
BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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February 9, 2006

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Tuesday, January 31, 2006**

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Affecting Calendar Numbers:

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195-05-BZ	2906 Quentin Road, Brooklyn
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DOCKETS

New Case Filed Up to January 31, 2006

14-06-A

54 Graham Place, S/S Graham Place 158.86' W/O Beach 20th Street, Block 16350, Lot 400, Borough of **Queens, Community Board: 14.** General City Law Section 36, Article 3-Proposed to reconstruct and enlarge existing single family dwelling not fronting a mapped street.

16-06-BZ

2253 East 14th Street, West side , between Avenue V and Gravesend Neck Road, Block 7375, Lot 50, Borough of **Brooklyn, Community Board: 15.** SPECIAL PERMIT-73-622-To permit the proposed enlargement of a one family home, which creates non-compliances with respect to open space and floor area (ZR 23-141), side yards (ZR 23-461) and rear yard (ZR 23-47).

17-06-BZ

99-24 39th Avenue, South side, 167.9 east of Roosevelt Avenue, between Roosevelt & 101st Street, Block 1765, Lot 40, Borough of **Queens, Community Board: 3.** Under 72-21-To permit the proposed demolition of a two story residential building and erect a four story commercial/residential mixed use structure.

18-06-A

99-24 39th Avenue, South side, 167.9' east of Roosevelt Avenue, between Roosevelt & 101st Street, Block 1765, Lot 40, Borough of **Queens, Community Board: 3.** General City Law Section 35-Submitted with a campion BZ application.

19-06-BZ

745 Fox Street, Encompasses the 200-ft of the block front on S/Sof 156th & 100 ft on Fox & Beck, Block 2707, Lot 11, Borough of **Bronx, Community Board: 2.** Under 72-21-To permit a proposed eight-story residential building which requires variance of ZR 23-145 (floor area), 23-633 (height and setback), 25-25c (parking), 23-851 (court regulations) and (legal window).

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

CALENDAR

MARCH 28, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 28, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

410-68-BZ

APPLICANT – Sheldon Lobel, P.C., for Alessandro Bartellino, owner.

SUBJECT – Application January 21, 2006 – Extension of time to complete construction and to obtain a certificate of occupancy pursuant to Z.R.§11-412.

PREMISES AFFECTED – 85-05 Astoria Boulevard, Block 1097, Lot 1, Borough of Queens.

COMMUNITY BOARD #3Q

357-72-BZ

APPLICANT - Law Office of Fredrick A. Becker, for Permanent Mission of the Russian Federation to the U.N., owner.

SUBJECT - Application December 19, 2005 - Amendment to a previously granted Variance ZR 72-21 for a multiple dwelling and community facility complex to allow for the enclosure of an existing swimming pool and the enlargement of an accessory health and sports facility. The premise is located in an R-4 zoning district.

PREMISES AFFECTED - 355 West 255th Street, northwest corner of West 255th Street and Fieldston Road, Block 5846, 5848, Lots 1605, 1774, Borough of The Bronx.

COMMUNITY BOARD #8BX

7-95-BZ

APPLICANT – Francis R. Angelino, Esq., c/o DeCampo, for Redmont Realty Company, LLC, owner; Town Sports International, Inc., lessee.

SUBJECT – Application September 13, 2005 – Reopening for an extension of term and an amendment of a previously granted variance to permit, in a C1-2(R3-2)/R3-2 district, a physical culture establishment (health club) in a cellar and two-story building within a larger shopping center development, which does not conform to district use regulations.

PREMISES AFFECTED – 153-37 Cross Island Parkway, Block 4717, Lot 16, Borough of Queens.

COMMUNITY BOARD #7Q

1038-80-BZ

APPLICANT – Davidoff Malito & Hatcher, LLP, for Feinrose Downing LLC, owner; Expressway Arcade Corp,

lessee.

SUBJECT – December 1, 2005 - Extension of Term of a Special Permit for an amusement arcade (UG15) in an M2-1 zoning district which expired on January 6, 2006.

PREMISES AFFECTED – 31-07/09/11 Downing Street, Whitestone Expressway, Block 4327, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

280-01-BZ

APPLICANT – Stadtmauer Bailkin LLP & Cozin O’Connor, for Perbinder Holdings, LLC, owner; Metropolitan Transportation Auth., lessee.

SUBJECT – Application January 23, 2006 - Extension of Time to complete construction for a variance ZR§72-21 to permit a mixed use building located in a C1-9 zoning district.

PREMISES AFFECTED – 663/673 Second Avenue & 241/249 East 36th Street, Block 917, Lots 21, 24/30, 32 & 34, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEALS CALENDAR

222-04-A thru 224-04-A

APPLICANT – Rothkrug, Rothkrug, Weinberg, & Spector, LLC for Dalip Karpuzi, owner.

SUBJECT - Application filed June 1, 2004 - to permit construction of a three one family dwellings in the bed of a final mapped street (Pemberton Avenue) contrary to Article 3, Section 35 of the General City Law . Premises is located within an R3-1 (SRD) Zoning District.

PREMISES AFFECTED - 486 Arthur Kill Road, & 120 , 122 Pemberton Avenue Block 5450, Lots 37, 35 & 36, Borough of Staten Island.

COMMUNITY BOARD #3SI

370-04-A

APPLICANT - Rothkrug, Rothkrug, Weinberg & Spector , LLC for Edgewater Developers and Builders. Inc., Owner.

SUBJECT - Application filed November 23, 2004 - to permit construction of a one family dwelling in the bed of a final mapped street (Egdewater Road) contrary to Article 3, Section 35 of the General City Law . Premises is loated within an R2 Zoning District.

PREMISES AFFECTED - 1511 Egmont Place, north side of Egmont Place 705.9 ft east of Mott Avenue, Block 15685, Lot 48, Borough of Queens.

COMMUNITY BOARD #14Q

370-05-BZY

APPLICANT - Kramer Levin Naftalis & Frankel, LLP, for Affirmation Arts Limited, owner.

CALENDAR

SUBJECT - Application December 22, 2005 - Proposed extension of time to complete construction pursuant to Z.R. 11-332 for a one story and mezzanine addition to an existing three-story building, previously located in a C6-2(CC) zoning district. The current zoning district is now C6-2(HY).

PREMISES AFFECTED - 523 West 37th Street, interior lot, block bounded by West 37th and West 38th Streets, Tenth and Eleventh Avenues, Block 709, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #4M

371-05-A

APPLICANT - Kramer Levin Naftalis & Frankel, LLP, for Affirmation Arts Limited, owner.

SUBJECT - Application December 22, 2005 - An appeal seeking a determination that the owner of said premises has acquired a common law vested rights to complete construction pursuant to Z.R. 11-332 for a one story and mezzanine addition to an existing three-story building, previously located in a C6-2(CC) zoning district. The current zoning district is now C6-2(HY).

PREMISES AFFECTED - 523 West 37th Street, interior lot, block bounded by West 37th and West 38th Streets, Tenth and Eleventh Avenues, Block 709, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #4M

following matters:

ZONING CALENDAR

129-05-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Laurence Roberts, owner.

SUBJECT – Application May 24, 2005 - Special Permit under ZR §§73-622 to allow the enlargement of a single family residence which is contrary to ZR23-141 for floor area and open space and ZR 23-47 for rear yard waiver. The premise is located in an R2 zoning district.

PREMISES AFFECTED – 1161 East 21st Street, East 21st Street, between Avenue J and Avenue K, Block 7603, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #14BK

163-05-BZ

APPLICANT – Harold Weinberg, for Aaron (Ari) Presser, owner.

SUBJECT – Application July 19, 2005- Special Permit - pursuant to ZR§73-622 for the enlargement of single family home which seeks to vary ZR§23-141 for the increase in floor area and open space ratio, ZR§23-47 for less than the minimum 30' rear yard required and ZR§23-461 for less than the required side yard. The premise is located in an R2 zoning district.

PREMISES AFFECTED – 1134 28th Street, west side, 260' south of Avenue K, Block 7627, Lot 59, Borough of Brooklyn.

COMMUNITY BOARD #14BK

182-05-BZ

APPLICANT – Eric Palatnik, P.C., for 4 Park Avenue Associates, owner.

SUBJECT – August 4, 2005 – Under Z.R. §73-36 to allow the legalization of a physical culture establishment in a C5-3 zoning district.

PREMISES AFFECTED – 4 Park Avenue, between East 33rd and East 34th Streets, Block 863, Lot 44, Borough of Manhattan.

COMMUNITY BOARD #5M

MARCH 28, 2006, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, March 28, 2006, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the

CALENDAR

193-05-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 32 East 31st Street Corp., owner; Forever Young Spa Inc., lessee.

SUBJECT – Application August 16, 2005 – Under Z.R. 73-36 to allow the operation of a physical culture establishment in the cellar, first floor and first floor mezzanine of a ten story commercial building which is contrary to §32-21 Z.R. PREMISES AFFECTED – 32 East 31st Street, East 31st Street between Park & Madison Avenues, Block 860, Lot 55, Borough of Manhattan

COMMUNITY BOARD #5M

202-05-BZ

APPLICANT – Eric Palatnik, P.C., for Steve Chon, owner; Inn Spa World, Inc., lessee.

SUBJECT – Application August 24, 2005 – Under Z.R. to §73-36 to allow the proposed Physical Culture Establishment in a Manufacturing (M1-1) zoning district. PREMISES AFFECTED – 11-11 131st Street, between 11th and 14th Avenues, Block 4011, Lot 24, Borough of Queens

COMMUNITY BOARD #7Q

323-05-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP for DB Real Estate Enterprises, LLC, owner.

SUBJECT – Application November 9, 2005 – Under Z.R. §72-21 to allow a proposed two-family dwelling that does not provide a required side yard in an R5 Zoning District; contrary to ZR §23-461(b).

PREMISES AFFECTED – 488 Logan Street, West side of Logan Street, 190ft south of intersection with Pitkin Avenue, Block 4227, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #5BK

Pasquale Pacifico, Executive Director

Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL HEARING**350-05-BZY**

APPLICANT – Eric Palatnik, P.C., for 49 Properties, LLC, owner.

SUBJECT - Application December 08, 2005 - Proposed extension of time to complete construction of a minor development pursuant to Z.R. 11-331 for a multi family 4 story residential building under the prior Zoning R6. New Zoning District is R6B as of November 16, 2005.

PREMISES AFFECTED - 245 16th Street, Brooklyn, north side between 4th and 5th Avenue, Block 1048, Lot 51, Borough of Brooklyn.

COMMUNITY BOARD #7BK

353-05-BZY

APPLICANT - Cozen & O'Connor for Emet Veshlom Development, LLC, owner.

SUBJECT - Application December 14, 2005 - Proposed extension of time to complete construction of a minor development pursuant to Z.R. 11-331 for a 38 unit multiple dwelling and community facility under the prior Zoning R6. New Zoning District is R6B as of November 16, 2005.

PREMISES AFFECTED - 614 7th Avenue, Brooklyn, northwest corner of 7th Avenue and 23rd Street, Block 900, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #7BK

354-05-BZY

Cozen & O'Connor for Global Development, LLC, owner. Application December 14, 2005 - Proposed extension of time to complete construction of a minor development pursuant to Z.R. 11-331 for a 62 unit 11 story multiple dwelling under the prior Zoning R6. New Zoning District is R6B/ C2-3 as of November 16, 2005.

PREMISES AFFECTED - 182 15th Street, Brooklyn, south side of 15th Street, 320 feet west of 5th Avenue, Block 1047, Lot 22 Borough of Brooklyn.

COMMUNITY BOARD #7BK

MARCH 29, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 29, 2006, 10:00 A.M., at 40

CALENDAR

355-05-BZY

APPLICANT – Rothkrug, Rothkrug, Weinberg , Spector, LLP for Adda 422 Prospect Avenue, LLC, owner.

Application December 14, 2005 - Proposed extension of time to complete construction of a minor development pursuant to Z.R. 11-331 for a multi family 3 story residential building under the prior Zoning R5. New Zoning District is R5B as of November 16, 2005.

PREMISES AFFECTED - 422 Prospect Avenue, Brooklyn, Prospect Avenue, west of 8th Avenue , Block 869, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #7BK

360-05-BZY

APPLICANT - Greenberg & Traurig , LLP for 400 15th Street, LLC, owner.

SUBJECT - Application December 14, 2005 - Proposed extension of time to complete construction of a minor development pursuant to Z.R. 11-331 for a multi family 3 story residential building under the prior Zoning R5. New Zoning District is R5B as of November 16, 2005.

PREMISES AFFECTED - 400 15th Street, Brooklyn, south side of 15th Street, 205'feet 5" west of intersection of 8th Avenue and 15th Street , Borough of Brooklyn

COMMUNITY BOARD #7BK

362-05-BZY

APPLICANT - Greenberg & Traurig, LLP for 6 on 6th LLC, owner.

SUBJECT - Application December 16, 2005 - Proposed extension of time to complete construction of a minor development pursuant to Z.R. 11-331 for a six story residential building under the prior Zoning R6. New Zoning District is R6B as of November 16, 2005.

PREMISES AFFECTED - 639 Sixth Avenue, Brooklyn, east side of Sixth Avenue 128'2" north of intersection of 18th Street and Sixth Avenue, Borough of Brooklyn.

COMMUNITY BOARD #7BK

367-05-A

APPLICANT - Greenberg & Traurig, LLP for 6 on 6th Avenue, LLC, owner.

SUBJECT - Application December 22, 2005 - An appeal seeking a determination that the owner of said premises has acquired a common law vested rights to continue development commenced under the prior Zoning R6. New Zoning District is R6B as of November 16, 2005.

PREMISES AFFECTED - 639 Sixth Avenue, east side of Sixth Avenue, 128'-2" north of intersection of 18th Street and Sixth Avenue, Borough of Brooklyn.

COMMUNITY BOARD #7BK

368-05-A

APPLICANT - Greenberg & Traurig , LLP for 400 15th

Street, LLC., owner.

SUBJECT - Application December 22, 2005 - An appeal seeking a determination that the owner of said premises has acquired a common law vested rights to continue development commenced under the prior Zoning R6. New Zoning District is R6B as of November 16, 2005.

PREMISES AFFECTED - 400 15th Street, south side of 15th Street, 205'-5" west of intersection of 8th Avenue and 15th Street, Borough of Brooklyn.

COMMUNITY BOARD #7BK

Pasquale Pacifico, Executive Director

MINUTES

REGULAR MEETING TUESDAY MORNING, JANUARY 31, 2006 10:00 A.M.

Present: Chair Srinivasan, Vice Chair Babbar,
Commissioner Chin and Commissioner Collins.

The motion is to approve the minutes of regular meeting of the Board held on Tuesday morning and afternoon, November 15, 2005, as printed in the bulletin of November 24, 2005, Vol. 90, Nos. 47-48. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

1005-66-BZ

APPLICANT – Moshe M. Friedman, P.E., for Chelsea Town Company, owner.

SUBJECT – Application November 22, 2005 – Request for a waiver of Rules of Procedure and reopening for the Extension of Term of a variance previously granted under Section 60(1b) of the Multiple Dwelling Law, which expired May 2, 2002, for transient parking of unused and surplus tenant spaces within the accessory garage. Transient parking is limited to twenty-two cars. The premise is located in an R8B zoning district.

PREMISES AFFECTED – 320 West 30th Street, a/k/a 314-322 West 30th Street, south side of West 30th Street, 202' west of 8th Avenue, Block 753, Lot 51, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Abstain: Commissioner Collins.....1

THE RESOLUTION –

WHEREAS, this application is a request for a re-opening and an extension of term of a previously issued grant to allow transient parking in accessory garage; and

WHEREAS, a public hearing was held on this application on January 10, 2006, after due notice by publication in *The City Record*, and then to decision on January 31, 2006; and

WHEREAS, Community Board No. 5, Manhattan, recommended approval of this application; and

WHEREAS, on May 2, 1967, the Board granted an application pursuant to Section 60(1)(b) of the Multiple Dwelling Law (“MDL”) under the subject calendar number to permit the use of transient parking for the unused and surplus parking spaces in a multiple dwelling accessory garage, in addition to tenant and monthly parking, on condition that the transient parking spaces shall not exceed twenty-two (22) in

number; and

WHEREAS, the term of the variance was extended for a period of ten years on February 8, 1984 and June 13, 1995; the last expiration date was May 2, 2002; and

WHEREAS, the Board has reviewed the submitted materials and agrees that the requested extension of term is appropriate to grant.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, *reopens and amends* the resolution pursuant to Section 60(1)(b) of the MDL, said resolution having been adopted on May 2, 1967, as subsequently extended, so that as amended this portion of the resolution shall read: “granted for a term of ten (10) years from May 2, 2002, to expire on May 2, 2012; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked ‘Received August 16, 2005’–(2) sheets and ‘November 22, 2005’–(2) sheets; and *on further condition*;

THAT the number of daily transient parking spaces shall be no greater than 22;

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

THAT a sign providing the same information about tenant recapture rights be placed in a conspicuous place within the garage;

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

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; 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. 104088345)

Adopted by the Board of Standards and Appeals,
January 31, 2006.

386-74-BZ

APPLICANT – Stadtmauer Bailkin/Steve Sinacori, for Riverside Radio Dispatcher, Inc., owner.

MINUTES

SUBJECT – Application October 19, 2005 – Reopening for an amendment to Z.R. 72-21 a Variance application to permit the erection of a one story building for use as an automobile repair shop which is not a permitted use. The proposed amendment pursuant to ZR 52-35 for the change of use from one non-conforming use (Automotive Repair Shop UG16) to another non-conforming use (Auto Laundry UG16) is contrary to the previously approved plans. The premise is located in C4-4 zoning district.

PREMISES AFFECTED – 4184/4186 Park Avenue, east side of Park Avenue, between East Tremont Avenue and 176th Street, Block 2909, Lot 8, Borough of The Bronx.

COMMUNITY BOARD #6BX

APPEARANCES –

For Applicant: Richard Bowers.

ACTION OF THE BOARD - Application granted on condition.

THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Abstain: Commissioner Collins.....1

THE RESOLUTION -

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance, to permit a change of use from an automobile repair shop to an automobile laundry (a car wash); and

WHEREAS, a public hearing was held on this application on November 22, 2005, after due notice by publication in *The City Record*, with a continued hearing on January 10, 2006, and then to decision on January 31, 2006; and

WHEREAS, a committee of the Board conducted a site visit of the premises; and

WHEREAS, Community Board 8, Bronx, recommends approval of this application; and

WHEREAS, the subject premises is located on the east side of Park Avenue between East Tremont Avenue and 176th Street, and has a total lot area of approximately 14,892.54 sq. ft.; and

WHEREAS, the site is located within a C4-4 zoning district; and

WHEREAS, the site is improved upon with a 5,000 sq. ft. one-story building formerly occupied as a use Group 16 automobile repair facility, but which is now vacant; and

WHEREAS, on February 11, 1975, the Board granted a variance under the subject calendar number to permit the erection of this one-story building and its occupancy as an automotive repair facility; and

WHEREAS, the applicant represents that the current owner desires to convert the building to a UG 16 automobile laundry, that would serve its fleet of livery cars, nearby automotive uses, and the nearby residential community; the facility would also provide hand detailing, waxing, and vacuuming, as well as an accessory retail store and coffee shop; and

WHEREAS, the applicant states that the facility will

operate 24 hours per day; and

WHEREAS, at hearing, the Board expressed concern about the proposed layout; specifically, the following issue was identified: the proposed drying area appeared to be too small to accommodate the amount of cars using the car wash, having space for only three cars, which could lead to car washing activity taking place on the side walk or street, or back up of cars onto the street; and

WHEREAS, the applicant responded by increasing the capacity of the drying area to four cars, and also explained that cars move through the car wash at a rate that allows drying to occur in a reasonable time frame (two to three minutes) with a drying area with a four car capacity; and

WHEREAS, the Board finds the modification and explanation acceptable; and

WHEREAS, at hearing, the Board also asked the applicant to explain any potential impact the car wash might have on the surrounding community; and

WHEREAS, the applicant responded by noting that the surrounding uses were mostly commercial and automotive, except for a multiple dwelling to the north of the site; the applicant states that a 10 ft. high wall will be installed on this side of the site that will act as a screen; and

WHEREAS, the Board was also concerned about the height of the temporary shed at the rear of the property; the applicant responded that it will be no greater than 10 ft. in height; and

WHEREAS, finally, at hearing, the Board expressed concern regarding the existing curb cuts and the need for a pedestrian sidewalk; in particular, the Board asked that the curb cut nearest to the pedestrian entry be eliminated; and

WHEREAS, in response, the applicant submitted a revised site plan that eliminated the offending curb cut and that illustrated a new sidewalk near the pedestrian entry; and

WHEREAS, based upon the submitted evidence, the Board finds the requested amendment 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 11, 1975, so that as amended this portion of the resolution shall read: “to permit the change in use from Use Group 16 automobile repair facility to Use Group 16 automobile laundry, *on condition* that all work shall substantially conform to drawings as filed with this application, marked ‘Received October 19, 2005’ – (2) sheets and ‘January 16, 2006’ – (2) sheets; and *on further condition*:

THAT no carwash activities shall be conducted on the sidewalks or streets abutting the site;

THAT all landscaping and fencing shall be installed and/or maintained as shown on the BSA-approved plans;

THAT the shed at the rear of the property shall be no greater than 10 ft. high;

THAT all signage comply with applicable C4-4 district regulations;

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

MINUTES

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. 200868098)

Adopted by the Board of Standards and Appeals, January 31, 2006.

648-42-BZ

APPLICANT – Sheldon Lobel, P.C., for Abenaa Frempong, owner.

SUBJECT – Application August 11, 2005 - Pursuant to ZR §11-413 this application seeks to change the ground floor use from previously approved manufacture of ferrous and non-ferrous metal products (UG16) to music studio (UG9). The owner also seeks to construct an as-of- right two family residences on two additional floors, thereby making this a proposed three story building. The premise is located in an R-6 zoning district.

PREMISES AFFECTED – 28 Quincy Street, between Classon Avenue and Downing Street, Block 1972, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to February 28, 2006, at 10 A.M. for continued hearing.

7-57-BZ

APPLICANT – Ruth Peres, Esq., for Kapsin & Dallis Realty Corp., owner; Ruth Peres, lessee.

SUBJECT – Application December 15, 2005 – Pursuant to ZR §11-411 for an Extension of Term of a gasoline service station which expired on September 30, 2005. The premise is located in an R3-2 zoning district.

PREMISES AFFECTED – 2317-27 Ralph Avenue – 1302-1320 East 65th Street, southeast corner of Ralph Avenue and Avenue M, Block 8364, Lot 34, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Ruth Peres and Peter Leong.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to February 28, 2006, at 10 A.M., for decision, hearing closed.

374-71-BZ

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for Evelyn DiBenedetto, owner; Star Toyota, lessee.

SUBJECT – Application filed pursuant to ZR §§72-01 and 72-22 for an extension of term of a variance permitting an automobile showroom with open display of new and used cars (UG16) in a C2-2 (R3-2) district. The application also seeks an amendment to permit accessory customer and employee parking in the previously unused vacant portion of the premises.

PREMISES AFFECTED – 205-11 Northern Boulevard, Block 6269, Lots 14 and 20, located on the North West corner of Northern Boulevard and the Clearview Expressway, Borough of Queens.

COMMUNITY BOARD#11Q

APPEARANCES –

For Applicant: Adam Rothkurg and Michael Koufakir.

For Objection: Terri Pouymari, Kevin Vallone, Henry Euler and Theresa Wallace.

ACTION OF THE BOARD – Laid over to March 14, 2006, at 10 A.M., for continued hearing.

111-94-BZ

APPLICANT – Ari Goodman, Esq., for 2502 8th Avenue Corp., owner; Michael Williams, lessee.

SUBJECT – Application May 4, 2005 – Extension of term of a Special Permit for the vacant portion of a lot to be used for accessory parking for the commercial uses on the built portion of the site and as incidental monthly/overnight parking for the residential neighbors. The site is located in a C1-4/R-8 zoning district.

PREMISES AFFECTED – 3543-49 Broadway, a/k/a 601 West 145th Street, northwest corner intersection of Broadway and West 145th Street, Block 2092, Lot 26, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Ari Goodman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to February 28, 2006, at 10 A.M., for decision, hearing closed.

165-02-BZ thru 190-02-BZ

APPLICANT – Stuart A. Klein, Esq./Steve Sinacori, Esq., for Park Side Estates, LLC., owner.

SUBJECT – Application March 31, 2005- Reopening for an amendment to BSA resolution granted under calendar numbers 167-02-BZ, 169-02-BZ, 171-02-BZ, 173-02-BZ and 175-02-BZ. The application seeks to add 5 residential units to the overall development (encompassing lots 21 and 28) for a total of 37, increase the maximum wall height by 2'-0", and increase the number of underground parking spaces from 11

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to 20, while remaining complaint with the FAR granted under the original variance, located in an M1-1 zoning district.

PREMISES AFFECTED – 143-147 Classon Avenue, a/k/a 380-388 Park Avenue and 149-159 Classon Avenue, southeast corner of Park and Classon Avenues, Block 1896, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Steven Sinacori.

ACTION OF THE BOARD – Laid over to March 14, 2006, at 10 A.M., for continued hearing.

APPEALS CALENDAR

177-05-A

APPLICANT – Joseph Sherry for Breezy Point Cooperative, owner Raymond Reis, lessee.

SUBJECT – Application August 2, 2005 – Proposed reconstruction and enlargement of an existing one family dwelling, not fronting on mapped street and located partially in the bed of a mapped street (Oceanside Avenue), are contrary to both Section 35 and Section 36, Article 3 of the General City Law and the upgrade of an existing private disposal system located in the bed of a mapped street is contrary to the Buildings Department Policy.

PREMISES AFFECTED – 5 Arcadia Walk, E/S 24.87 S/O Mapped Breezy Point Blvd, Block 16350, part of Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Loretta Papa.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated July 25, 2005, acting on Department of Buildings Application No. 402117311, reads:

“A1- The Site is located partially in the bed of mapped street therefore no permit or Certificate of Occupancy can be issued as per Article 3, Section 35 of the General City Law;

A2- The site and building is not fronting on an official mapped street therefore, no permit or Certificate of Occupancy can be issued as per Art. 3, Sect 36 of the General City Law; also no permit can be issued since the proposed construction does not have at least 8% of total perimeter of building fronting directly upon a legally mapped street or frontage space and therefore contrary to Section C27-291- (C26-401.1) of the Administrative Code of the City

of New York.

A3- The private disposal system is in the bed of a mapped street which is contrary to Department of Buildings policy;” and

WHEREAS, a public hearing was held on this application on January 31, 2006 after due notice by publication in the *City Record*, on which date the matter was closed and decided; and

WHEREAS, by letter dated August 22, 2005, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated August 31, 2005, the Department of Environmental Protection states that it has reviewed the project and has no objections; and

WHEREAS, by letter dated November 28, 2005, the Department of Transportation states that it has reviewed the project and has no objections; and

WHEREAS, 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, July 25, 2005, acting on Department of Buildings Application No. 402117311, is modified by the power vested in the Board by Section 36 And Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received August 2, 2005”-(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 approved plans shall be considered approved only for the portions related to the specific relief granted; and

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

Adopted by the Board of Standards and Appeals, January 31, 2006.

181-05-A

APPLICANT – Walter T. Gorman, P.E. Breezy Point Cooperative, owner Donald & Connie & Jones, lessee.

SUBJECT – Application August 3, 2005 – Proposed to construct a two story home which does not fronting on mapped street, which is contrary to Section 36, Article 3 of the General City Law, also in the bed of a mapped street (Beach 207th Street) contrary to Section 35, General City Law and the installation of a new septic system located in the bed of a mapped street is contrary to the Buildings Department Policy. Located in an R-4 Zoning District

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PREMISES AFFECTED – 22 Atlantic Walk w/s 3.59 North of Breezy Point Boulevard, Block 16350, part of Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: John Ronan.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated December 9, 2005, acting on Department of Buildings Application No. 402182810, reads:

- “1. Proposal to construct a two story (2) home and install a new septic system on a site which lies within an R-4 district is contrary to Article 3, Section 36 (2) of the General City Law (GCL) in that the site does not front on a mapped street (Atlantic Walk) and is contrary to Article 3, Section 35 of the General City Law in that the home and septic system will lie within the bed of a street which is mapped (Beach 207th), and contrary to Section 27-291 of the NYC Building Code and must therefore be referred back to the Board of Standards and Appeals for approval”; and

WHEREAS, a public hearing was held on this application on January 31, 2006 after due notice by publication in the *City Record*, on which date the matter was closed and decided; and

WHEREAS, by letter dated August 22, 2005, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated August 31, 2005, the Department of Environmental Protection states that it has reviewed the project and has no objections; and

WHEREAS, by letter dated November 28, 2005 , the Department of Transportation states that it has reviewed the project and has no objections; and

WHEREAS, 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, December 9, 2005, acting on Department of Buildings Application No. 402182810, is modified by the powers vested in the Board by Section 36 and Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received December 16, 2005”–(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 approved plans shall be considered approved only for the portions related to the specific relief granted; and

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

Adopted by the Board of Standards and Appeals, January 31, 2006.

304-05-A

APPLICANT – Joseph Sherry, P.E. for Breezy Point Cooperative, owner Fred & Josephine Rella, lessee.

SUBJECT – Application October 13, 2005 - Enlargement of a one family dwelling which does not front on mapped street, which is contrary to Section 36, Article 3 of the General City Law. Located in an R4 Zoning District.

PREMISES AFFECTED – 38 Ocean Avenue E/S 294.86 N/O Rockaway Point Boulevard, Block 16350, part of Lot 300, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Loretta Papa.

ACTION OF THE BOARD - Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated September 29, 2005, acting on Department of Buildings Application No. 402176015, reads:

- “A1- The Site and Building is not fronting on an official mapped street; therefore, no permit or Certificate of Occupancy can be issued as per Article 3, Section 36 of the General City Law; no permit can be issued since the proposed construction does not have at least 8% of total perimeter of building fronting directly upon a legally mapped street or frontage space and therefore contrary to Section C27-291- of the Administrative Code of the City of New York.”; and

WHEREAS, a public hearing was held on this application on January 31, 2006 after due notice by publication in the *City Record*, on which date the matter was closed and decided; and

WHEREAS, by letter dated November 28, 2005, the Fire Department states that it has reviewed the above project and has no objections; and

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

Therefore it is Resolved that the decision of the Queens

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Borough Commissioner, September 29, 2005, acting on Department of Buildings Application No. 402176015, 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 October 13, 2005" – (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 approved plans shall be considered approved only for the portions related to the specific relief granted; and

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

Adopted by the Board of Standards and Appeals, January 31, 2006.

305-05-A

APPLICANT – Joseph Sherry, P.E. for Breezy Point Cooperative, owner Jim McShane, lessee.

SUBJECT – Application October 13, 2005 - Enlargement of a one family dwelling which does not front on mapped street, which is contrary to Section 36, Article 3 of the General City Law and upgrade of a private disposal system in the bed of a service road contrary to Dept of Buildings policy. Located in an R4 Zoning District

PREMISES AFFECTED – 19 Queens Walk, E/S 416.39 N/O Breezy Point Boulevard. Block 16350 part of Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Loretta Papa.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated September 29, 2005, acting on Department of Buildings Application No. 402176006, reads:

“A1– The Site and Building is not fronting on an official mapped street; therefore, no permit or Certificate of Occupancy can be issued as per Article 3, Section 36 of the General City Law; no permit can be issued since the proposed construction does not have at least 8% of total perimeter of building fronting directly upon a

legally mapped street or frontage space and therefore contrary to Section C27-291- of the Administrative Code of the City of New York.

A-2 – The private disposal system is in the bed of a service road which serves as a street which is contrary to Department of Buildings policy ; and

WHEREAS, a public hearing was held on this application on January 31, 2006 after due notice by publication in the *City Record*, on which date the matter was closed and decided; and

WHEREAS, by letter dated November 28, 2005, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, 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, September 29, 2005, acting on Department of Buildings Application No .402176006, 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 October 13, 2005"–(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 approved plans shall be considered approved only for the portions related to the specific relief granted; and

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

Adopted by the Board of Standards and Appeals, January 31, 2006.

324-05-BZY

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Perry Street Development Corp., c/o Richard Born, Hotel Wellington, owners.

SUBJECT – Application November 10, 2005 – Proposed extension of time to complete construction pursuant to Z.R. 11-332 for 2-story residential addition to an existing 6-story commercial building. Appeal case is seeking a determination that the owner of said premises has acquired a common-law vested right to continue development commenced under the prior C6-2 zoning district. Current Zoning District is R6A (C1-5) and (C1-7).

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PREMISES AFFECTED – 164-172 Perry Street, midblock portion of block bounded by Perry, Washington and West Streets and Charles Lane, Block 637, Lots 13 and 17, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Gary R. Tarnoff.

ACTION OF THE BOARD - Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Abstain: Commissioner Collins.....1

THE RESOLUTION –

WHEREAS, this is an application under Z.R. § 11-332, to renew a building permit and extend the time for the completion of a two-story enlargement to an existing six-story building; and

WHEREAS, this application was brought concurrently with a companion application under BSA Cal. No. 348-05-A, decided the date hereof, which is an appeal to the Board for a finding that the owner of the premises has obtained a vested right to continue construction under the common law; and

WHEREAS, the Board notes that while separate applications were filed, in the interest of convenience, it heard the cases together and the record is the same for both; and

WHEREAS, a public hearing was held on this application on December 13, 2005 after due notice by publication in The City Record, with a continued hearing on January 10, 2006 and then to decision on January 31, 2006; and

WHEREAS, the site was inspected by a committee of the Board; and

WHEREAS, Council Member Quinn, Assembly Member Glick, Senator Duane and the Manhattan Borough President opposed the granting of any relief to the applicant; and

WHEREAS, certain other members of the community also opposed this application, including the Greenwich Village Society for Historic Preservation, (collectively, the “opposition”), alleging that some of the enlargement work was conducted contrary to the issued permit or in an unsafe manner; these allegations are addressed below; and

WHEREAS, the subject premises is an 8,377 sq. ft. midblock site consisting of two tax lots (Lots 13 and 17), on a block bounded by Perry, Washington and West Streets, and Charles Lane; and

WHEREAS, the premises is currently improved upon with a six-story garage building on Lot 13, and a three-story parking and garage building on Lot 17; the proposed two-story enlargement is of the six-story garage building, that

WHEREAS, the premises is currently located primarily within an R6A(C1-5) zoning district (with a small 3’-5” wide portion within a C1-7 zoning district), but was formerly located within a C6-2 zoning district; and

WHEREAS, the proposed enlargement complies with the former C6-2 zoning district parameters as to floor area, building height, and lot coverage; and

WHEREAS, however, on October 11, 2005 (hereinafter, the “Enactment Date”), the City Council voted to adopt the Far West Village Rezoning, which rezoned all but a sliver of the site

to R6A(C1-5), as noted above; and

WHEREAS, because the site is now within an R6A(C1-5) district, the existing building becomes a lawful non-complying structure, and the proposed enlargement increases the degree of non-compliance as to floor area, building height, and lot coverage and therefore is not permitted; and

WHEREAS, ZR §11-30 et seq. sets forth the regulations that apply to the subject application for a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, ZR §11-31(c)(3) defines construction such as the proposed enlargement as “other construction”; and

WHEREAS, for “other construction”, an extension of time to complete construction may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, Z.R. §11-332 reads, in pertinent part: “[F]or other construction if construction has not been completed on the effective date of any applicable amendment, the building permit shall automatically lapse and the right to continue construction shall terminate. An application 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 . . . one term of not more than three months for other construction. 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, Z.R. § 11-31(a) reads: “For 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 Department of Buildings (“DOB”) permits were lawfully issued to the owner of the subject premises; and

WHEREAS, the record indicates that the following permit was lawfully issued to the owner by DOB: on August 30, 2005, an alteration permit (Permit No. 104214814-01-AL; hereinafter, the “A1 Permit”) for the proposed enlargement; and

WHEREAS, additionally, other related permits were issued to facilitate construction of the proposed enlargement, including a fence permit, a sidewalk shed permit and a scaffold permit; and

WHEREAS, the Board has reviewed the record and agrees that the A1 Permit was lawfully issued to the owner of the subject premises on the referenced dates, prior to the Enactment Date; and

WHEREAS, although there was no dispute brought to the Board’s attention as to whether the A1 Permit issuance was based upon complete plans and specification, while the instant matter was in hearing, the Board was made aware that DOB was

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conducting an audit of the A1 Permit; and

WHEREAS, the Board is aware that after the audit, DOB issued a Notice of Objections as well as a 10 day letter indicating that the permit would be revoked unless the objections were resolved; and

WHEREAS, subsequent to this, the applicant submitted into the record the DOB Notice of Objections that indicates that all of the objections were resolved and that the audit was accepted; and

WHEREAS, in addition, the record contains a letter of rescission for the previously issued revocation from the Borough Commissioner of DOB; and

WHEREAS, in reliance upon DOB's review of the A1 Permit and the subsequent successful resolution of all objections, as well as confirmation of this from the Borough Commissioner, which is the only evidence before the Board as to the validity of the Permit, the Board concludes that the terms and general provisions of ZR § 11-31(a) are satisfied; and

WHEREAS, the Board makes this conclusion notwithstanding opposition's contentions as set forth in a letter dated January 27, 2006, which essentially recites some of the objections listed in the Notice of Objections and asks that the Board delay decision until said objection are resolved; and

WHEREAS, as discussed above, these objections have been resolved and the Borough Commissioner has rescinded the previously issued revocation letter; and

WHEREAS, accordingly, the Board finds that the record contains sufficient evidence to satisfy the findings set forth ZR 11-31(a) and that a decision may be rendered provided the other findings are met; 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 an enlargement; and

WHEREAS, the Board first notes that the text of this provision requires the Board to evaluate the degree of completed work against what remains to be done; and

WHEREAS, thus, the Board's deliberation focuses upon the amount of work completed versus what remains in terms of actual construction; and

WHEREAS, useful gauges of the substantiality of the completed work are the time spent on construction up to the Enactment Date versus how much time the proposed enlargement will take to complete, as well as a discussion of the complexity of the work already done versus that which remains; and

WHEREAS, however, these gauges are not dispositive, and may be accorded different weight by the Board depending on the circumstances of a particular case; and

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

WHEREAS, the Board notes that like the actual work performed, the expenditures to be assessed under ZR § 11-332 are those incurred after the permit is issued; and

WHEREAS, accordingly, as is reflected below, the Board only considered post-permit expenditures, as submitted by the

applicant per the Board's request; and

WHEREAS, in its written statements and testimony, the applicant represents that as of the Enactment Date, substantial construction had been completed and substantial expenditures were made after the issuance of the A1 Permit; and

WHEREAS, the applicant states that work on the proposed enlargement subsequent to the issuance of the A1 Permit involved the following: (1) Selective demolition, consisting of the creation of two shafts by the demolition of portions of the first floor through the roof; (2) Cutting and excavation of the pit foundation for the new elevator; (3) Existing concrete encased steel moment connections were exposed in order to determine the necessary upgrades to the existing steel to bear the load of the new structure; (4) Masonry shaft construction, consisting of reinforced solid filled structural block constructed as a bearing member of the existing building; (5) Reinforcement of the structural columns from the fifth floor through the existing roof by encasing the columns and the connections in reinforced concrete; (6) The structural steel for the new 2-story addition was erected and fifty percent of the Q-decking (corrugated metal deck – 7th floor portion) was installed; and

WHEREAS, in support of this statement the applicant has submitted the following evidence: various affidavits from the owner and contractor, a daily work log prepared by the contractor, and pictures of the work completed along with an affidavit from a construction supervisor and attached schedule that reflects in what month the pictures were taken; none of the pictures were taken after the Enactment Date; and

WHEREAS, at the request of the Board, the applicant also submitted plans stamped and signed by Asymptote Architecture, indicating the extent of completion of the proposed enlargement as of the Enactment Date; this set of plans corroborates the applicant's statements as to the scope of work; and

WHEREAS, the Board has reviewed this documentation and agrees that it establishes that the afore-mentioned work was completed prior to the Enactment Date; and

WHEREAS, the applicant states that this work was done over 29 days of construction; and

WHEREAS, during the course of construction, DOB inspectors were at the site on various occasions, and the following DOB violations were issued: (1) issuance of DOB Violation 091805CERMR01 on September 18, 2005, which states "construction activities are being performed on [sic – probably should read "beyond"] weekdays between the hours of 7am and 6pm without a variance as required by Section 24-224 of the Administrative Code" (hereinafter, the DOB Violation); and (2) issuance of ECB Violation 34490118L on September 22, 2005, which reads in pertinent part "Failure to safeguard public and property affected by construction operations noted: work in progress under job#104214814 exp 12-01-05 at roof levels adding 2 stories without providing sidewalk or protection" (hereinafter, the "ECB Violation"); and

WHEREAS, the ECB Violation was the result of an inspection on September 22, 2005, on which date work was stopped pursuant to a Stop Work Order ("SWO"); and

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WHEREAS, the applicant notes that the SWO was lifted on September 23, 2005 with respect to interior work and on October 12, 2005 with respect to exterior work; and

WHEREAS, no Stop Work Order was issued on September 18, 2005 when the DOB Violation was issued; and

WHEREAS, the applicant states that the following work remains to be done: “finish Q-decking (8th floor portion) and structural studs and place concrete at decks, finish bulkhead portion of masonry shaft, install exterior wall, roofing and window system on 7th and 8th floor, finish elevator, install scissor stairs, completion of mechanical, plumbing and electrical systems, finish lobby areas on cellar thru 8th floor, and finish loft apartments and related services on 7th and 8th floors”; and

WHEREAS, at the time of the initial application, the applicant stated that the remaining work would take approximately 50 to 60 days to finish; and

WHEREAS, however, in a submission dated December 8, 2006, the applicant noted that due an inordinate amount of rain in the fall of 2005, extensive damage to the proposed enlargement as well as to the existing building resulted, and that a longer amount of time to complete construction might therefore be required; and

WHEREAS, the applicant supported this contention with data from the National Climactic Data Center, which reflected the amount of rainfall, as well as an affidavit from the construction contractor which outlined the water damage; and

WHEREAS, based upon this concern, the applicant filed the afore-mentioned application for a common-law vested rights determination; and

WHEREAS, the Board notes that opposition questions whether the 50 to 60 day time estimate is accurate, but no proof of its inaccuracy has been provided by them; and

WHEREAS, so, for purposes of this application, the Board will rely upon the assertion of the applicant that, absent the intervening circumstance of rain damage that would not have occurred had the A1 Permit not lapsed by operation of law on the Enactment Date, completion of construction would take approximately 60 days; and

WHEREAS, thus, 29 out of 89 total days of anticipated construction (or 32 percent) took place prior to the Enactment Date, which the applicant represents supports a conclusion that substantial construction had been completed; and

WHEREAS, the applicant also states that, in these 29 days, the most complex work has already been completed; specifically, the applicant states that the reinforcement of the existing building structure, the excavation, demolition and dewatering for the new building shafts and the erection of the steel structure for the addition were the most challenging aspects of the proposed enlargement, from an engineering and site safety perspective; and

WHEREAS, the applicant states that the remaining work consists of installation of the remaining Q-decking, construction of the bulkhead, installation of the exterior wall, roof and windows and interior finish work; and

WHEREAS, the applicant concludes that based upon actual work performed under the A1 Permit, the amount of days worked versus those remaining, and the complexity, that

substantial construction has been completed sufficient to satisfy the standard in ZR § 11-332; and

WHEREAS, the Board agrees that the number of days that work proceeded, as well as its complexity, are useful as gauges, but further notes that the actual completion of physical construction is substantial in of itself, in that it resulted in numerous visible alterations to the existing building necessary to the proposed enlargement; and

WHEREAS, as to costs, the applicant initially stated that the expenditures made totaled \$1,603,056 of the total project cost of \$2,519,613 (51 percent); in support of this claim, the applicant has submitted checks, a receivables journal, and affidavits; and

WHEREAS, however, as noted above, the Board observes that ZR § 11-332 confines the expenditure analysis to those costs incurred after the permit and up to the date of the zoning amendment; and

WHEREAS, accordingly, the Board asked the applicant to clarify what costs were expended after the A1 Permit was issued; and

WHEREAS, in a submission dated December 27, 2005, the applicant states that a total of \$1,484,524, or approximately 47 percent of the total project cost, was incurred between the issuance of the A1 Permit and October 11, 2005, the date the A1 Permit lapsed; and

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

WHEREAS, absent any other consideration, the Board would agree; and

WHEREAS, however, opposition to this case expressed concerns about three primary issues: (1) that, contrary to the assertions of the applicant, the developer should have been aware of the proposed rezoning since the plans for the area were known to the public; (2) that some of the performed construction and incurred expenditures that were folded into the applicant’s analysis were the result of illegal after-hours or weekend work; and (3) that some of the construction and expenditures in the analysis were the result of work performed while a safety measure was not complied with, as evidenced by the ECB Violation; and

WHEREAS, as to the first contention, leaving aside whether it is factually accurate, the Board finds that consideration of whether the develop knew of the impending rezoning is not particularly relevant or pertinent, where the Board’s consideration under ZR § 11-332 is technical in nature, and is based upon a review of construction work and expenditure; and

WHEREAS, additionally, the applicant represents that the inception of the development process began in the fall of 2004 when the owner was advised by the company that owned the garage on which the proposed enlargement is being constructed that is would be ceasing its operations; and

WHEREAS, the applicant further states that the developer retained the project architect in January 2005, purchased the floor area development rights from the adjacent parcel, Lot 17 in March 2005, and retained a construction manager in June, 2005 ; and

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WHEREAS, as to the second and third contentions, opposition claims that such work and expenditure should not be credited by the Board; and

WHEREAS, the Board took such claims seriously and asked the applicant to address the specific concerns; and

WHEREAS, in support of the second contention, opposition submitted affidavits from neighbors that state that they observed work conducted after legal permit hours (which are 9 to 5) and on the weekends (when a special permit from DOB would be needed); and

WHEREAS, in response to the second contention (concerning after hours work), the applicant provided the Board affidavits, and cited to the work log, in support of the contention that the only after-hours work performed is as follows: (1) steel was erected by crane on Saturday, September 17, 2005, and Sunday, September 18, 2005; this work was permitted under Department of Transportation ("DOT") Permit 02-2005258-143 (valid 9/17/05 through 9/25/05, indicating "may work Sat-Sun 9am – 6 pm") and DOB Permit 104214814 (valid 9/17/05, 9 am to 5 pm); (2) on Saturday, September 24, 2005, a sidewalk bridge was erected; this work was performed in order to correct the condition cited in the ECB Violation; (3) on Saturday, October 8, 2005, work consisting primarily of installing out rig safety nets, generally permitted under DOB Permits 104243506-01-EQ-SH, dated September 26, 2005, and 104251060-01-EQ-SF, dated October 5, 2005, was performed; there was also some interior work performed on this date that was related to site safety and site maintenance, specifically drilling of saddles, required for Fire Department access, on the stand pipe and general cleaning work; and (4) on Sunday, October 16, 2005, emergency work was performed to secure an out rig that had been dislodged by high winds; and

WHEREAS, as to the work performed on September 17 and 18, the applicant states that although the DOB permit was on its face limited to Saturday, September 17, 2005, the work had been permitted by DOT to also occur on Sunday, September 18, 2005; and

WHEREAS, the applicant also states that commencement of the work had been unexpectedly delayed on the morning of Saturday, September 17, 2005, such that only approximately 75 percent of the installation could take place on that day, and that work proceeded on Sunday September 18, 2005 because the DOT permit remained valid for one more day, because the crane was already in place and because of public safety concerns arising from the fact that not all of the steel had been braced; and

WHEREAS, according to the applicant, a DOB inspector visited the site on Sunday, September 18, 2005, was apprised of the delays and the safety concerns and elected not to issue a Stop Work Order, but did issue the DOB Violation; and

WHEREAS, the applicant also states that on Saturday, September 17, 2005, there was some additional interior work performed, which was generally related to site safety and site maintenance, specifically, blocking of the elevator shaft, dewatering of the elevator pit and installation of fall

protection at the stair shaft; and

WHEREAS, the applicant concludes that any weekend work was properly permitted and/or was necessitated by site safety concerns that did not relate to the scope of work of the A1 Permit; and

WHEREAS, as to the allegations of work after hours during the week, the applicant states that DOB did not issue any violations for after hours work despite its receipt of complaints; and

WHEREAS, the Board has reviewed the affidavits, the work log, and the referenced weekend work permits, and agrees that at least for September 17, 2005, work was allowed at the premises, up until 5 PM; and

WHEREAS, the Board also agrees that at least some of the weekend work conducted was in order to address safety concerns at the site; and

WHEREAS, however, opposition observes that the daily work log for Sunday September 18, 2005 indicates that the work involved setting steel on the roof with a crane and the erection of 8th floor beams; and

WHEREAS, the Board asked the applicant to respond to this; and

WHEREAS, in response, the applicant notes that this work was done so that unsecured steel would not be present on top of the building, which would pose a potential safety hazard; and

WHEREAS, the Board has reviewed the contentions of both parties as to the weekend work and the alleged after-hours work during the week; and

WHEREAS, the Board agrees that, as a general principle, work that was not done pursuant to the time limitations of a permit should not be counted towards vesting, absent extenuating circumstances; and

WHEREAS, the applicant argues that such extenuating circumstances exist here; and

WHEREAS, however, as discussed in more detail below, the applicant argues that since the aggregate cost of such work is not significant, the Board could find that even when this work is excluded, the threshold of substantial construction and expenditure is nevertheless met; and

WHEREAS, the applicant also notes that the weekend work done in response to safety concerns was not folded into the substantial work or expenditures calculations; and

WHEREAS, accordingly, exemption of this work would not affect the determination that the work and expenditures were substantial; and

WHEREAS, as to the third contention (concerning work done where a sidewalk shed was required), opposition states that in response to complaints, DOB issued the ECB Violation and related Stop Work Order for not having a sidewalk shed; and

WHEREAS, opposition contends that the exterior work on the proposed enlargement performed prior to September 23, 2005 was done in an unsafe manner because of the failure to provide a sidewalk shed and therefore should not be credited; and

WHEREAS, the applicant states that the Board should not discount work from the substantial construction and

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substantial expenditures standards because of a site safety violation for the lack of a sidewalk shed; and

WHEREAS, the applicant argues that while site safety is very important, and violation of said standards may result in penalties, the issuance of a violation does not invalidate work that was performed pursuant to validly issued DOB permits; and

WHEREAS, the Board agrees that issuance of a violation may not render a permit invalid nor does it necessarily mean that the work that was performed prior to issuance of a violation is unlawful; and

WHEREAS, additionally, like the applicant, the Board is unaware of any explicit authority that would allow it to discount work performed while the violation conditions remained from the substantial construction and substantial expenditures calculations; and

WHEREAS, nor has the opposition cited to any such authority; instead, the opposition states that the applicant disregarded safety concerns in order to continue with construction at an expedited pace and that the endangerment of the surrounding buildings and people should not be rewarded; and

WHEREAS, notwithstanding the apparent lack of precedent for excluding from a vesting calculation work performed in violation of an applicable safety requirement, the Board can envision that, depending on the circumstances, the possibility of discounting such work should at least be entertained, regardless of any official action as to the underlying permit; and

WHEREAS, for instance, if irrefutable proof was provided to the Board of a developer's willing and knowing disregard for a site safety provision such that danger to persons or property was imminent and obvious, and no other safety measures were taken and no mitigating circumstances existed, the Board, would at a minimum, consider excluding such work so that developers are not encouraged to forego

WHEREAS, however, as to this disputed work, the applicant makes the same argument as it did as to unpermitted work; specifically, that even if such work is excluded, the threshold of substantial construction and expenditure is nevertheless met; and

WHEREAS, specifically, the applicant notes that the expenditures for work that arguably required a sidewalk bridge or other pedestrian safety measures on Monday, September 19, 2005 through Thursday, September 22, 2005 consisted solely of the labor costs for the installation of steel materials that were already on the site, which are estimated by the developer to be approximately \$20,000; and

WHEREAS, the applicant states that this amount represents approximately 7 percent of the total amount under the iron work contract (\$293,500) and approximately 0.6 percent of the total project cost of \$3,126,814; and

WHEREAS, the applicant states, and the Board agrees that even if the non-permitted work and work conducted without the sidewalk shed is deducted safety measures in order to finish construction; and from the expenditures, a total of \$1,391,148 in costs, or 44 percent of the total project cost, was still incurred between the issuance of the A1 Permit

and the Enactment date; and

WHEREAS, based upon its review of all the submitted evidence, the Board finds that this percentage of expenditure is substantial and meets the finding set forth at Z.R. § 11-332; and

WHEREAS, additionally, the Board finds that the work performed up to September 18 was complex construction that was necessary for the proposed enlargement and that resulted in tangible change to the structure; and

WHEREAS, based upon its consideration of the arguments made by the applicant and opposition as outlined above, as well as its consideration of the entire record, the Board finds that substantial construction was completed and substantial expenditure were made; therefore, the Board finds that the applicant has adequately satisfied all the requirements of Z.R. § 11-332, and that the owner is entitled to the requested reinstatement of the A1 Permit, and all other permits necessary to complete the proposed enlargement; and

WHEREAS, however, the Board notes that the applicant has also filed the above-mentioned companion application under BSA Cal. No. 348-05-A, stating that the relief that the Board can grant under ZR §11-332 is not sufficient to complete the proposed enlargement, due to the additional time it will take to both finish the anticipated work as well as remedy the unanticipated damage to the proposed enlargement that resulted from rain after work was stopped; and

WHEREAS, accordingly, although the Board, through this resolution, grants the owner of the site the requested three month extension for completion of construction that is allowed under ZR § 11-332, this grant is not an impediment to the reinstatement of the permit made by the Board under BSA Cal. No. 348-05-A, in which the Board is providing the applicant a sufficient amount of time to complete construction.

Therefore it is Resolved that this application made pursuant to Z.R. §11-332 to renew Alteration Permit No. 104214814 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 enlargement for one term of three months from the date of this resolution, to expire on April 31, 2006; this grant and the term shall not prohibit the reinstatement of these permits pursuant to a grant made under BSA Cal. No. 348-05-A.

Adopted by the Board of Standards and Appeals, January 31, 2006.

348-05-A

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Perry Street Development Corp., c/o Richard Born, Hotel Wellington, owners.

SUBJECT – Application November 10, 2005 – Proposed extension of time to complete construction pursuant to Z.R. 11-332 for 2-story residential addition to an existing 6-story commercial building. Appeal case is seeking a determination that the owner of said premises has acquired a common-law vested right to continue development commenced under the prior C6-2 zoning district. Current Zoning District is R6A (C1-5) and (C1-7).

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PREMISES AFFECTED – 164-172 Perry Street, midblock portion of block bounded by Perry, Washington and West Streets and Charles Lane, Block 637, Lots 13 and 17, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Gary R. Tarnoff.

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Abstain: Commissioner Collins.....1

THE RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained a vested right under the common law to complete a two-story enlargement to an existing six-story building; and

WHEREAS, this application was brought concurrently with a companion application under BSA Cal. No. 324-05-BZY, decided the date hereof, which is a request to the Board for a finding that the owner of the premises has obtained a right to continue construction pursuant to ZR § 11-332 (hereinafter, the “BZY Application”); and

WHEREAS, the applicant made its initial request for relief under the common law in conjunction with the BZY Application; at the direction of the Board’s staff, the applicant submitted this separate application, because the analysis is different under the common law and because different relief may be granted, and also so that a separate calendar number could be issued; and

WHEREAS, the Board notes that while separate applications were ultimately filed, in the interest of convenience, it heard the cases together and the record is the same for both; and

WHEREAS, a public hearing was held on this application on December 13, 2005 after due notice by publication in *The City Record*, with a continued hearing on January 10, 2006 and then to decision on January 31, 2006; and

WHEREAS, the site was inspected by a committee of the Board; and

WHEREAS, Council Member Quinn, Assembly Member Glick, Senator Duane and the Manhattan Borough President opposed the granting of any relief to the applicant; and

WHEREAS, certain other members of the community also opposed this application, including the Greenwich Village Society for Historic Preservation, (collectively, the “opposition”), alleging that some of the enlargement work was conducted contrary to the issued permit or in an unsafe manner; these allegations are addressed below; and

WHEREAS, the subject premises is an 8,377 sq. ft. midblock site consisting of two tax lots (Lots 13 and 17), on a block bounded by Perry, Washington and West Streets, and Charles Lane; and

WHEREAS, the premises is currently improved upon with a six-story garage building on Lot 13, and a three-story parking and garage building on Lot 17; the proposed two-story enlargement is of the six-story garage building, that

WHEREAS, the premises is currently located primarily within an R6A(C1-5) zoning district, with a small 3’-5” wide portion within a C1-7 zoning district), but was formerly located within a C6-2 zoning district; and

WHEREAS, the proposed enlargement complies with the former C6-2 zoning district parameters as to floor area, building height, and lot coverage; and

WHEREAS, however, on October 11, 2005 (hereinafter, the “Enactment Date”), the City Council voted to adopt the Far West Village Rezoning, which rezoned all but a sliver of the site to R6A(C1-5), as noted above; and

WHEREAS, because the site is now within an R6A(C1-5) district, the proposed enlargement increases the degree of non-compliance as to floor area, building height, and lot coverage and therefore is not permitted; and

WHEREAS, the applicant requests that the Board find that based upon the amount of financial expenditures, including irrevocable commitments, and the amount of work completed, the owner has a vested right to continue construction and finish the proposed enlargement; and

WHEREAS, the applicant states that it is requesting relief under the common law and constitutional theory of vested rights in addition to seeking relief under ZR § 11-332 because the amount of relief that can be granted by the Board under this provision is limited to three months; and

WHEREAS, in a submission dated December 8, 2006, the applicant noted that due an inordinate amount of rain in the fall of 2005, extensive damage to the proposed enlargement as well as the existing building resulted, and that a longer amount of time to complete construction might therefore be required; and

WHEREAS, the applicant supported this contention with data from the National Climactic Data Center, which reflected the amount of rainfall, as well as an affidavit from the construction contractor which outlined the water damage; and

WHEREAS, based upon this concern, the applicant filed the instant application, and requests a six month term in which to complete construction; and

WHEREAS, the Board notes that established precedent exists for the proposition that seeking relief pursuant to ZR 11-30 et seq. does not prevent a property owner from also seeking relief under the common law; and

WHEREAS, as a threshold matter in determining this appeal, the Board must find that the completed work was conducted pursuant to valid permits; and

WHEREAS, as reflected in the resolution for the BZY Application, the record for that case and the instant case contains sufficient evidence to make this finding; and

WHEREAS, turning to the substantive findings of the amount of work done and the amount of expenditure, the Board notes that a common law vested right to continue construction generally exists where the owner has undertaken substantial construction and made substantial expenditures prior to the effective date of an amendment; and

WHEREAS, as discussed by the court in *Kadin v. Bennett*, 163 A.D.2d 308 (2d Dept. 1990) “there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess ‘a vested right’. Rather, it is a term which sums up a determination that the facts of the

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case render it inequitable that the State impede the individual from taking certain action”; and

WHEREAS, as to enlargements specifically, in its statement, the applicant cites to the case Bayswater Health Related Facility v. Karagheuzoff, 37 NY2d. 408, in which the Court of Appeals held that a vested right had been acquired for a conversion of existing structures to nursing homes because the “main building had already been gutted, its roof and sidewalks opened and exposed to the elements ...”; and

WHEREAS, the applicant also cites to Paliotto v. Perlman, 71 Misc.2d 221 (Sup. Ct. Nassau Co. 1972), where, when petitioner sought to complete a dome over a tennis court under a permit issued prior to the effective date of a new fire ordinance, the court held: "The completed approved improvements were an integral and necessary part of the proposed air supported structures alteration”; and

WHEREAS, the applicant states that from these cases, it is apparent that such factors as tangible physical change, gutting the existing building and exposing it to the elements, and completion of improvements that are an integral part of the alteration, all are relevant to a finding of completion of substantial construction; and

WHEREAS, the Board agrees that, under the common law, a completion of substantial construction finding will depend, in part, upon a showing of actual construction work resulting in some tangible change to the structure being altered that is integral to the proposed work; and

WHEREAS, in addition, the Board notes that, like a case brought under, Z.R. § 11-30 et seq., a comparison of the amount of work completed versus what remains, in terms of time and actual construction, and a discussion of the complexity of the work, may also be relevant but non-dispositive gauges; and

WHEREAS, however, as to expenditure, the Board notes that unlike an application for relief under ZR § 11-30 et seq., soft costs and irrevocable financial commitments can be considered in an application under the common law; accordingly, these costs are included in the applicant’s analysis; and

WHEREAS, in its written statements and testimony, the applicant represents that as of the Enactment Date, substantial construction had been completed and substantial expenditures were made after the issuance of the A1 Permit; and

WHEREAS, the applicant states cites to the same work and the same evidence as was presented in the BZY Application; and

WHEREAS, the Board has reviewed this documentation and agrees that it establishes that the afore-mentioned work was completed prior to the Enactment Date; and

WHEREAS, the applicant also concludes that based upon actual work performed under the A1 Permit and its complexity, that substantial construction has been completed sufficient to satisfy the general standards under the common law; and

WHEREAS, as to costs, the applicant states that the expenditures made totaled \$1,864,488 of the total project cost of \$3,126,814 (59 percent); this total includes soft costs and irrevocable financial commitments; and

WHEREAS, in support of this claim, the applicant has submitted checks, a receivables journal, and affidavits, which the Board has reviewed and finds credible; and

WHEREAS, absent any other consideration, the Board would find that the degree of work done and expenditures incurred would be sufficient to meet the common law vesting standard; and

WHEREAS, however, opposition expressed concerns about three primary issues: (1) that the developer knew of the impending rezoning; (2) that some of the performed construction and incurred expenditures that were folded into the applicant’s analysis were the result of illegal after-hours or weekend work; and (3) that some of the construction and expenditures in the analysis were the result of work performed while a safety measure was not complied with, as evidence by the ECB Violation; and

WHEREAS, while the Board asked the applicant to respond to these concerns, for the reasons set forth in the resolution issued under BSA Cal. No. 324-05-BZY, the Board finds that none of these contentions negates a determination that the owner has obtained a vested right to continue construction of the proposed enlargement; and

WHEREAS, specifically, the applicant notes that the expenditures for work that arguably required a sidewalk bridge or other pedestrian safety measures on Monday, September 19, 2005 through Thursday, September 22, 2005 consisted solely of the labor costs for the installation of steel materials that were already on the site, which are estimated by the developer to be approximately \$20,000; and

WHEREAS, the applicant states that this amount represents approximately 7 percent of the total amount under the iron work contract (\$293,500) and approximately 0.6 percent of the total project cost of \$3,126,814; and

WHEREAS, the Board finds that a reduction of the total expenditure by this small of a percentage would not affect a determination that the total expenditure is substantial; and

WHEREAS, additionally, the Board finds that the work performed up to September 18 was complex construction that was necessary for the proposed enlargement and that resulted in tangible change to the structure; and

WHEREAS, accordingly, the owner has met the standard for vested rights under the common law is entitled to the requested six-month extension of the A1 Permit and all related permits for construction of the proposed enlargement.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights and requesting a reinstatement of Alteration Permit No. 104214814, 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 enlargement for one term of six months from the date of this resolution, to expire on July 31, 2006.

Adopted by the Board of Standards and Appeals, January 31, 2006.

326-05-BZY

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APPLICANT – Greenberg Traurig, LLP by Deirdre Carson, for 163 Charles St. Realty, LLC., owner.

SUBJECT – Application November 10, 2005 – Proposed extension of time to complete construction pursuant to Z.R. §11-331 for the alteration and enlargement of the building. Appeal case is seeking a determination that the owner of said premises has acquired a common-law vested right to continue development commenced under the prior C6-2 zoning district. Current Zoning District is R6A and (C1-5).

PREMISES AFFECTED – 163 Charles Street, lot fronting on Charles Lane between West and Washington Streets, Block 637, Lot 42, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Deirdre Carson.

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Abstain: Commissioner Collins.....1

THE RESOLUTION -

WHEREAS, this is an application under ZR §11-331, to renew a building permit and extend the time for the completion of a two-story enlargement to an existing six-story building; and

WHEREAS, this application was brought concurrently with a companion application under BSA Cal. No. 328-05-A, decided the date hereof, which is a request to the Board for a finding that the owner of the premises has obtained a vested right to continue construction under the common law; and

WHEREAS, the Board notes that while separate applications were filed, in the interest of convenience, it heard the cases together and the record is the same for both; and

WHEREAS, a public hearing was held on this application on December 13, 2005 after due notice by publication in *The City Record*, with a continued hearing on January 10, 2006 and then to decision on January 31, 2006; and

WHEREAS, the site was inspected by a committee of the Board; and

WHEREAS, Council Member Quinn, Assembly Member Glick, Senator Duane, and the Manhattan Borough President opposed the granting of any relief to the applicant; and

WHEREAS, certain other members of the community also opposed this application, including the Greenwich Village Society for Historic Preservation, (collectively, the “opposition”), alleging that some of the enlargement work was conducted contrary to the issued permit or in an unsafe manner and that the representations of the applicant were not supported by evidence; these allegations are addressed below; and

WHEREAS, the applicant states that the subject premises is a through lot fronting on Charles Street and Charles Lane between Washington and West Streets in the West Village in Manhattan and is situated on a lot having 2,244 square feet of lot area, with frontage of 22 feet on each street and a depth of 102 feet; and

WHEREAS, the applicant proposes to enlarge and alter the building that existed at the site, which will result in a building containing 2,731 square feet of commercial floor

area (1.2 FAR) and 9594 square feet of residential floor area (4.2 FAR), with three dwelling units and 7 stories with a penthouse; and

WHEREAS, the subject premises is currently located within an R6A(C1-5) zoning district, but was formerly located within a C6-2 zoning district; and

WHEREAS, the proposed enlargement complies with the former C6-2 zoning district parameters as to floor area, stories of commercial, height, lot coverage and street wall; and

WHEREAS, however, on October 11, 2005 (hereinafter, the “Enactment Date”), the City Council voted to adopt the Far West Village Rezoning, which rezoned the site to R6A(C1-5), as noted above; and

WHEREAS, because the site is now within an R6A(C1-5) district, the proposed development would not comply with such parameters; and

WHEREAS, ZR § 11-30 et seq. sets forth the regulations that apply to the subject application for a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, ZR § 11-31(c)(1)(iv) defines the proposed enlargement as a “major enlargement” since the enlargement requires the installation of foundations and involves at least 50 percent of the total floor area of the enlarged building; and

WHEREAS, pursuant to ZR § 11-31(c)(1), a “major enlargement” is considered a “minor development” for purposes of ZR § 11-331; and

WHEREAS, Z.R. §11-331 reads: “If, before the effective date of an applicable amendment of this Resolution, a building permit has been lawfully issued as set forth in Section 11-31 paragraph (a), to a person with a possessory interest in a zoning lot, authorizing a minor development or a major development, such construction, if lawful in other respects, may be continued provided that: (a) in the case of a minor development, all work on foundations had been completed prior to such effective date; or (b) in the case of a major development, the foundations for at least one building of the development had been completed prior to such effective date. In the event that such required foundations have been commenced but not completed before such effective date, the building permit shall automatically lapse on the effective date 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 the building permit and authorize an extension of time limited to one term of not more than six months to permit the completion of the required foundations, provided that the Board finds that, on the date the building permit lapsed, excavation had been completed and substantial progress made on foundations.”; and

WHEREAS, Z.R. §11-31(a) reads: “For 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

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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 Department of Buildings ("DOB") permits were lawfully issued to the owner of the subject premises; and

WHEREAS, the record indicates that the following permit was lawfully issued to the owner by DOB: on November 24, 2004, an alteration permit (Permit No. 103972550; hereinafter, the "A1 Permit") for the proposed enlargement, as well as an extension of this permit through August of 2006; and

WHEREAS, related permits for other work types to the A1 Permit, including those for general construction, plumbing, structural, boiler and standpipe, were also issued; and

WHEREAS, additionally, DOB and the Department of Transportation issued various weekend work permits, all of which are part of the record; and

WHEREAS, the Board has reviewed the record and agrees that the A1 Permit was lawfully issued to the owner of the subject premises on the referenced date, which is prior to the Enactment Date; and

WHEREAS, although there was no dispute brought to the Board's attention as to whether the A1 Permit issuance was based upon complete plans and specification, while the instant matter was in hearing, the Board was made aware that DOB was conducting an audit of the A1 Permit; and

WHEREAS, the Board is aware that after the audit, DOB issued a Notice of Objections as well as a 10 day letter indicating that the permit would be revoked unless the objections were resolved; and

WHEREAS, subsequent to this, the applicant submitted into the record the DOB Notice of Objections that indicates that all of the objections were resolved and that the audit was accepted; and

WHEREAS, in addition, the record contains a letter of rescission for the previously issued revocation from the Borough Commissioner of DOB; and

WHEREAS, in reliance upon DOB's review of the A1 Permit and the subsequent successful resolution of all objections, as well as confirmation of this from the Borough Commissioner, which is the only evidence before the Board as to the validity of the Permit, the Board concludes that the terms and general provisions of ZR §11-31(a) are satisfied; and

WHEREAS, the Board makes this conclusion notwithstanding opposition's contentions as set forth in a letter dated January 27, 2006, which essentially recites some of the objections listed in the Notice of Objections and asks that the Board delay decision until said objections are resolved; and

WHEREAS, as discussed above, these objections have been resolved and the Borough Commissioner has rescinded the previously issued revocation letter; and

WHEREAS, accordingly, the Board finds that the record contains sufficient evidence to satisfy the findings set forth ZR 11-31(a) and a decision may be rendered provided the other findings are met; and

WHEREAS, turning to the substantive findings of ZR §11-331, the applicant represents that, as of the Enactment Date,

excavation was completed and substantial progress had been made on the required foundation; and

WHEREAS, the applicant states that in December 2004, the developer demolished the above-ground floors of the building existing on the site, leaving the foundation walls, some exterior walls at grade and some existing underpinning intact for use in the new foundation; and

WHEREAS, the applicant further states that excavation began in May 2005 and was completed September 15, 2005, though some excess fill for use in leveling the foundation and for access to the site was left; and

WHEREAS, the applicant represents that upon completion of the excavation, the developer installed a dewatering system, seven of the twelve required footings, 95% of the underpinning and a large mat footing covering approximately one third of the foundation, as well as an elevator pit; and

WHEREAS, work continued on the site until the Enactment Date, aside from a period of time where work was stopped by DOB pursuant to a Stop Work Order issued in conjunction with ECB Viol Number: 34484011K (the "ECB Violation"); this violation cites a failure to protect adjoining property during excavation (the relevancy of this violation is discussed below); and

WHEREAS, this Stop Work Order was later lifted and work was allowed to continue; and

WHEREAS, the applicant represents that no other violations or Stop Work Orders were issued prior to the Enactment Date; and

WHEREAS, in order to complete the foundation, the applicant states that the developer must construct the remaining five footings and 5.0% of the underpinning as well as pour the floor slab; and

WHEREAS, in terms of time remaining on foundation construction, the applicant believes that the balance of the foundation work required on the site can be completed in 7 working days; and

WHEREAS, in support of the contention that concrete for the footings and other foundation components was poured, the applicant has submitted pour slips from the concrete contractor and well as affidavits; and

WHEREAS, at the first hearing, the Board requested more information as to the extent of the completed foundation work; and

WHEREAS, in response, the applicant submitted elevations showing the completed work, which illustrates the following: (1) Existing walls on all four perimeters extending from the base of the foundation to grade; (2) New underpinning on portions of the western perimeter wall, on the entire eastern foundation wall and the entire northern foundation wall, all of which extends from the base of the foundation to heights between 8 feet and 14 feet; (3) Footings extending from the base of the foundation up to 8 feet; (4) A mat slab that is 3 feet 6 inches thick covering approximately one-third of the foundation floor; and

WHEREAS, the applicant states that the only portions of the proposed building that would transfer load to the soil

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are the underpinning (122 out of 129 cubic yards poured), footings (57 out of 73 cubic yards poured), the mat slab (108 out of 108 cubic yards poured) and foundation walls; and

WHEREAS, the applicant notes that although new walls have not been poured, existing walls are located on all four perimeters of the foundation and are incorporated into the foundation; and

WHEREAS, the applicant concludes that the level of completion of the slab, footings and walls at the point of contact with the soil sufficiently illustrate the extent of foundation completion; and

WHEREAS, the applicant also submitted letters from subcontractors confirming the storage of five trailer loads of manufactured steel for the building since October 5, 2005, as well as the completion of the stairs for the building; and

WHEREAS, further, the applicant submitted an affidavit by the project architect, Daniel Goldner, confirming the extent of completion of the foundation as indicated on the submitted plans; and

WHEREAS, the Board has reviewed all of the applicant's representations and the submitted evidence and agrees that it establishes that substantial progress was made on the required foundation as of the Enactment Date; and

WHEREAS, opposition to this case initially expressed concerns about three primary issues: (1) that some of the performed construction and incurred expenditures that were folded into the applicant's analysis were the result of illegal after-hours or weekend work; (2) that some of the performed construction was the result of unsafe work; (3) that the evidence submitted as to the progress made on foundations is not convincing; and

WHEREAS, in response, the applicant cited to the fact that the developer had obtained permits for Saturday work on every Saturday between July 2, 2005 and October 8, 2005, except for September 30, 2005; and

WHEREAS, as to allegations of other after hours work, the applicant stated that such work may have been related to dewatering, which involves constant pumping of water from the site, which must be regularly supervised and which is legal; and

WHEREAS, the applicant notes, and the Board agrees, that the affidavits and testimony submitted by opposition alleging illegal work are vague and conclusory; and

WHEREAS, as to the possibility of unsafe work, opposition alleges that as indicated by the ECB Violation, the work on the foundation caused damage to an adjacent building, which is evidence that the work was done quickly and unsafely; and

WHEREAS, opposition contends that, on this basis, the Board should discount all of the foundation work; and

WHEREAS, the applicant states that although the work on the site was briefly stopped when cracking occurred on an adjacent property, that condition was addressed by the developer and the developer will undertake whatever ameliorative action is required; and

WHEREAS, the Board observes that such an occurrence, as apparently happened here, does not mean that

the foundation work as a whole must be discounted for purposes of ZR § 11-331; and

WHEREAS, finally, as to the evidentiary issue, opposition claims that visual observation of the site does not reveal the extent of foundation completion as represented by the applicant; and

WHEREAS, the applicant responds that the neighbors who allege that the photos submitted by the applicant may not reflect current conditions or work which was begun and then removed are not aware that much of the construction done on the foundation underpinning is now covered by backfilled dirt and therefore would not be visible in their photographs or observations; and

WHEREAS, at the next hearing, opposition continued to allege that the foundation work was done in a negligent and hasty manner, as evidenced by the damage to adjacent property, and therefore should not be credited; and

WHEREAS, opposition also continued to allege that work was done illegally after hours; and

WHEREAS, however, opposition did not specifically address any of the applicant's responses to such allegations, as discussed above, nor did they provide any new evidence in support of the allegations; and

WHEREAS, finally, opposition submitted into the record an engineer's report, which alleges the following: (1) that the foundation wall and underpinning on the western side of the premises, which the applicant represents as completed foundation work, were actually completed before the current owner purchased the building; (2) that the owner will need more than seven days to finish the foundation; (3) that the time estimate should include an assessment of waterproofing needs, which was not considered; and (4) that some of the footings may not actually be completed; and

WHEREAS, opposition indicated that this engineer's report was based on observations made from a neighboring building; and

WHEREAS, in a submission dated January 23, 2006, the applicant responded to each of the contentions; and

WHEREAS, as to the waterproofing issue, the applicant notes that the planned waterproofing is not yet apparent because it will be one of the last elements of the foundation to be installed; as part of the waterproofing plan, the contractor will install a waterproof membrane between the soil and the floor slab just before the slab is poured; and

WHEREAS, the applicant notes that a network of sub-slab drainage is being installed, and, as shown in the foundation plans, a sump pump and ejector pit have been installed to provide drainage; and

WHEREAS, the applicant observes that this is a very standard waterproofing plan for this type of building, and opposition did not refute this; and

WHEREAS, as to the time to complete construction, the applicant states that the developer's 7-day time estimate was an estimate that was intended to be as accurate as possible; and

WHEREAS, the Board observes that opposition was not specific as to how long foundation completion would

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actually take; and

WHEREAS, the Board notes that even if actual completion takes longer, such that that the ratio of days of construction up to the Enactment Date to day of remaining construction is affected, the degree of foundation work completed in terms of concrete poured and percentage of total foundation elements completed is so significant in the instant case that a determination that the substantial progress was made on foundations would not be affected; and

WHEREAS, the Board notes that the ratio is a gauge only, and is not dispositive to the Board's deliberations, especially where it is clear that significant work has been performed; and

WHEREAS, as to completion of the south wall underpinning, the applicant notes that it never claimed that the underpinning of the south wall was complete; instead, the applicant observes that the foundation plan contains green shading on the south wall to indicate that the underpinning there is not complete; and

WHEREAS, as to completion of footings, the Board notes that because portions of the site have been backfilled, certain of the completed footings are not visible; and

WHEREAS, also, as to certain other footings where reinforcing can be seen projecting from them, the applicant notes that the footings are complete; the small amount of rebar extending above the footings is embedded in four feet of concrete and will tie the footing to the slab once it is poured; and

WHEREAS, the applicant explained that the visibility of these elements simply means that these footings are complete and ready to support additional components of the Building; and

WHEREAS, the Board has considered the applicant's responses to the contentions of opposition and finds that they are logical, credible, and based on substantial evidence; and

WHEREAS, based upon its consideration of the arguments made by the applicant and opposition as outlined above, as well as its consideration of the entire record, the Board finds that excavation was complete and that substantial progress had been made on foundations; therefore, the Board finds that the applicant has adequately satisfied all the requirements of Z.R. § 11-331; and

WHEREAS, however, the Board notes that the applicant has also filed the above-mentioned companion application under BSA Cal. No. 328-05-A, which requests a determination that the applicant has obtained a vested right under the common law to complete construction under the A1 Permit; and

WHEREAS, accordingly, although the Board, through this resolution, grants the owner of the site the six month extension for completion of construction that is allowed under ZR § 11-331, this grant is not an impediment to the reinstatement of the permit made by the Board under BSA Cal.

No. 328-05-A, should the applicant so choose.

Therefore it is Resolved that this application made pursuant to ZR § 11-331, to renew Alteration Permit No. 103972550 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 enlargement for one term of six months from the date of this resolution, to expire on July 31, 2006; this grant and the term shall not prohibit the reinstatement of these permits pursuant to a grant made under BSA Cal. No. 328-05-A.

Adopted by the Board of Standards and Appeals, January 31, 2006.

328-05-A

APPLICANT – Greenberg Traurig, LLP by Deirdre Carson, for 163 Charles St. Realty, LLC., owner.

SUBJECT – Application November 10, 2005 – Proposed extension of time to complete construction pursuant to Z.R. § 11-331 for the alteration and enlargement of the building. Appeal case is seeking a determination that the owner of said premises has acquired a common-law vested right to continue development commenced under the prior C6-2 zoning district. Current Zoning District is R6A and (C1-5).

PREMISES AFFECTED – 163 Charles Street, lot fronting on Charles Lane between West and Washington Streets, Block 637, Lot 42, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Deirdre Carson.

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Abstain: Commissioner Collins.....1

THE RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained a vested right under the common law to complete a proposed enlargement of a building at the referenced premises; and

WHEREAS, this application was brought concurrently with a companion application under BSA Cal. No. 326-05-BZY (the "BZY Application"), decided the date hereof, which is a request to the Board for a finding that the owner of the premises has obtained a right to continue construction pursuant to ZR § 11-331; and

WHEREAS, the Board notes that while separate applications were filed according to Board procedure, in the interest of convenience, it heard the cases together and the record is the same for both; and

WHEREAS, a public hearing was held on this application on December 13, 2005 after due notice by publication in *The City Record*, with a continued hearing on January 10, 2006 and

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then to decision on January 31, 2006; and

WHEREAS, the site was inspected by a committee of the Board; and

WHEREAS, Council Member Quinn, Assembly Member Glick, Senator Duane, and the Manhattan Borough President opposed the granting of any relief to the applicant; and

WHEREAS, certain other members of the community also opposed this application, including the Greenwich Village Society for Historic Preservation, (collectively, the "opposition"), alleging that some of the enlargement work was conducted contrary to the issued permit or in an unsafe manner and that the representations of the applicant were not supported by evidence; these allegations are addressed below; and

WHEREAS, the applicant states that the subject premises is a through lot fronting on Charles Street and Charles Lane between Washington and West Streets in the West Village in Manhattan and is situated on a lot having 2,244 square feet of lot area, with frontage of 22 feet on each street and a depth of 102 feet; and

WHEREAS, the applicant proposes to enlarge and alter the building that existed at the site, which will result in a building containing 2,731 square feet of commercial floor area (1.2 FAR) and 9594 square feet of residential floor area (4.2 FAR), with three dwelling units and 7 stories with a penthouse; and

WHEREAS, the subject premises is currently located within an R6A(C1-5) zoning district, but was formerly located within a C6-2 zoning district; and

WHEREAS, the proposed enlargement complies with the former C6-2 zoning district parameters as to floor area, stories of commercial, height, lot coverage and street wall; and

WHEREAS, however, on October 11, 2005 (hereinafter, the "Enactment Date"), the City Council voted to adopt the Far West Village Rezoning, which rezoned the site to R6A(C1-5), as noted above; and

WHEREAS, because the site is now within an R6A(C1-5) district, the proposed development would not comply with such parameters; and

WHEREAS, the applicant requests that the Board find that based upon the amount of financial expenditures, including irrevocable commitments, and the amount of work completed, the owner has a vested right to continue construction and finish the proposed enlargement; and

WHEREAS, the Board notes that established precedent exists for the proposition that seeking relief pursuant to ZR 11-30 et seq. does not prevent a property owner from also seeking relief under the common law; and

WHEREAS, as a threshold matter in determining this appeal, the Board must find that the completed work was conducted pursuant to a valid permit; and

WHEREAS, as reflected in the resolution for the BZY Application, the record for that case and the instant case contains sufficient evidence to make this finding; and

WHEREAS, specifically, the applicant states that on November 24, 2004, an alteration permit (Permit No. 103972550; hereinafter, the "A1 Permit") for the proposed enlargement, was issued by the Department of Buildings; DOB also issued an extension of this permit through August of 2006;

and

WHEREAS, turning to the substantive findings of the amount of work done and the amount of expenditure, the Board notes that a common law vested right to continue construction generally exists where the owner has undertaken substantial construction and made substantial expenditures prior to the effective date of an amendment; and

WHEREAS, as discussed by the court in *Kadin v. Bennett*, 163 A.D.2d 308 (2d Dept. 1990) "there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess 'a vested right'. Rather, it is a term which sums up a determination that the facts of the case render it inequitable that the State impede the individual from taking certain action"; and

WHEREAS, the applicant cites to *Putnam Armonk, Inc. v. Town of Southeast*, 52 A.D.2d 10, 15, 382 N.Y.S.2d 538, 541 (2d Dept. 1976) for the proposition that where a restrictive amendment to a zoning ordinance is enacted, the owner's rights under the prior ordinance are deemed vested "and will not be disturbed where enforcement [of new zoning requirements] would cause 'serious loss' to the owner," and "where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance."; and

WHEREAS, as to expenditure, the Board notes that unlike an application for relief under ZR § 11-30 et seq., soft costs and irrevocable financial commitments can be considered in an application under the common law; accordingly, these costs are included in the applicant's analysis; and

WHEREAS, in its written statements and testimony, the applicant represents that as of the Enactment Date, substantial construction had been completed and substantial expenditures were made after the issuance of the A1 Permit; and

WHEREAS, more specifically, the applicant represents that: (1) the owner of the site will suffer serious economic harm without the right to build under the A1 Permit, as several floors of the proposed building would not be permitted and the owner would have to create new building plans and build a new foundation; (2) substantial construction had occurred by the Enactment Date because: (i) all portions of the existing building not intended to be incorporated into the enlarged and altered building had been removed, (ii) excavation was complete and (iii) approximately 87% of the concrete for the foundation had been poured; and (3) substantial expenditures had been made by the time of the Rezoning because significant sums had been either expended or committed through irrevocable contracts; and WHEREAS, the applicant cites to the same work and the same evidence as was presented in the BZY Application; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed and the supporting documentation and agrees that it establishes that the significant progress was made on foundations prior to the Enactment Date, and that said work was substantial; and

WHEREAS, as to costs, the applicant states that 72% of the budgeted expenditures for the proposed enlargement had been either expended or committed pursuant to irrevocable contracts by the Enactment Date; and

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WHEREAS, the Board notes that the budgeted expenditures included site purchase costs, which for the purposes of its analysis here, the Board has excluded; and

WHEREAS, thus, based upon the applicant's representation as to the total project cost and these particular site purchase costs, the Board concludes that the actual construction costs for the proposed enlargement, both soft and hard, approximate 7.4 million dollars; and

WHEREAS, in relation to actual construction costs and related soft costs, the applicant specifically notes that the owner had paid \$110,750 for demolition, \$79,643 in construction manager's fees, \$300,000 to the foundation contractor, and \$81,428 for additional foundation expenses; and

WHEREAS, additionally, the owner had also paid \$13,590 as a down payment for the elevator and commissioned the manufacture of \$449,000 of structural steel, which had been manufactured and now awaits installation; and

WHEREAS, other costs included \$186,134 for the architect and \$120,642 other consultants and engineers; and

WHEREAS, the applicant further states that the owner also irrevocably owed an additional \$1,721,687 in connection with the proposed enlargement, because it had executed binding contracts for work and materials, including \$150,357 in outstanding fees to the construction manager, \$387,500 for the construction of the curtain wall and windows, and an additional \$195,218 for the foundation; and

WHEREAS, in addition, the owner was under contract for an additional \$140,410 for the elevator, \$501,000 for the remaining structural steel, \$86,436 for the facade brick, which had already been manufactured, and \$51,366 in additional fees to the architect; and

WHEREAS, at the request of the Board, the applicant also provided further detail about the manufactured and purchased steel used in the project, noting that before October 5, 2005, the iron contractor had manufactured 50% of the steel required for the building, for which the developer owed \$472,222 to the contractor; and

WHEREAS, the applicant provided proof of payment for this steel; and

WHEREAS, the total of these construction related costs and commitments is approximately 4.5 million dollars, which means that approximately 60 percent of the construction related project costs has been expended or committed; and

WHEREAS, additionally, as noted by the applicant, a new foundation would have to be installed for such a complying building, further compounding the economic harm to the owner; and

WHEREAS, finally, as further evidence of the economic harm that the owner would incur if required to construct the building under the current zoning, the applicant notes that the owner has taken out a \$7,000,000 mortgage on the site for use in constructing the building, and that, to date, the owner has drawn down \$4,989,155 of that amount to finance part of its acquisition and construction costs, which is irrevocably owed to the bank; and

WHEREAS, based upon its review of the expenditures

and commitments made by the owner and the evidence submitted in support of them, the Board agrees that such costs are substantial; and

WHEREAS, absent any other consideration, the Board would find that the degree of work done and expenditures incurred would be sufficient to meet the common law vesting standard; and

WHEREAS, however, as discussed in the resolution issued under BSA Cal. No. 324-05-BZY, opposition expressed concerns about various aspects of this application; and

WHEREAS, the Board asked the applicant to respond to these concerns, and for the reasons set forth in the resolution for BSA Cal. No. 326-05-BZY, the Board finds that none of these contentions negates a determination that the owner has obtained a vested right to continue construction of the proposed enlargement; and

WHEREAS, based upon its consideration of the arguments made by the applicant and opposition as outlined above, as well as its consideration of the entire record, the Board finds that the owner has met the standard for vested rights under the common law and is entitled to the requested six-month extension of the A1 Permit, and all other related permits necessary to complete construction.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of Alteration Permit No. 103972550, 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 enlargement for one term of six months from the date of this resolution, to expire on July 31, 2006.

Adopted by the Board of Standards and Appeals, January 31, 2006.

144-05-BZY

APPLICANT – Alfonso Duarte, for Bel Homes, LLC, owner.

SUBJECT – Application June 9, 2005 - Proposed extension of time to complete construction pursuant to Z.R. 11-331 for two-two family attached dwellings.

PREMISES AFFECTED – 143-53/55 Poplar Avenue, northwest corner of Parsons Boulevard, and Poplar Avenue, Block 5228, Lots 32 and 34, Flushing, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Alfonso Duarte.

For Opposition: Beverly McDermott, Edmond Toadu and Joe Amoroso.

ACTION OF THE BOARD - Laid over to March 7, 2006, at 10 A.M., for continued hearing.

190-05-A

APPLICANT – Stadtmauer Bailkin, LLP, for John Antzoulis, owner.

SUBJECT – Application filed on August 12, 2005 – An

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appeal seeking a determination that the owner of said premises has acquired a common-law vested right to continue development commenced under the prior R2 zoning district. Current Zoning District is R2A.

PREMISES AFFECTED - 28-32 215th Street, east side of 215th Street, between 28th Avenue and 29th Avenue, Block 6016, Lot 56, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Richard Bowers and Neil Weisband.

For Administrative: Lisa Orrantia, Department of Buildings.

ACTION OF THE BOARD – Laid over to March 28, 2006, at 10 A.M., for continued hearing.

Pasquale Pacifico, Executive Director.

Adjourned: 12:00 P.M.

REGULAR MEETING TUESDAY AFTERNOON, JANUARY 31, 2006 1:30 P.M.

Present: Chair Srinivasan, Vice Chair Babbar, Commissioner Chin and Commissioner Collins.

ZONING CALENDAR

286-04-BZ & 287-04-BZ

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, LLP for Pei-Yu Zhong, owner.

SUBJECT – Application August 18, 2004 – under Z.R. §72-21 to permit the proposed one family dwelling, without the required lot width and lot area is contrary to Z.R. §23-32.

PREMISES AFFECTED –

85-78 Santiago Street, west side, 11.74' south of McLaughlin Avenue, Block 10503, Part of Lot 13 (tent.#13), Borough of Queens.

85-82 Santiago Street, west side, 177' south of McLaughlin Avenue, Block 10503, Part of Lot 13 (tent.#15), Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Adam W. Rothkrug.

For Opposition: Linda Valentino, Chun Kung Tang and Huei Chun Shing.

ACTION OF THE BOARD – Laid over to March 14, 2006, at 1:30 P.M., for continued hearing.

382-04-BZ

APPLICANT – Eric Palatnik, P.C., for Billy Ades, (Contract Vendee).

SUBJECT – Application December 6, 2004 – under Z.R.

§73-622 – to permit the proposed enlargement of an existing single family dwelling, located in an R4 zoning district, which does not comply with the zoning requirements for floor area, lot coverage, open space and side yards, is contrary to Z.R. §23-141(b) and §23-461(a).

PREMISES AFFECTED – 2026 Avenue “T”, corner of Avenue “T” and East 21st Street, Block 7325, Lot 8, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik and Dill Ades.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to March 14, 2006, at 1:30 P.M., for decision, hearing closed.

26-05-BZ

APPLICANT – Cozen O’Connor, for Tikvah Realty, LLC, owner.

SUBJECT – Application February 11, 2005 - under Z.R. §72-21 to permit the proposed bulk variance, to facilitate the new construction of an 89 room hotel on floors 4-6, catering facility on floors 1-3, ground floor retail and three levels of underground parking, which creates non-compliance with regards to floor area, rear yard, interior lot, permitted obstructions in the rear yard, setback, sky exposure plane, loading berths and accessory off-street parking spaces, is contrary to Z.R. §33-122, §33-26, §33-432, §36-21, §33-23 and §36-62.

PREMISES AFFECTED - 1702/28 East 9th Street, a/k/a 815 Kings Highway, west side, between Kings Highway and Quentin Road, Block 6665, Lots 7, 12 and 15, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Peter Geis.

ACTION OF THE BOARD – Laid over to February 28, 2006, at 1:30 P.M., for adjourned hearing.

47-05-BZ

APPLICANT – Fischbein Badillo Wagner Harding, LLP, for AMF Machine, owner.

SUBJECT – Application March 1, 2005 - under Z.R. §72-21 to permit the proposed eight story and penthouse mixed-use building, located in an R6B zoning district, with a C2-3 overlay, which exceeds the permitted floor area, wall and building height requirements, is contrary to Z.R. §23-145 and §23-633.

PREMISES AFFECTED - 90-15 Corona Avenue, northeast corner of 90th Street, Block 1586, Lot 10, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

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For Applicant: Peter Geis.

ACTION OF THE BOARD – Laid over to March 7, 2006, at 1:30 P.M., for adjourned hearing.

72-05-BZ

APPLICANT – Harold Weinberg, P.E., for Cong. Shomlou by Rabbi Marton Ehrenreich, owner.

SUBJECT – Application March 23, 2005 - under Z.R. §72-21 to permit the proposed erection of a synagogue and yeshiva, with accessory residences, Use Groups 2 and 4, located in an R6 zoning district, which does not comply with the zoning requirements for floor area ratio, lot coverage, rear yard and open space ratio, is contrary to Z.R. §§24-11, 23-142, 24-36 and 24-12.

PREMISES AFFECTED - 245 Hooper Street, north side, 205th east of Marcy Avenue, between Marcy and Harrison Avenues, Block 2201, Lot 61, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Harold Weinberg.

ACTION OF THE BOARD – Laid over to March 28, 2006, at 1:30 P.M., for continued hearing.

150-05-BZ

APPLICANT – Henry & Dooley Architects, P.C., for Doris Porter, owner; Cynthia Small, lessee.

SUBJECT – Application June 16, 2005 – under Z.R. §73-36 approval sought for a proposed physical cultural establishment located on the second and third floor in a mixed- use building. The PCE use will contain 2, 006 square feet. The site is located in a C2-3 /R-6 Zoning District.

PREMISES AFFECTED – 1426 Fulton Street, between Kingston and Brooklyn Avenue, Block 1863, Lot 9, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Paul Duke.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to March 7, 2006, at 1:30 P.M., for decision, hearing closed.

171-05-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP for Equinox 568 Broadway Inc., lessee, 568 Broadway Properties LLC, owner.

SUBJECT – Application July 28, 2005 – Special Permit:

Under ZR Section 73-36 an approval sought to permit the operation of a physical cultural establishment located on a portion of the cellar, portion of the first floor, part of the mezzanine, entire second floor, and a portion of the third floor of a twelve story commercial building . The PCE use will contain 26, 712 square feet of floor area. The site is located in a M1-5B Zoning District (SOHO Cast Iron).

PREMISES AFFECTED – 568 Broadway aka 69-79 Prince Street and 108-112 Crosby Streets, Block 512, Lot 11, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Ellen Hay.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to February 7, 2006, at 1:30 P.M., for decision, hearing closed.

172-05-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP for Equinox Joralemon Street, Inc., lessee, 50 Court Street Associates, owner.

SUBJECT – Application July 28, 2005 – Special Permit: Under ZR Section 73-36 an approval sought to permit the operation of a physical cultural establishment located on a portion of the ground floor, part of the mezzanine, entire second, third and fourth floors of a twelve story commercial building. The PCE use will contain 31, 538 square feet of floor area. The site is located in a C5-2 A Zoning District(DB).

PREMISES AFFECTED – 50 Court Street aka 194-204 Joralemon Street, southwest corner of Court Street and Joralemon Street, Block 265, Lot # 43, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Ellen Hay.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to February 7, 2006, at 1:30 P.M., for decision, hearing closed.

195-05-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Steven Wemreb and Raizy Weinreb, owner.

SUBJECT – Application August 17, 2005 - Pursuant to ZR §73-622 for the enlargement of an existing one family residence which creates non compliances with respect to floor area, lot coverage and open space as per ZR 23-141 and less than the minimum required side yard as per ZR 23-48. The premise is located in an R3-2 zoning district.

PREMISES AFFECTED – 2906 Quentin Road, Quentin

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Road between East 29th Street and Nostrand Avenue, Block 6812, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to February 14, 2006, at 1:30 P.M., for decision, hearing closed.

196-05-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Leon Kamkhatchi and Pnina Fani Kamkhatchi, owner.

SUBJECT – Application August 17, 2005 - ZR§73-622 for the enlargement of an existing one family residence which creates non compliances with respect to floor area, lot coverage and open space as per ZR §23-141 and less than the minimum required side yard as per ZR 23-48. The premise is located in an R3-2 zoning district.

PREMISES AFFECTED – 2315 Quentin Road, Quentin Road between East 23rd Street and East 24th Street, Block 6786, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to February 14, 2006, at 1:30 P.M., for decision, hearing closed.

Pasquale Pacifico, Executive Director.

Adjourned: 3:50 P.M.