No. 4046; and

WHEREAS, the applicant represents that there are costs of approximately \$1.3 million, not including expected overage, associated with the remediation of the subject site; and

WHEREAS, the applicant represents that these conditions are unique to the subject site and are not customarily found in the subject residential zoning district; and



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WHEREAS, the analysis states that the remediation process is likely to include: (1) pumping out all liquids present in the drain using a vacuum truck, (2) removing all contaminated soil, (3) removing all fill material present in the subsurface soil in accordance with all relevant regulations, and (4) installing a vapor barrier under the new foundation; and

WHEREAS, the Board notes that the prior use of the site pre-dates the enactment of modern environmental standards and regulations; and

WHEREAS, the applicant has documented more than \$1.3 million in premium construction costs associated with the remediation of the site; and

WHEREAS, the applicant represents that the waivers are required to accommodate sufficient floor area and dwelling units to overcome the premium construction costs while maintaining a building with a bulk that is compatible with neighborhood character; and

WHEREAS, the Board finds that the aforementioned unique physical condition, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, initially, the applicant submitted a financial analysis for (1) an as-of-right (1.31 FAR) residential building, without special costs; (2) an as-of-right (1.31 FAR) residential building, with special costs; and (3) the proposed (3.0 FAR) residential building; and

WHEREAS, the analysis relied on \$1.6 million in remediation costs and reflected that only the proposal realized a reasonable rate of return; and

WHEREAS, the applicant concluded that neither of the as of right scenarios would result in a reasonable return, due to prohibitively high construction costs; and

WHEREAS, the Board directed the applicant to (1) analyze a lesser variance alternative and (2) reduce the estimated remediation costs so that only the portion of the site presumed to be contaminated, and not the entire site, was used as the basis for the premium costs; and

WHEREAS, in response, the applicant provided a lesser variance alternative for a residential building with 2.6 FAR and reduced the remediation estimate to approximately \$1.3 million; and

WHEREAS, the applicant's analysis reflects that, due to the contamination of the site, only the proposal, and not the lesser variance alternative, would realize a reasonable rate of return; and

WHEREAS, as noted, the Board directed the applicant to reduce the degree of waivers requested and to reflect the minimum variance; thus, the applicant modified the presumed remediation costs and modified the building envelope to respond to the Board's concerns; and

WHEREAS, thus, the applicant asserts that the additional FAR and other waivers are required to overcome the premium construction costs; and

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

return; and

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

WHEREAS, the applicant states that the surrounding area is mixed use with residential buildings of varying heights; and

WHEREAS, specifically, the applicant notes that there are at least 12 four-story and taller buildings within a 400-ft. radius of the site; and

WHEREAS, the applicant notes that buildings with heights between four and six stories are common in the surrounding area; and

WHEREAS, the applicant provided a land use map and a chart, which reflects the lot size, height, and FAR of a number of buildings in the area that are comparable to the proposed bulk; and

WHEREAS, additionally, the applicant notes that there is a telephone exchange building directly across Troy Avenue, which has a height of 62'-7" and an FAR of 3.0; the two corner lots, directly to the north are both occupied by buildings with heights of approximately 50 feet and FAR of approximately 3.0; and

WHEREAS, the applicant notes that there is a new residential development on Crown Street, between Albany Avenue and Troy Avenue, which reflects two nine-story buildings and 300 residential units; and

WHEREAS, further, the applicant represents that since the fifth floor/penthouse level of the proposed building will be set back 18 feet, it will be barely visible from grade and the eastern portion of the building is three stories, which will provide a transition between the bulk of the proposed building at the corner to the one and two-family homes on Carroll Street; and

WHEREAS, at the Board's direction, the applicant reduced the height of the building from 57'-6" to 54'-6" and the streetwall height from 47'-0" to 44'-6"; and

WHEREAS, the Board notes that the proposed FAR, streetwall height, and total height are compatible with the neighborhood character; and

WHEREAS, the applicant also increased the number of parking spaces from 31 to 35 to provide one space for each dwelling unit; and

WHEREAS, the Board agrees that the proposed residential use is as of right and more compatible with the residential use in the area than the historic pre-existing non-conforming use or the earlier mixed-use proposal; and

WHEREAS, based upon the above, 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 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 rather a function of the unique physical characteristics of the site; and

WHEREAS, as noted, the Board does not regard the contaminated soil conditions to be a self-created hardship since it can be attributed to a legal non-conforming use at the site

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which pre-dates modern environmental regulations; and

WHEREAS, the Board notes that the applicant initially claimed that the originally proposed height was required to overcome the hardship at the site; and

WHEREAS, the Board agrees that there is practical difficulty due to the unique conditions of the site, which require additional floor area and the other noted waivers, but disagrees that the initially proposed envelope was required to make the building feasible; and

WHEREAS, as noted, the applicant revised the application to reduce the degree of streetwall height and total height non-compliance; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) 09BSA011K, dated March 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, the New York City Department of Environmental Protection's (DEP) Bureau of Environmental Planning and Assessment has reviewed the project for potential hazardous materials; and

WHEREAS, DEP approved the Remedial Action Plan and the Construction Health and Safety Plan on March 3, 2010; and

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

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

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

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

Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R4 zoning district, a proposed five-story (including penthouse) residential building with 34 dwelling units and 35 accessory parking spaces, which exceeds the maximum permitted FAR, lot coverage, wall height, total height, and number of dwelling units and does not provide the minimum required front or side yards, contrary to ZR §§ 23-141, 23-462(a), 23-631(b), 23-22, and 23-45, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received October 27, 2009"- thirteen (13) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum of five stories including penthouse, a maximum of 34 dwelling units, a total height of 54'-6", a streetwall height of 44'-6", a floor area of 48,342 sq. ft. (3.0 FAR), one front yard with a depth of 6'-0", one side yard with a width of 6'-0", a lot coverage of 72 percent, and a minimum of 35 parking spaces, all as illustrated on the BSA-approved plans;

THAT the parking layout shall be as approved by DOB;

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

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

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

THAT substantial construction be completed in accordance with ZR § 72-23; and

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

Adopted by the Board of Standards and Appeals, March 16, 2010.

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**328-09-BZ**

**CEQR #10-BSA-035M**

APPLICANT – Bryan Cave LLP, for The Abraham Joshua Heschel School, owner.

SUBJECT – Application December 14, 2009 – Variance (§72-21) to allow for the construction of a community facility (*The Abraham Joshua Heschel School*), contrary to height and setback, and rear yard requirements. (§§33-432, 23-634, 33-432). C6-2/C4-7 zoning districts.

PREMISES AFFECTED – 28-34 West End Avenue, 246-252 West 61<sup>st</sup> Street, West End Avenue and West 61<sup>st</sup> Street, Block 1152, Lot 58, 61, Borough of Manhattan.

**COMMUNITY BOARD #7M**

APPEARANCES –

For Applicant: Margery Perlmutter.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Manhattan Borough Superintendent, dated December 2, 2009, acting on Department of Buildings Application No. 120178994, reads in pertinent part:

- “1. 33-432. Proposed community facility does not comply with the maximum height of the front wall and required front set backs as required under ZR 33-432.
2. 33-23. Proposed two story structure in the rear yard set back exceeds the required height and is not a permitted obstruction as defined by ZR 33-23.
3. 33-433. Proposed street wall does not comply with special height and set back requirements as set forth in ZR 23-634, front wall recesses are not permitted below 23’ above curb level or the second story ceiling whichever is less;” and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within a C6-2 zoning district and partially within a C4-7 zoning district, the construction of a nine-story school building (Use Group 3), which is contrary to ZR §§ 33-23, 33-432, 33-433, and 23-634; and

WHEREAS, a public hearing was held on this application on February 23, 2010, after due notice by publication in the *City Record*, and then to decision on March 16, 2010; and

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

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

WHEREAS, this application is brought on behalf of The Abraham Joshua Heschel School (the “School”), a not-for-profit educational entity; and

WHEREAS, the School currently serves 364 students from pre-kindergarten through fifth grade in its building at 270 West 89<sup>th</sup> Street (the “Lower School”), including an Early Childhood Center for the pre-kindergarten and kindergarten students, and 132 students from sixth grade through eighth grade in its building at 314 West 91<sup>st</sup> Street (the “Middle School”); and

WHEREAS, the applicant now proposes to move the Lower School and Middle School into a single building at the subject site, which is located adjacent to its high school; and

WHEREAS, the site is located on the southeast corner of West End Avenue and West 61<sup>st</sup> Street, partially within a C6-2 zoning district and partially within a C4-7 zoning district; and

WHEREAS, the site has 100’-5” of frontage on West End Avenue, 175 feet of frontage on West 61<sup>st</sup> Street, and a total lot area of 17,573 sq. ft.; and

WHEREAS, the site consists of two tax lots; Lot 58 is currently occupied by a one-story brick automobile paint and body shop, and Lot 61 is currently occupied by a four-story parking and storage facility; and

WHEREAS, the School proposes to construct a nine-story, 118,600 sq. ft. lower and middle school building on the site with the following non-compliances: a street wall height of 122 feet with no setback along West 61<sup>st</sup> Street (a minimum front wall setback of 20 feet on a narrow street is required at a height of 85 feet); a front wall entry recess on West End Avenue with a depth of approximately 24 feet, a height of 29 feet, and a width of 34 feet (front wall recesses are permitted above the level of the second story ceiling to a maximum depth of ten feet and front wall openings are permitted below that point for entrances only); and a two-story portion of the building to a height of approximately 21’-7” in the rear yard, with a skylight to a height of 35 feet and a parapet wall to a height of 35 feet (permitted obstructions are limited to one story and a maximum height of 23 feet); and

WHEREAS, the proposal provides for the following uses: (1) a chapel / multi-purpose room, auditorium / gymnasium, and administrative offices on the first floor; (2) dining space on the second floor; (3) classrooms on the third through seventh floors; (4) a gymnasium, music room, and storage space on the eighth floor; (5) mechanical space on the ninth floor; and (6) a kitchen, mechanicals, and storage space in the cellar; and

WHEREAS, the applicant states that the following are the programmatic needs of the School: (1) to accommodate the growing enrollment of the Lower School and Middle School; (2) to provide a regulation basketball court suitable for inter-scholastic competition; (3) to provide a gymnasium/auditorium space; (4) to provide classrooms with proper layouts; (5) to provide outdoor play areas; and (6) to consolidate the Lower School and Middle School on the same site as the existing high school while maintaining a physical separation between the Lower School and the Middle School; and

WHEREAS, in order to meet the programmatic needs, the applicant seeks a variance pursuant to ZR § 72-21; and

WHEREAS, the applicant represents that the requested waivers are necessary to provide the program space necessary to adequately serve its growing student body; and

WHEREAS, the applicant states that the Lower School and Middle School have current enrollments of 364 students and 132 students, respectively, and they have outgrown their current facilities as they are forced to turn away new applicants due to lack of space; and

WHEREAS, the applicant represents that the proposed waivers will allow the School to accommodate its anticipated enrollment of 520 students in the Lower School and 225 students in the Middle School; and

WHEREAS, the applicant further represents that the waivers will enable the School to provide floor plates large enough to configure classrooms to their ideal proportions, locate necessary support areas for each grade level within or adjacent to them, and cluster the classrooms around open circulation areas that are best suited to student interaction and teacher observation; and

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WHEREAS, the applicant states that larger floor plates will also make it possible to construct a regulation basketball court that meets the New York State Association of Independent Schools High School Sports Standards, which will be suitable for inter-scholastic competition and will have sufficient space for both home and visiting team spectators; and

WHEREAS, the applicant represents that the requested height and setback waiver is necessary to provide uniform floor plates that are large enough to accommodate the above noted programmatic needs; and

WHEREAS, the applicant further states that the playground located in the rear yard above the double-height auditorium/gymnasium on the southeastern portion of the lot will provide a separate outdoor play area for the Early Childhood Center (the "Early Childhood Center Playground"); and

WHEREAS, the applicant represents that a portion of the second floor and a walkway located at the second floor level along the rear wall of the auditorium/gymnasium are located within the rear yard area, and a 750 sq. ft. skylight will rise 12 feet above the level of the Early Childhood Center Playground, to a height of 35 feet; and

WHEREAS, the applicant states that the proposed skylight will allow natural light into the lobby area and second floor of the building, lending light to the auditorium/gymnasium through interior glass partitions, thereby enhancing the ambience of these spaces and helping to satisfy LEED energy conservation requirements; and

WHEREAS, the applicant further states that a parapet wall around the Early Childhood Center Playground is proposed to rise 14 feet above the level of the play area to a height of 35 feet and is necessary as a privacy, security, and noise buffering measure because the play area abuts the wall of, and is seven feet lower than, the roof terrace level of the building immediately to the south of it; and

WHEREAS, the applicant represents that the requested rear yard waiver is necessary in order to provide a double height auditorium/gymnasium with a skylight to provide natural light into the building and to provide a secure play area on the rooftop of the auditorium/gymnasium space; and

WHEREAS, the applicant states that sufficient space is required to accommodate both the Lower School and Middle School into a single building while still providing a separation between the small children in the Lower School that are in need of constant supervision and the older more independent children in the Middle School; and

WHEREAS, the applicant states that the proposed building will have two points of entry, one on West End Avenue and one on West 61<sup>st</sup> Street, and each school will occupy its own floors in the building; and

WHEREAS, the applicant further states that the Middle School children will enter primarily through their own entrance on West 61<sup>st</sup> Street, while the Lower School children will use the entrance on West End Avenue, which is set back from the street under a covered portico to permit the children to gather there and to allow pedestrian circulation along West End Avenue to be unimpeded by children congregating on the sidewalk; and

WHEREAS, the applicant represents that without the waiver for the front wall entry recess, it would be unable to provide a separate entryway for the Lower School students that allows the children to gather in front of the building without interfering with pedestrian circulation along West End Avenue; and

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

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

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

WHEREAS, however, the applicant also represents that the subsurface conditions of the site create an unnecessary hardship in developing the site in compliance with applicable regulations; and

WHEREAS, the applicant states that soil borings indicate that there is a substantial amount of bedrock close to the surface along the perimeters of the site and between 15 and 20 feet below the surface towards the center of the site; and

WHEREAS, the applicant represents that the removal of this bedrock will require expensive blasting or cutting; and

WHEREAS, the applicant states that there is also a high water table that will require dewatering of sub-grade floors from 12 to 16 feet below the surface; and

WHEREAS, the applicant further states that the existing buildings to the south and east of the site were constructed without foundations or with very shallow ones, and the excavation to the perimeter of the subject site to construct a full cellar extending to the lot lines of the site would require expensive shoring and underpinning, which could still put the structural integrity of the adjacent buildings at risk; and

WHEREAS, the applicant represents that, as a result of these subsurface conditions, the proposed cellar must be located approximately 11 feet from the eastern property line and approximately 15 feet from the southern property line, thereby reducing the useable area on the cellar level; and

WHEREAS, the applicant states that in order to provide a complying building with floor plates that are deep enough to provide the ideal classroom clustering around a central corridor, the top four floors would need to shift south and cantilever over the Early Childhood Center Playground and reduce the amount of natural light available to the play area, the lobby skylight and the south-facing windows below the cantilever; and

WHEREAS, the applicant represents that a complying development would also result in unusual and impracticable building configuration, the shifting of the Middle School to the

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sixth and seventh floors where access to those floors via stairs from street level would no longer be practicable, and the isolation and lack of contiguity with other classroom spaces of the special music and computer rooms as a result of their location on the partial tenth floor; and

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

WHEREAS, since the School 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 states that the surrounding neighborhood is a mixed-use area containing residential, commercial, and institutional uses and is characterized by a mix of medium to high-rise buildings; and

WHEREAS, the applicant represents that there is no context for setbacks among the surrounding buildings along West 61<sup>st</sup> Street; and

WHEREAS, the applicant states that West 61<sup>st</sup> Street is on a downward slope heading east to west such that the subject building, with its street wall height of 122 feet, will visually be the same height as the adjacent building to the east, with an approximate street wall height of 106 feet; and

WHEREAS, the applicant submitted a graphic rendering of the street wall heights along West 61<sup>st</sup> Street, which reflects that there is also a six-story building with a street wall height of 108 feet directly across West 61<sup>st</sup> Street from the subject site, a 27-story building with a street wall height of approximately 350 feet to the east of the site, and a six-story building with a street wall height of approximately 133 feet to the east of the site; and

WHEREAS, the slope along West 61<sup>st</sup> Street also results in an approximately 11'-6" change in grade on the subject site from the eastern lot line to the western lot line; and

WHEREAS, the applicant states that, because of the site's slope, the Early Childhood Center Playground is significantly lower than a terrace at the rear lot line of the adjacent building, and that the proposed skylight and privacy wall are nearly level with height of the rear lot line of the adjacent property; and

WHEREAS, the applicant represents that it is consulting with the adjacent building owner and has plans to make the proposed privacy wall a planted green wall around the play area; and

WHEREAS, the applicant states that, above the Early Childhood Center Playground, the building is set back approximately 36 feet from the rear lot line, which far exceeds the 20-ft. rear yard requirement; and

WHEREAS, the applicant states that it will install a decorative entrance screen at the entrance on West End Avenue to close off the entry recess when the school is closed; and

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

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

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner; and

WHEREAS, the applicant represents that the requested waivers for height and setback, front wall entry recess, and rear yard obstruction, are the minimum necessary to accommodate the School's current and projected programmatic needs; and

WHEREAS, the applicant notes that the requested height and setback waiver is requested for only 105 feet of the West 61<sup>st</sup> Street frontage, which is only 38 percent of the proposed building's total frontage of 275'-5" on West 61<sup>st</sup> Street and West End Avenue; the remaining 170 feet of frontage will comply with the applicable height and setback requirements; and

WHEREAS, the applicant further notes that the requested waiver for the front wall entry recess is requested for only 34 feet of the total 100-ft. wide West End Avenue frontage, and is part of an entrance as is permitted by ZR § 23-634; and

WHEREAS, the applicant further notes that the requested rear yard obstruction waiver is the minimum necessary to afford relief because the two-story portion of the building in the rear yard is below the maximum 23-ft. height limit, the skylight only occupies 310 sq. ft., or approximately 21 percent, of the required rear yard, and the parapet wall will be largely surrounded by taller obstructions in the rear yards to the south and east; and

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

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) 10BSA035M, dated December 11, 2009, with a supplementary Hazardous Materials Chapter dated March 16, 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

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Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

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

WHEREAS, DEP reviewed the applicant's air permit searches and field survey of surrounding industrial uses within a 400-ft. radius of the subject site and determined that the proposed project is not anticipated to result in significant stationary source air quality impacts; and

WHEREAS, the proposed project would not generate sufficient traffic to have the potential to result in a significant air quality impact from mobile sources; and

WHEREAS, to achieve an interior noise level of 45 dBA, the applicant proposes 30 dBA of window-wall noise attenuation in the proposed building with central air-conditioning as an alternate means of ventilation; and

WHEREAS, an "E" designation for Hazardous Materials (E-172) was placed on the subject parcels by the Department of City Planning as part of the West 61<sup>st</sup> Street Rezoning action (CEQR# 05 DCP 063Y); and

WHEREAS, the applicant has submitted a March 2010 Final/Revised Remedial Action Plan ("RAP") and a site-specific Construction Health and Safety Plan ("CHASP") to the NYC Office of Environmental Remediation ("OER") under the E-Designation Program; and

WHEREAS, OER has determined in a letter dated March 12, 2010 that the RAP and CHASP are acceptable; 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 Determination, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site partially a C6-2 zoning district and partially within a C4-7 zoning district, the construction of a nine-story and cellar school building (Use Group 3), which is contrary to ZR §§ 33-23, 33-432, 33-433 and 23-634, *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 12, 2010" – (25) sheets and "Received February 17, 2010" – (1) sheet; and *on further condition*:

THAT the building parameters shall be limited to nine stories and a wall height of 122 feet, as reflected on the BSA-approved plans;

THAT any change in the use, occupancy, or operator of

the school requires review and approval by the Board;

THAT prior to the issuance of any building permits by DOB for the proposed project that would result in grading, excavation, foundation, alteration, building or any other permit which permits soil disturbance, the applicant or successor shall obtain from OER a Notice to Proceed, and shall comply with all OER requirements to obtain such notices;

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

THAT 30 dBA of window-wall noise attenuation shall be provided with central air-conditioning as an alternate means of ventilation;

THAT substantial construction shall be completed pursuant to 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);

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, March 16, 2010.

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## **302-08-BZ**

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for James Woods, owner.

SUBJECT – Application December 10, 2008 – Variance (§72-21) to permit an existing semi-detached residential building, contrary to side yard regulations (§23-462) R5 district.

PREMISES AFFECTED – 4368 Furman Avenue, 224' south of the southeast corner of the intersection of Furman Avenue and Nereid Avenue, Block 5047, Lot 12, Borough of The Bronx.

## **COMMUNITY BOARD #12BX**

APPEARANCES –

For Applicant: Adam W. Rothkrug and Todd Dale.

**ACTION OF THE BOARD** – Laid over to April 27, 2010, at 1:30 P.M., for continued hearing.

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## **13-09-BZ**

APPLICANT – Moshe M. Friedman, P.E., for 5621 21<sup>st</sup> Avenue LLC, for Congregation Tehilos Yitzchok, owner.

SUBJECT – Application January 26, 2009 – Special Permit (§73-622) for the enlargement of an existing two -family home to be converted to a single family home, contrary to lot coverage and floor area (§23-141); side yards (§23-461) and rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 5611 21<sup>st</sup> Avenue, east side 95'-8" north of intersection of 21<sup>st</sup> Avenue and 57<sup>th</sup> Street, Block

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5495, Lot 430, Borough of Brooklyn.

## **COMMUNITY BOARD #12BK**

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Laid over to April 27, 2010, at 1:30 P.M., for decision, hearing closed.

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## **28-09-BZ**

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

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

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

## **COMMUNITY BOARD #3BK**

APPEARANCES –

For Applicant: Moshe M. Friedman.

For Opposition: Suellen Levy.

**ACTION OF THE BOARD** – Laid over to April 20, 2010, at 1:30 P.M., for continued hearing.

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## **192-09-BZ**

APPLICANT – Richard Lobel, for Leon Mann, owner.

SUBJECT – Application June 16, 2009 – Variance (§72-21) to allow for the construction of a department store (UG10), contrary to use regulations (§§22-00, 32-00). R6 and R6/C2-3 zoning districts.

PREMISES AFFECTED – 912 Broadway, northeast corner of the intersection of Broadway and Stockton Street, Block 1584, Lot 11, Borough of Brooklyn.

## **COMMUNITY BOARD #3BK**

APPEARANCES –

For Applicant: Richard Lobel.

**ACTION OF THE BOARD** – Laid over to May 11, 2010, at 1:30 P.M., for continued hearing.

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## **214-09-BZ**

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for LAL Astor Avenue Management Co., LLC, owner.

SUBJECT – Application June 29, 2009 – Special Permit (§73-125) to allow for a 9,996 sq ft ambulatory diagnostic or treatment center which exceeds the 1,500 sq ft maximum allowable floor area set forth in ZR §22-14. R4-1 zoning district.

PREMISES AFFECTED – 1464 Astor Avenue, south side of Astor Avenue, 100' east of intersection with Fenton Avenue, Block 4389, Lot 26, 45, Borough of Bronx.

## **COMMUNITY BOARD #11BX**

APPEARANCES –

For Applicant: Adam W. Rothkrug.

**ACTION OF THE BOARD** – Laid over to April 20,

2010, at 1:30 P.M., for adjourned hearing.

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## **270-09-BZ**

APPLICANT – Richard Lobel, for Jack Kameo, owner.

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

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

## **COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Richard Lobel.

**ACTION OF THE BOARD** – Laid over to April 27, 2010, at 1:30 P.M., for continued hearing.

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## **271-09-BZ**

APPLICANT – Sheldon Lobel, P.C., for 132-40 Metropolitan Realty, LLC, owner; Jamaica Fitness Group, LLC d/b/a Planet Fitness, lessee.

SUBJECT – Application September 21, 2009 – Special Permit (§73-36) to legalize the operation of an existing physical culture establishment (*Planet Fitness*) on the first, second, and third floors of an existing three-story building. C2-3 zoning district.

PREMISES AFFECTED – 132-40 Metropolitan Avenue, between Metropolitan Avenue and Jamaica Avenue, approximately 300 feet east of 132nd Street. Block 9284, Lot 19, Borough of Queens.

## **COMMUNITY BOARD #9Q**

APPEARANCES –

For Applicant: Elizabeth Safian.

**ACTION OF THE BOARD** – Laid over to April 20, 2010, at 1:30 P.M., for continued hearing.

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## **273-09-BZ**

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

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

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

## **COMMUNITY BOARD #10Q**

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Laid over to April 20, 2010, at 1:30 P.M., for adjourned hearing.

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## 11-10-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 562 Court Street, LLC, owner; Brooklyn Kick Boxing Inc., lessee.

SUBJECT – Application January 26, 2010 – Special Permit (§73-36) to legalize and enlarge a physical culture establishment (*CKO Kickboxing*). C2-3/R6 zoning district.

PREMISES AFFECTED – 562 Court Street (aka 21 Garnet Street) southwest corner Court Street and Garnet Street, Block 382, Lot 37, Borough of Brooklyn.

### COMMUNITY BOARD # 6BK

APPEARANCES –

For Applicant: Adam W. Rothkrug.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

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## 13-10-BZ

APPLICANT – Eric Palatnik, P.C., for Yakov Platnikov, owner.

SUBJECT – Application January 27, 2010 – Special Permit (§73-622) for the enlargement of an existing two -family home to be converted to a single family home, contrary to lot coverage and floor area (§23-141); side yards (§23-461) and rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 79 Amherst Street, east side of Amherst Street, north Hampton Avenue, Block 8727, Lot 24, Borough of Brooklyn.

### COMMUNITY BOARD # 15BK

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Laid over to April 27, 2010, at 1:30 P.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*