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# BULLETIN

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

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

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Volume 96, No. 22

June 1, 2011

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### DIRECTORY

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### CONTENTS

DOCKET .....	360
<b>CALENDAR</b> of June 14, 2011	
Morning .....	361
Afternoon .....	361/362

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# CONTENTS

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**MINUTES of Regular Meetings,  
Tuesday, May 24, 2011**

Morning Calendar .....363

**Affecting Calendar Numbers:**

435-74-BZ	552 Midland Avenue, Staten Island
145-99-BZ	286 Spring Street, Manhattan
273-00-BZ	3 West 33 <sup>rd</sup> Street, Manhattan
290-06-BZ	372 Lafayette Street, aka 11 Great Jones Street, Manhattan
703-80-BZ	2994/3018 Cropsey Avenue, Brooklyn
982-83-BZ	191-20 Northern Boulevard, Queens
161-06-BZ	3349 Webster Avenue, Bronx
316-06-BZ	2960 Webster Avenue, Bronx
221-08-BZ	34-08 Collins Place, Queens
228-10-BZY	180 Ludlow Street, Manhattan
44-11-A	74 Tioga Walk, Queens
45-11-A	29 Kildare Walk, Queens
46-11-A	57 Bedford Avenue, Queens

Afternoon Calendar .....372

**Affecting Calendar Numbers:**

240-09-BZ	454 City Island Avenue, Bronx
13-11-BZ	1040 East 26 <sup>th</sup> Street, Brooklyn
20-11-BZ	30 West 18 <sup>th</sup> Street, Manhattan
236-09-BZ	140-148 West 28 <sup>th</sup> Street, Manhattan
45-10-BZ	1413-1429 Edward L. Grant Highway, Bronx
230-10-BZ	177 Kensington Street, Brooklyn
9-11-BZ	2129A-39A White Plains Road, Bronx
23-11-BZ	490 Fulton Street, Brooklyn
26-11-BZ	12 East 18 <sup>th</sup> Street, Manhattan

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# DOCKET

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New Case Filed Up to May 24, 2011  
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**69-11-A**

88-11 173rd Street, East side of 173rd Street between 89th Avenue and Warwick Circle., Block 9830, Lot(s) 22,23 (tentative), Borough of **Queens, Community Board: 12**. An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development of prior R4-1 zoning district. R4-1 district.  
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**70-11-A**

88-13 173rd Street, East side of 173rd Street between 89th Avenue and Warwick Circle., Block 9830, Lot(s) 22,23 (tentative), Borough of **Queens, Community Board: 12**. An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development of prior R4-1 zoning district. R4-1 district.  
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**71-11-BZ**

41-02 Forley Street, Northeast corner of the intersection formed by Forley Street and Britton Avenue., Block 1513, Lot(s) 6, Borough of **Queens, Community Board: 04**. Variance (§72-21) to allow the legalization for conversion for the mosque to permit an enlargement of said premises R4 district.  
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**72-11-BZ**

101-06 Astoria Boulevard, South east corner of 101st Street., Block 1688, Lot(s) 30, Borough of **Queens, Community Board: 3**. Re-Instatement (11-411) to reinstate the variance granted under Cal. No. 711-56-BZ for a gasoline service station in a R3-2 zoning district. R3-2 district.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**JUNE 14, 2011, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, June 14, 2011, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL ORDER CALENDAR**

**662-56-BZ**

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Flatbush Holdings LLC, owner.

SUBJECT – Application April 6, 2011 – Extension of Term (§11-411) of a previously approved variance which permitted the a public parking lot (UG 8), which expired on January 23, 2011; Waiver of the Rules of Practice and Procedure. C1-2/R5 zoning district.

PREMISES AFFECTED – 3875 Flatbush Avenue, Northerly side of Flatbush Avenue, 100' east of the intersection of Flatlands Avenue. Block 7821, Lots 21, 23. Borough of Brooklyn.

**COMMUNITY BOARD #18BK**  
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**1250-65-BZ**

APPLICANT – Peter Hirshman, for 87<sup>th</sup> Street Owners Corporation, owner; Park 87<sup>th</sup> Corporation, lessee.

SUBJECT – Application April 21, 2011 – Extension of Term for transient parking in an existing multiple dwelling which expired on March 21, 2011. R8B zoning district.

PREMISES AFFECTED – 55 East 87<sup>th</sup> Street, 107.67' west of Park Avenue, Block 1499, Lot 25, Borough of Manhattan.

**COMMUNITY BOARD #8M**  
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**118-95-BZ**

APPLICANT – Carl A Sulfaro, for White Castle System, Incorporated, owner.

SUBJECT – Application April 11, 2011 – Extension of Term of a previously granted Special Permit (§73-243) for the continued operation of a drive-thru facility at an eating and drinking establishment (*White Castle*) which expires on July 25, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on May 22, 2008 and waiver of the rules. C1-2/R6 zoning district.

PREMISES AFFECTED – 89-03 57<sup>th</sup> Avenue, southeast corner of Queens Boulevard and 57th Avenue, Block 1845, Lot 45, Borough of Queens.

**COMMUNITY BOARD #4Q**  
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**JUNE 14, 2011, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, June 14, 2011, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**ZONING CALENDAR**

**56-10-BZ**

APPLICANT – T-Mobile Northeast LLC, for Luca & Maryann Guglielmo, owners.

SUBJECT – Application April 19, 2010 – Variance (§72-21) to construct a telecommunications facility on the rooftop of an existing building. The proposal is contrary to sky exposure plane (§33-431) and front yard (§23-45). C1-2/R3-2 zoning district.

PREMISES AFFECTED – 3424 Quentin Road, Quentin Road and East 35<sup>th</sup> Street, Block 7717, Lot 56, Borough of Brooklyn.

**COMMUNITY BOARD #18BK**  
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**6-11-BZ**

APPLICANT – Paul Bonfilio, for Denis Forde, Rockchapel Reality, LLC, owner.

SUBJECT – Application January 19, 2011 – Variance (§72-21) to permit the construction of a one family detached residence on a vacant corner tax lot contrary to ZR §23-711 for minimum distance between buildings on the same zoning lot; ZR §23-461 for less than the required width of a side yard on a corner lot and ZR §23-89(b) less than the required open area between two buildings. R2A zoning district.

PREMISES AFFECTED – 50-20 216<sup>th</sup> Street, corner of 51<sup>st</sup> Avenue, Block 7395, Lot 13, 16, Borough of Queens.

**COMMUNITY BOARD #11Q**  
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**34-11-BZ**

APPLICANT – Joan Humphreys/A & H Architecture PC, for Keith W. Bails/272 Driggs Avenue Corporation, owner; Adriane Stare/Caribou Baby d/b/a Stollenwerck Stare LLC, 272 Driggs Avenue, lessee.

SUBJECT – Application March 29, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Caribou Baby*). C2-4 Overlay/R6B zoning district.

PREMISES AFFECTED – 272 Driggs Avenue, north side of Driggs Avenue 85.29' west of Eckford Street, Block 2681, Lot 38, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**  
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# CALENDAR

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**49-11-BZ**

APPLICANT – Sheldon Lobel, P.C., for A & G Real Estate, LLC, owner; Barry Bootcamp, lessee.

SUBJECT – Application April 15, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Barry's Bootcamp*). C6-3A zoning district.

PREMISES AFFECTED – 135 West 20<sup>th</sup> Street, north side of West 20<sup>th</sup> Street, between 6<sup>th</sup> and 7<sup>th</sup> Avenues, Block 796, Lot 18, Borough of Manhattan.

**COMMUNITY BOARD #4M**

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*Jeff Mulligan, Executive Director*

# MINUTES

## REGULAR MEETING TUESDAY MORNING, MAY 24, 2011 10:00 A.M.

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

### SPECIAL ORDER CALENDAR

#### 435-74-BZ

APPLICANT –Eric Palatnik, P.C., for J. B. Automotive Center of New York, Inc., owner.

SUBJECT – Application January 26, 2011 – Extension of Term of a Variance (§72-21) for the continued operation of an automotive repair center which expired on January 14, 2011; waiver of the rules. R3-1 zoning district.

PREMISES AFFECTED – 552 Midland Avenue, southwest corner of Midland and Freeborn Street, Block 3804, Lot 18, Borough of Staten Island.

#### COMMUNITY BOARD #2SI

##### APPEARANCES –

For Applicant: Eric Palatnik.

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

##### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

##### THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term for the continued use of an automotive service station, which expired on January 14, 2010; and

WHEREAS, a public hearing was held on this application on April 5, 2011, after due notice by publication in *The City Record*, with a continued hearing on May 3, 2011, and then to decision on May 24, 2011; and

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

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

WHEREAS, the site is located on the southeast corner of Midland Avenue and Freeborn Street, within an R3-1 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 14, 1975 when, under the subject calendar number, the Board granted a variance to permit the reconstruction and rehabilitation of an automotive service station with accessory uses, for a term of 15 years; and

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

WHEREAS, most recently, on December 19, 2000, the Board granted an extension of term for ten years from the expiration of the prior grant, to expire on January 14, 2010, and granted an amendment to legalize the elimination of the gasoline service use from the site; and

WHEREAS, the applicant now requests an additional ten-year extension of term; and

WHEREAS, at hearing, the Board directed the applicant to remove the pole banners from the site and verify that the site complies with C1 district signage regulations, and to remove the vehicles parked in the ramp area; and

WHEREAS, in response, the applicant submitted photographs and revised plans reflecting that the pole banners have been removed from the site, the concrete has been restored to the sidewalk area where the poles were located, the site complies with C1 district signage regulations, and the vehicles have been removed from the ramp area on the site; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated January 14, 1975, so that as amended this portion of the resolution shall read: “to extend the term for ten years from the expiration of the prior grant, to expire on January 14, 2020; *on condition* that all use and operations shall substantially conform to plans filed with this application marked Received ‘January 26, 2011’-(2) sheets and ‘May 9, 2011’-(1) sheet; and *on further condition*:

THAT the term of the grant shall expire on January 14, 2020;

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

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. 500509693)

Adopted by the Board of Standards and Appeals May 24, 2011.

#### 145-99-BZ

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

SUBJECT – Application March 24, 2011 – Application to request a re-hearing, pursuant to Board Rules Section 1-10(e), of a variance application for residential conversion of a six-story commercial building, previously denied on March 14, 2000. M1-6 zoning district.

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

# MINUTES

Borough of Manhattan.

## COMMUNITY BOARD #2M

### APPEARANCES –

For Applicant: Frank Chaney.

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

### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

### THE RESOLUTION –

WHEREAS, this is an application for a re-hearing, pursuant to Section 1-10(e) of the Board’s Rules of Practice and Procedure, of a variance application which the Board previously denied; and

WHEREAS, a public hearing was held on this application on May 10, 2011, after due notice by publication in The City Record, and then to decision on May 24, 2011; 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, the subject site is located on the southeast corner of Spring Street and Hudson Street, within an M1-6 zoning district; and

WHEREAS, the site is occupied by a six-story L-shaped historic warehouse building, currently in commercial use, with frontage on Spring Street and Hudson Street; and

WHEREAS, in 1999, an application was made under the subject calendar number for a variance pursuant to ZR § 72-21; the application sought approval for the conversion of the second through sixth floors of the subject building to residential use, which is contrary to ZR § 42-00; and

WHEREAS, on March 14, 2000, the Board denied the application; and

WHEREAS, at the time of the denial, the Board found that the applicant had failed to provide substantial evidence in support of the required finding that unique site conditions create practical difficulties or unnecessary hardship in complying with zoning regulations; and

WHEREAS, the Board did not dispute that the subject L-shaped building on an irregular lot was unique, but it found that the building was functioning and almost fully occupied, so it was unable to accept the assertion that the building was unmarketable for conforming industrial and office uses; and

WHEREAS, additionally, the Board rejected the applicant’s assertion that the subject building could not compete with large amounts of newly-created office space, which was proposed to become available in the area; and

WHEREAS, the Board noted that since the new office space was not yet available, it is unclear what, if any effect it would have on the subject building’s marketability; and

WHEREAS, the applicant asserts that there has been a material change in circumstances since the Board’s denial of

the variance application in 1999 and requests that the Board re-hear the case pursuant to Section 1-10(e) of the Rules of Practice and Procedure which provides: “A request for a rehearing shall not be granted unless substantial new evidence is submitted that was not available at the time of the initial hearing, or there is a material change in plans or circumstances or an application is filed under a different jurisdictional provision of the law”; and

WHEREAS, the applicant asserts that there has been a material change in circumstances with respect to the site as well as the surrounding neighborhood and thus a re-hearing of the use variance is warranted; and

WHEREAS, specifically, the applicant cites that (1) the building occupancy has decreased significantly and (2) the subject building cannot compete with the more than two and one-half million sq. ft. of new office space in larger buildings able to accommodate a variety of office sizes, which has been introduced to the area’s commercial rental market; and

WHEREAS, as to the building’s occupancy, the applicant represents that 35.3 percent of the 17 office units are vacant; if three additional units, which were vacant for an extended period of time and are currently occupied by the owner’s relatives who do not pay market rent, are included as vacant, the vacancy rate is 52.9 percent of the units, 41.5 percent of the total office floor area, and 41.9 percent of the rent roll; and

WHEREAS, the applicant represents that two units have been vacant for more than two years and four have been vacant for more than one year; and

WHEREAS, the applicant represents that other units have remained vacant for periods between nine months and more than four years; and

WHEREAS, the applicant cites to industry data, which reflects that the vacancy rate in the surrounding Hudson Square area has been approximately 20 percent since 2004; and

WHEREAS, the applicant represents that it is unable to realize a reasonable rate of return with a vacancy rate that is more than double that in the area; and

WHEREAS, as to the Hudson Square area’s office space market, the applicant identifies the following industrial buildings which have been converted to commercial office space since the 1999 application: One Hudson Square (a 16-story, 993,903 sq. ft. building); 304 Hudson Street (an eight-story, 230,000 sq. ft. building); 326 Hudson Street (a 23-story, 345,621 sq. ft. building); 348 Hudson Street (a nine-story, 259,000 sq. ft. building); and 341 Hudson Street (a 17-story, 797,000 sq. ft. building); and

WHEREAS, additionally, the applicant identifies the Business Incubator at 160 Varick Street, a city-subsidized facility for small businesses, which is currently at full capacity with 35 businesses; and

WHEREAS, as to the neighborhood context, the applicant cites to several rezonings in the area which have taken place since the 1999 denial, which include (1) the 2003 Hudson Square Rezoning, which rezoned a portion of the area, just west of the site from M1-6 and M2-4 zoning

# MINUTES

districts to a C6-2A zoning district, which permits residential use as-of-right; (2) the 2006 North Tribeca Rezoning, which rezoned a four-block area south of Canal Street from M1-5 to C6-2A and C6-3A, which permits residential uses as-of-right; and (3) the 2010 North Tribeca Rezoning, which rezoned the remaining M1-5 area to C6-2A; and

WHEREAS, the applicant states that the Hudson Square and North Tribeca rezonings have led to several residential conversions and the construction of new residential buildings at sites including: 300 Spring Street, 505 Greenwich Street, 255 Hudson Street, and 479 Greenwich Street; and

WHEREAS, the applicant cites to additional actions such as a proposed Hudson Square Special District, which would allow for more residential use in the area; and Board use variances between 2005 and 2007, which have allowed for residential use within M1-5 and M1-6 zoning districts in the area; and

WHEREAS, the Board has reviewed the record and determined that the applicant has identified substantial evidence, which supports the conclusion that there is a material change in circumstances since the 1999 application; and

WHEREAS, the Board notes that the 1999 application was denied because the Board must reject a variance application that does not comply with any one of the five variance findings and, accordingly, it did not make a determination related to findings not directly addressed by its prior resolution.

*Therefore it is Resolved* that, based upon the above, this application for a re-hearing of the BSA Cal. No. 145-99-BZ is granted.

Adopted by the Board of Standards and Appeals, May 24, 2011.

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## 273-00-BZ

APPLICANT – Mitchell Ross, Esq., for 10 West Thirty Third Joint Venture, owner; Spa Sol, Incorporated, lessee. SUBJECT – Application July 22, 2010 – Extension of Term of a Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*Spa Sol*) which expires on February 13, 2011; Amendment to legalize interior layout/increase in number of treatment rooms. C6-4 zoning district.

PREMISES AFFECTED – 3 West 33<sup>rd</sup> Street, 1.07' southwest of West 33<sup>rd</sup> Street and Fifth Avenue, Block 834, Lot 49, Borough of Manhattan.

### COMMUNITY BOARD #5M

#### APPEARANCES –

For Applicant: Mitchell Ross.

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

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

#### THE RESOLUTION –

WHEREAS, this is an application for a reopening, an extension of the term of a previously granted special permit for a physical culture establishment (“PCE”), which expired on February 13, 2011, and an amendment for a change in the hours of operation and to legalize modifications to the interior layout of the site; and

WHEREAS, a public hearing was held on this application on April 5, 2011, after due notice by publication in *The City Record*, with a continued hearing on May 3, 2011, and then to decision on May 24, 2011; and

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

WHEREAS, Community Board 5, Manhattan, states that it has no objection to this application; and

WHEREAS, the PCE is located on the south side of West 33<sup>rd</sup> Street, between Fifth Avenue and Broadway, within a C6-4 zoning district; and

WHEREAS, the subject site is occupied by a 22-story commercial building; and

WHEREAS, the PCE occupies a total of 1,907 sq. ft. of floor area in portions of the first floor and first floor mezzanine of the subject building, with an additional 1,434 sq. ft. of floor space located in a portion of the cellar; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 13, 2001 when, under the subject calendar number, the Board granted a special permit for the establishment of a PCE in the subject building for a term of ten years, to expire on February 13, 2011; and

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

WHEREAS, the applicant also requests an amendment for a change in the hours of operation of the PCE; and

WHEREAS, the prior grant limited the hours of operation of the PCE to 10:00 a.m. to 12:00 midnight, daily; and

WHEREAS, the applicant now proposes the following hours of operation for the PCE: Monday through Saturday, from 10:00 a.m. to 2:00 a.m.; and Sunday, from 11:00 a.m. to 1:00 a.m.; and

WHEREAS, the applicant also requests an amendment to legalize modifications to the interior layout of the site, which enabled the applicant to increase the number of treatment rooms at the cellar level from two to six without increasing the amount of floor space occupied by the PCE; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of term and amendment to the hours of operation are appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on February 13, 2001, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from February 13, 2011, to expire on February 13, 2021,

# MINUTES

and to permit the noted modifications to the hours of operation and interior layout of the site; *on condition* that all use and operations shall substantially conform to BSA-approved plans associated with the prior grant; and *on further condition*:

THAT the term of this grant shall expire on February 13, 2021;

THAT the hours of operation for the PCE shall be: Monday through Saturday, from 10:00 a.m. to 2:00 a.m.; and Sunday, from 11:00 a.m. to 1:00 a.m.;

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

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;

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. 120207481)

Adopted by the Board of Standards and Appeals, May 24, 2011.

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## 290-06-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Rusabo 368 LLC, owner; Great Jones Lafayette LLC, lessee.

SUBJECT – Application April 20, 2011 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the construction of a six-story, eight-unit residential building with ground floor retail which expired on April 17, 2011. M1-5B zoning district.

PREMISES AFFECTED – 372 Lafayette Street, aka 11 Great Jones Street, block bounded by Lafayette, Great Jones and Bond Streets and Shinbone Alley, Block 530, Lot 13, Borough of Manhattan.

### COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Jim Power.

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4  
Negative:.....0  
Absent: Vice Chair Collins.....1

**THE RESOLUTION** –

WHEREAS, this is an application for a reopening and an extension of time to complete construction of a previously granted variance to permit the construction of a six-story mixed-use commercial/residential building, which expired on April 17, 2011; and

WHEREAS, a public hearing was held on this

application on May 10, 2011, after due notice by publication in *The City Record*, and then to decision on May 24, 2011; and

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

WHEREAS, the subject site is located on the west side of Lafayette Street, between Great Jones Street and Bond Street, in an M1-5B zoning district within the NoHo Historic District; and

WHEREAS, the Board has exercised jurisdiction over the site since April 17, 2007 when, under the subject calendar number, the Board granted a variance to permit the proposed construction of a six-story, eight-unit residential building with ground floor retail, contrary to ZR §§ 42-10 and 42-14; and

WHEREAS, substantial construction was to be completed by April 17, 2011, in accordance with ZR § 72-23; and

WHEREAS, the applicant states that due to financing delays, additional time is necessary to complete the project; thus, the applicant now requests an extension of time to complete construction; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated April 17, 2007, so that as amended this portion of the resolution shall read: “to grant an extension of the time to complete construction for a term of four years, to expire on May 24, 2015; *on condition*:

THAT substantial construction shall be completed by May 24, 2015;

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. 104520608)

Adopted by the Board of Standards and Appeals, May 24, 2011.

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## 703-80-BZ

APPLICANT – Joseph P. Morsellino, for Louis N. Petrosino, owner.

SUBJECT – Application July 1, 2010 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of an existing scrap metal storage establishment which expires on December 2, 2010; Amendment to legalize the enclosure of an open storage area. C8-1 zoning district.

# MINUTES

PREMISES AFFECTED – 2994/3018 Cropsey Avenue, southwest corner of Bay 54<sup>th</sup> Street, Block 6947, Lot 260, Borough of Brooklyn.

## COMMUNITY BOARD #13BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

**ACTION OF THE BOARD** – Laid over to August 16, 2011, at 10 A.M., for decision, hearing closed.

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## 982-83-BZ

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

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

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

## COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: H. Irving Sigman.

For Opposition: Terri Pouymari and Henry Euler.

**ACTION OF THE BOARD** – Laid over to June 21, 2011, at 10 A.M., for continued hearing.

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## 161-06-BZ

APPLICANT – Eric Palatnik, P.C., for Webster Affordable Solutions, owner.

SUBJECT – Application April 25, 2011 – Extension of Time to complete construction of a Variance (§72-21) for the construction of two eight-story mixed-use residential/commercial/community facility buildings which expires on September 11, 2011. C8-2 zoning district.

PREMISES AFFECTED – 3349 Webster Avenue, Webster Avenue, south of Gun Hill Road, Block 3355, Lot 121, Borough of Bronx.

## COMMUNITY BOARD #7BX

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to June 21, 2011, at 10 A.M., for continued hearing.

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## 316-06-BZ

APPLICANT – Jesse Masyr, Esq., Watchel & Masyr, LLP, for New York Botanical Garden, owner.

SUBJECT – Application April 29, 2011 – Extension of Time to Complete Construction of a Variance (§72-21) for the construction of a six story accessory garage (UG4) with 825 parking spaces which expired on April 10, 2011. R7D/C2-1 zoning district.

PREMISES AFFECTED – 2960 Webster Avenue, between Bedford Park Boulevard and Botanical Square South, Block 3274, Lot 1 & 4, Borough of Bronx.

## COMMUNITY BOARD #7BX

APPEARANCES –

For Applicant: Ethan Goodman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

**ACTION OF THE BOARD** – Laid over to June 14, 2011, at 10 A.M., for decision, hearing closed.

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## 221-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Chris Xu, owner.

SUBJECT – Application August 28, 2008 – Variance (§72-21) to permit the development of a transient hotel, contrary to district use regulations. M2-1 zoning district.

PREMISES AFFECTED – 34-08 Collins Place, north side of Collins Place, 34<sup>th</sup> Avenue, College Point and 35<sup>th</sup> Avenue, Block 4945, Lot 34, Borough of Queens.

## COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Richard Lobel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

**ACTION OF THE BOARD** – Laid over to June 21, 2011, at 10 A.M., for decision, hearing closed.

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## APPEALS CALENDAR

### 228-10-BZY

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

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

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

## COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Jessica Loeser.

# MINUTES

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

**THE RESOLUTION** –

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

WHEREAS, a public hearing was held on this application on April 12, 2011, after due notice by publication in *The City Record*, with a continued hearing on May 10, 2011, and then to decision on May 24, 2011; and

WHEREAS, the site was inspected by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the east side of Ludlow Street, between Stanton Street and East Houston Street; and

WHEREAS, the site has 75 feet of frontage on Ludlow Street and a total lot area of approximately 6,801 sq. ft.; and

WHEREAS, the site is proposed to be developed with a 20-story hotel building (the “Building”); and

WHEREAS, the Building is proposed to have a floor area of 72,868 sq. ft.; and

WHEREAS, the Building complies with the former C6-1 zoning district parameters; and

WHEREAS, however, on November 19, 2008 (hereinafter, the “Enactment Date”), the City Council voted to enact the East Village/Lower East Side Rezoning, which rezoned the site from C6-1 to C4-4A; and

WHEREAS, on March 7, 2008, New Building Permit No. 104706695-01-NB (the “Permit”) was issued by the Department of Buildings (“DOB”) permitting construction of an 18-story hotel building; the permit was subsequently amended to permit the proposed 20-story hotel building; and

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

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

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

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed development, which involves the construction of a single building which is non-complying under an amendment to the Zoning Resolution, as a

“minor development”; and

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

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

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

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

WHEREAS, by letter dated April 1, 2011, DOB stated that the Permit was lawfully issued, authorizing construction of the proposed Building prior to the Enactment Date; and

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

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

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

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

# MINUTES

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

WHEREAS, the Board further notes that any work performed after the two-year time limit to complete construction and obtain a certificate of occupancy cannot be considered for vesting purposes; accordingly, only the work performed as of November 19, 2010 has been considered; and

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

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permit includes 100 percent of the foundation, and 100 percent of the 20-story superstructure of the Building; and

WHEREAS, in support of this statement, the applicant has submitted the following: construction tables; framing plan surveys; construction contracts; copies of cancelled checks; an Application and Certification for Payment from the general contractor; and photographs of the site; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the aforementioned work was completed subsequent to the issuance of the valid permits; and

WHEREAS, as to costs, the applicant represents that the total expenditure paid for the development is \$5,454,212, or 22 percent, out of the approximately \$24,852,263 cost to complete; and

WHEREAS, as noted above, the applicant has submitted financial records, construction contracts, copies of cancelled checks, and an Application and Certification for Payment from the general contractor evidencing payments made by the applicant; and

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

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

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

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a two-year extension of time to complete construction, pursuant to ZR § 11-332.

*Therefore it is Resolved* that this application made pursuant to ZR § 11-332 to renew New Building Permit No. 104706695-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on May 24, 2013.

Adopted by the Board of Standards and Appeals, May 24, 2011.

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**44-11-A**

APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Incorporated, owner; Paul Atanasio, lessee.

SUBJECT – Application April 13, 2011 – Proposed reconstruction and enlargement of an existing single family dwelling, contrary to General City Law Section 35, Article 3. R4 zoning District.

PREMISES AFFECTED – 74 Tioga Walk, west side of Tioga Walk 332.6' north of Breezy Point Boulevard. Block 16350, Lot p/o 400. Borough of Queens.

**COMMUNITY BOARD #14Q**

APPEARANCES –

For Applicant: Gary Lenhart.

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

**THE RESOLUTION** –

WHEREAS, the decision of the Queens Borough Commissioner, dated April 5, 2011, acting on Department of Buildings Application No. 420329683, reads in pertinent part:

“A-1 The existing building to be altered lies within the bed of a mapped street contrary to General City Law Article 3, Section 35;” and

WHEREAS, a public hearing was held on this application on May 24, 2011, after due notice by publication in the *City Record*, and then to closure and decision on the same date; and

WHEREAS, by letter dated April 21, 2011, the Fire Department states that it has reviewed the subject proposal and has no objections provided the following conditions are met:

(1) the entire building be fully sprinklered in conformity with the sprinkler provisions of Local Law 10 of 1999 as well as Reference Standard 17-2B of the New York City Building Code; and (2) the entire building be provided with interconnected smoke alarms in accordance with Section 907.2.10 of the NYC Building Code; and

WHEREAS, by letter dated April 21, 2011, the Department of Environmental Protection states that it has no objection to the subject proposal; and

WHEREAS, by letter dated May 19, 2011, the Department of Transportation (“DOT”) states that it has no objection to the subject proposal; and

WHEREAS, DOT states that the subject lot is not currently included in the agency’s Capital Improvement Program; and

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

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated April 5, 2011, acting on Department of Buildings Application No 420329683, is modified by the power vested in the Board by Section 35 of the

# MINUTES

General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received May 24, 2011" – one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT the home shall be sprinklered and smoke alarms shall be installed in accordance with the BSA-approved plans;

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

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

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

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

Adopted by the Board of Standards and Appeals, May 24, 2011.

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## 45-11-A

APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Incorporated, owner; Kathleen & Joseph Buckley, lessee.

SUBJECT – Application April 13, 2011 – Proposed reconstruction and enlargement of an existing single family home, contrary to General City Law Section 36, Article 3, and proposed upgrade of the private disposal system located partially within the bed of the Service Road, contrary to Department of Buildings Policy. R4 zoning district.

PREMISES AFFECTED – 29 Kildare Walk, east side of Kildare Walk 223" south of Oceanside Avenue. Block 16350, Lot p/o 400. Borough of Queens.

### COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4  
Negative:.....0  
Absent: Vice Chair Collins.....1

**THE RESOLUTION** –

WHEREAS, the decision of the Queens Borough Commissioner dated March 29, 2011 acting on Department of Buildings Application No. 420323590, reads in pertinent part:

A-1 The street giving access to the existing building to be altered is not duly placed on the official map of the City of New York, therefore:

A) A Certificate of Occupancy may not be issued

as per Article 3, Section 36 of the General City Law.

B) Existing dwelling to be altered does not have at least 8% of total perimeter of the building fronting directly upon a legally mapped street or frontage space is contrary to Section C27-291 (C26-401.1) of the Administrative Code of the City of New York.

A-2 The proposed upgraded private disposal system is in the bed of the service lane contrary to Department of Buildings Policy; and

WHEREAS, a public hearing was held on this application on May 24, 2011, after due notice by publication in the *City Record*, and then to closure and decision on the same date; and

WHEREAS, by letter dated April 21, 2011, the Fire Department states that it has reviewed the subject proposal and has no objections provided the following conditions are met: (1) the entire building be fully sprinklered in conformity with the sprinkler provisions of Local Law 10 of 1999 as well as Reference Standard 17-2B of the New York City Building Code; and (2) the entire building be provided with interconnected smoke alarms in accordance with Section 907.2.10 of the NYC Building Code; and

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

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated March 29, 2011, acting on Department of Buildings Application No. 420323590, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received May 24, 2011- one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

THAT the home shall be sprinklered and smoke alarms shall be installed in accordance with the BSA-approved plans;

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

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

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

Adopted by the Board of Standards and Appeals, May 24, 2011.

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# MINUTES

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## 46-11-A

APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Incorporated, owner; Joanne & Louis Isidora, lessee.

SUBJECT – Application April 13, 2011 – Proposed reconstruction of an existing single family home, contrary to General City Law Section 36, Article 3, and proposed upgrade of existing non-complying private disposal system in the bed of the service road, contrary to Department of Buildings Policy. R4 zoning District.

PREMISES AFFECTED – 57 Bedford Avenue, east side of Bedford Avenue 174 feet north of 12th Avenue. Block 16350, Lot p/o 300. Borough of Queens.

### COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

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

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner dated April 7, 2011 acting on Department of Buildings Application No. 420334150, reads in pertinent part:

A-1 The street giving access to the existing building to be altered is not duly placed on the official map of the City of New York, therefore:

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

B) Existing dwelling to be altered does not have at least 8% of total perimeter of the building fronting directly upon a legally mapped street or frontage space is contrary to Section C27-291 (C26-401.1) of the Administrative Code of the City of New York.

A-2 The proposed upgraded private disposal system is in the bed of the service lane contrary to Department of Buildings Policy; and

WHEREAS, a public hearing was held on this application on May 24, 2011, after due notice by publication in the *City Record*, and then to closure and decision on the same date; and

WHEREAS, by letter dated April 21, 2011, the Fire Department states that it has reviewed the subject proposal and has no objections provided the following conditions are met: (1) the entire building be fully sprinklered in conformity with the sprinkler provisions of Local Law 10 of 1999 as well as Reference Standard 17-2B of the New York City Building Code; and (2) the entire building be provided with interconnected smoke alarms in accordance with Section 907.2.10 of the NYC Building Code; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this

approval under certain conditions.

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated April 7, 2011, acting on Department of Buildings Application No. 420334150, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received May 24, 2011- one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

THAT the home shall be sprinklered and smoke alarms shall be installed in accordance with the BSA-approved plans;

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

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

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

Adopted by the Board of Standards and Appeals, May 24, 2011.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

# MINUTES

**REGULAR MEETING  
TUESDAY AFTERNOON, MAY 24, 2011  
1:30 P.M.**

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

**ZONING CALENDAR**

**240-09-BZ**

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

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

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

**COMMUNITY BOARD #10BX**

APPEARANCES – None.

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

**THE VOTE TO WITHDRAW** –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

Adopted by the Board of Standards and Appeals, May 24, 2011.

**13-11-BZ**

APPLICANT – Law Office of Fredrick A. Becker, Miriam Loeb and Chaim Loeb, owner.

SUBJECT – Application February 3, 2011 – Special Permit (§73-622) for the enlargement of an existing single family residence contrary to floor area and open space (§23-141); side yard (§23-461 and §23-48); and rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1040 East 26<sup>th</sup> Street, west side of East 26<sup>th</sup> Street, between Avenue J and Avenue K, Block 7607, Lot 66, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Lyra J. Altman.

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

**THE RESOLUTION** –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated January 5, 2011, acting on Department of Buildings Application No. 320214200, reads in pertinent part:

“Obtain special permit approval from the Board of Standards and Appeals for the following objections:

Proposed floor area is contrary to ZR 23-141.

Proposed open space ratio is contrary to ZR 23-141.

Proposed rear yard is contrary to ZR 23-47.

Proposed side yard is contrary to ZR 23-461(a) and ZR 23-48;” and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space ratio, side yards and rear yard, contrary to ZR §§ 23-141, 23-461, 23-48 and 23-47; and

WHEREAS, a public hearing was held on this application on May 3, 2011 after due notice by publication in *The City Record*, and then to decision on May 24, 2011; 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 14, Brooklyn, recommends approval of this application; and

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

WHEREAS, the subject site has a total lot area of 3,103 sq. ft., and is occupied by a single-family home with a floor area of 1,941 sq. ft. (0.63 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 1,941 sq. ft. (0.63 FAR) to 3,219 sq. ft. (1.04 FAR); the maximum permitted floor area is 1,551.5 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 52 percent (150 percent is the minimum required); and

WHEREAS, the applicant proposes to maintain the existing side yards with widths of 1’-1½” along the southern lot line and 6’-6¾” along the northern lot line (a minimum width of 5’-0” is required for each side yard); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 21’-0” (a minimum rear yard depth of 30’-0” is required); and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, and will not impair the future use or

# MINUTES

development of the surrounding area; and

WHEREAS, the applicant provided an analysis of the FAR of homes in the surrounding area, which reflects that there are at least four homes on the subject block with an FAR of 1.0 or greater; and

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

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

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

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

*Therefore it is resolved,* that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, 23-48 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received April 18, 2011"-(11) sheets; and *on further condition:*

THAT the following shall be the bulk parameters of the building: a maximum floor area of 3,219 sq. ft. (1.04 FAR); an open space ratio of 52 percent; a side yard with a minimum width of 1'-1½" along the southern lot line; a side yard with a minimum width of 6'-6 ¾" along the northern lot line; and a rear yard with a minimum depth of 21'-0", as illustrated on the BSA-approved plans;

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

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

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the

plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 24, 2011.

## 20-11-BZ

### CEQR #11-BSA-063M

APPLICANT – The Law Office of Fredrick A. Becker, for 30 West 18<sup>th</sup> Associates Association, LLC, owner; Just Calm Down II, Inc., lessee.

SUBJECT – Application February 28, 2011 – Special Permit (§73-36) to allow the proposed physical culture establishment (*Just Calm Down*). C6-4A zoning district.

PREMISES AFFECTED – 30 West 18<sup>th</sup> Street, south side of West 18<sup>th</sup> Street, Block 819, Lot 59, Borough of Manhattan.

### COMMUNITY BOARD #5M

#### APPEARANCES –

For Applicant: Fredrick A. Becker.

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

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

#### THE RESOLUTION –

WHEREAS, the decision on behalf of the Manhattan Borough Commissioner, dated March 30, 2011, acting on Department of Buildings Application No. 104048905, reads in pertinent part:

"Legalization of subject physical culture establishment/spa is contrary to ZR Section 32-10. Go to BSA for special permit as per ZR Section 73-36;" and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within a C6-4A zoning district, the legalization of a physical culture establishment (PCE) at portions of the cellar and first floor of an 18-story mixed-use commercial/residential building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on May 3, 2011, after due notice by publication in *The City Record*, and then to decision on May 24, 2011; and

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

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

WHEREAS, the subject site is located on the south side of West 18<sup>th</sup> Street, between Fifth Avenue and Sixth Avenue, within a C6-4A zoning district; and

WHEREAS, the site is occupied by an 18-story mixed-use commercial/residential building; and

WHEREAS, the PCE occupies 1,782 sq. ft. of floor area on a portion of the first floor, with an additional 1,180 sq. ft. of floor space located in the cellar; and

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# MINUTES

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WHEREAS, the PCE is operated as Just Calm Down Spa; and

WHEREAS, the proposed hours of operation for the PCE are: Monday through Friday, from 11:00 a.m. to 9:00 p.m.; Saturday, from 10:30 a.m. to 7:30 p.m.; and Sunday, from 11:00 a.m. to 7:30 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for the practice of massage by New York State licensed masseurs and masseuses; and

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

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

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

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

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

WHEREAS, the Board notes that the PCE has been in operation since December 1, 2008 without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time between December 1, 2008 and the date of this grant; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 11BSA063M, dated February 28, 2011; and

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

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site located within a C6-4A zoning district, the legalization of a physical culture establishment at portions of the cellar and first floor of an 18-story mixed-use commercial/residential building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received February 28, 2011"- (4) sheets and *on further condition*:

THAT the term of this grant shall expire on December 1, 2018;

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

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, May 24, 2011.

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## **236-09-BZ**

APPLICANT – Marvin Mitzner, Esq, for Crosstown West 28 LLC, owner.

SUBJECT – Application July 31, 2009 – Variance (§72-21) to allow for a 29 story mixed use commercial and residential building contrary to use regulations (§42-00), floor area (§43-12), rear yard equivalent (§43-28), height (§43-43), tower regulations (§43-45) and parking (§13-10). M1-6 zoning district.

PREMISES AFFECTED – 140-148 West 28<sup>th</sup> Street, south side of West 28<sup>th</sup> Street, between 6<sup>th</sup> Avenue and 7<sup>th</sup> Avenue, block 803, Lots 62 and 65, Borough of Manhattan.

## **COMMUNITY BOARD #5M**

APPEARANCES –

For Applicant: Ian Rasmussen.

**ACTION OF THE BOARD** – Laid over to July 26, 2011, at 1:30 P.M., for continued hearing.

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# MINUTES

## 45-10-BZ

APPLICANT – Sheldon Lobel, PC, for Leemilt's Petroleum, Incorporated, owner.

SUBJECT – Application April 5, 2010 – Special Permit (§11-411 and §11-412) for the reinstatement of a Variance for the continued operation of a gasoline service station (*Getty*) which expired on June 23, 1986; Amendment to increase the size of the auto laundry; Extension of Time to obtain a Certificate of Occupancy. C1-4/R7-1 zoning district.

PREMISES AFFECTED – 1413-1429 Edward L. Grant Highway, southwest corner of Plimpton Avenue and Edward L. Grant Highway, Block 2521, Lot 15, Borough of Bronx.

### COMMUNITY BOARD #4BX

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice-Chair Collins.....1

**ACTION OF THE BOARD** – Laid over to June 14, 2011, at 1:30 P.M., for decision, hearing closed.

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## 230-10-BZ

APPLICANT – Eric Palatnik, P.C., for Leonid Fishman, owner.

SUBJECT – Application December 17, 2010 – Special Permit (§73-622) for the enlargement of a single family home, contrary to open space, lot coverage and floor area (§23-141(b)) and perimeter wall height (§23-631(b)). R3-1 zoning district.

PREMISES AFFECTED – 177 Kensington Street, Oriental Boulevard and Kensington Street, Block 8754, Lot 78, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik and Joel A. Miele.

For Opposition: Laura Krasner, Alfred Genlomp, Tanna Koifman and Diane Fox.

**ACTION OF THE BOARD** – Laid over to July 12, 2011, at 1:30 P.M., for continued hearing.

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## 9-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Riverdale Equities, LTD, owner; White Plains Road Fitness Group, LLC, lessee.

SUBJECT – Application January 31, 2011 – Special Permit (§73-36) to permit the operation of the proposed physical culture establishment (*Planet Fitness*). C4-4 zoning district.

PREMISES AFFECTED – 2129A-39A White Plains Road, a/k/a 2129-39 White Plains Road, a/k/a 626-636 Lydig Avenue, southeast corner of the intersection of White Plains Road and Lydig Avenue, Block 4286, Lot 35, Borough of Bronx.

### COMMUNITY BOARD #11BX

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice-Chair Collins.....1

**ACTION OF THE BOARD** – Laid over to June 14, 2011, at 1:30 P.M., for decision, hearing closed.

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## 23-11-BZ

APPLICANT – Sheldon Lobel, P.C., for 484 Fulton Owner, LLC, owner; 490 Fulton Street Fitness Group, LLC, lessee.

SUBJECT – Application March 3, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*). C5-4 (DB) zoning district.

PREMISES AFFECTED – 490 Fulton Street, west side of Bond Street, between Fulton Street and Livingston Street, Block 159, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Josh Rinesmith.

**ACTION OF THE BOARD** – Laid over to June 14, 2011, at 1:30 P.M., for continued hearing.

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## 26-11-BZ

APPLICANT – Francis R. Angelino, Esq., for West Gramercy Associates, LLC, owner; SoulCycle East 18<sup>th</sup> Street, LLC, owner.

SUBJECT – Application March 11, 2011 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*SoulCycle*). M1-5 zoning district.

PREMISES AFFECTED – 12 East 18<sup>th</sup> Street, south side of Fifth Avenue and Broadway, Block 846, Lot 67, Borough of Manhattan.

### COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Francis R. Angelino, Elizabeth Cutler and Peter Bryant.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice-Chair Collins.....1

**ACTION OF THE BOARD** – Laid over to June 21, 2011, at 1:30 P.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*