

113-10-BZY

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for Plaza Group 36 LLC, owner.

SUBJECT – Application June 22, 2010 – Extension of time (§11-331) to complete construction of a minor development commenced under the prior R6 zoning, R5B zoning district.

PREMISES AFFECTED – 30-86 36th Street, west side of 36th Street, 152’ north of 31st Avenue, Block 650, Lot 80, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Trevis Savage.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application under ZR §11-331 to renew a building permit and to extend the time for the completion of the foundation of a four-story residential building; and

WHEREAS, a public hearing was held on this application on October 5, 2010, after due notice by publication in *The City Record*, with a continued hearing on October 26, 2010, and then to decision on November 23, 2010; and

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

WHEREAS, Community Board 13, Queens, recommends disapproval of this application; and

WHEREAS, City Council Member Peter F. Vallone provided written testimony in opposition to the application; and

WHEREAS, representatives of the Norwood Neighborhood Association provided written and oral testimony in opposition to this application; and

WHEREAS, a number of neighborhood residents also testified in opposition to the application; and

WHEREAS, collectively, the parties who provided testimony in opposition to the proposal are the “Opposition;” and

WHEREAS, specifically, the Opposition raised the following concerns: (1) excavation was not completed; (2) construction took place on the site after the Enactment Date; (3) construction took place after working hours; and (4) that the applicant initially filed as a non-asbestos project; and

WHEREAS, the subject site is located on the west side of 36th Street, between 30th Avenue and 31st Avenue; and

WHEREAS, the site has a frontage of 30 feet on 36th Street, a depth of approximately 100 feet; and a

total lot area of 3,005 sq. ft.; and

WHEREAS, the site is proposed to be occupied with a four-story residential building with eight dwelling units (the “Building”); and

WHEREAS, the Building is proposed to have a total floor area of approximately 6,565 sq. ft. (2.18 FAR); and

WHEREAS, the site was formerly located within an R6 zoning district; and

WHEREAS, on May 18, 2010, New Building Permit No. 420092278-01-NB (the “Permit”) was issued by the Department of Buildings (“DOB”) permitting construction of the Building; and

WHEREAS, on May 25, 2010 (hereinafter, the “Enactment Date”), the City Council voted to enact the Astoria Rezoning, which changed the zoning district to R5B; and

WHEREAS, the applicant represents that the Building complies with the former R6 zoning district parameters; specifically, the R6 district permitted the proposed floor area ratio (“FAR”) of 2.18, the proposed eight dwelling units, no side yard, and no parking spaces; and

WHEREAS, because the site is now within an R5B zoning district, the Building would not comply with the maximum FAR of 1.35, the maximum number of dwelling units of three, the requirement of a side yard with a minimum width of 8’-0”, and the minimum number of parking spaces of three; and

WHEREAS, because the Building does not comply with the subject R5B zoning district and work on the foundation was not completed as of the Enactment Date, the Permit lapsed by operation of law; and

WHEREAS, additionally, DOB issued a Stop Work Order (“SWO”) on June 11, 2010 halting work on the Building; and

WHEREAS, the applicant now applies to the Board to reinstate the Permit pursuant to ZR § 11-331, so that the proposed development may be fully constructed under the parameters of the prior R5B zoning district; and

WHEREAS, ZR § 11-331 reads: “If, before the effective date of an applicable amendment of this Resolution, a building permit has been lawfully issued . . . 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.

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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, a threshold requirement in this application is that the Permit is valid; and

WHEREAS, ZR § 11-31(a) provides that “[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;” and

WHEREAS, the record indicates that on May 18, 2010, the Permit was issued by DOB authorizing construction of the entire Building; and

WHEREAS, by letter dated September 8, 2010, DOB states that the Permit was lawfully issued; and

WHEREAS, thus, the Board finds that the Permit was lawfully issued by DOB on May 18, 2010; and

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

WHEREAS, because the proposed development contemplates construction of one building, it meets the definition of a minor development; and

WHEREAS, since the proposed development is a minor development, the Board must find that excavation was completed and substantial progress was made as to the required foundation; and

WHEREAS, the applicant states that excavation began on May 18, 2010 and that excavation was completed and substantial progress was made on the foundation as of the Enactment Date; and

WHEREAS, the Opposition contends that excavation was not complete as of the Enactment Date, and submitted photographs indicating that the owner continued to remove dirt from the site after the Enactment Date; and

WHEREAS, in response, the applicant states that excavation of the site was completed prior to the Enactment Date and that any dirt remaining on the site after the rezoning was used to provide a ramp for the removal of the large excavation equipment on the site and for the completion of backfill; and

WHEREAS, the applicant submitted photographs reflecting that the site was completely excavated as of the Enactment Date; and

WHEREAS, further, an affidavit of the contractor states that the entire site was excavated as of the

Enactment Date; and

WHEREAS, the Board finds that the excavation performed at the site for the foundation of the Building is complete for vesting purposes under ZR § 11-331; and

WHEREAS, as to substantial progress on the foundation, the applicant initially represented that the foundation was 99 percent complete as of the Enactment Date; and

WHEREAS, specifically, the applicant stated that as of the Enactment Date, the owner had poured 82 of the 84 total cubic yards of concrete required for the foundation, and the only portion of the foundation that remained incomplete was the pouring of concrete for three interior footings for steel columns; and

WHEREAS, the applicant notes that DOB originally determined that the foundations were 100 percent complete as of the Enactment Date, based on an inspection conducted on May 27, 2010; and

WHEREAS, however, DOB subsequently audited the plans and issued the SWO based on its determination that the foundation was not complete as of the Enactment Date because the footings for the steel columns were not complete at that time; and

WHEREAS, the applicant submitted a foundation survey reflecting that the entire foundation was complete as of the Enactment Date, except for the three footings for the steel columns; and

WHEREAS, as to the Opposition’s argument that construction continued on the site after the Enactment Date, the applicant states that construction did continue on the site pursuant to valid permits between the Enactment Date and the date that the SWO was issued because DOB had initially determined that the foundation was complete; and

WHEREAS, the applicant further states that the construction which took place between the Enactment Date and the issuance of the SWO included the pouring of the three interior footings, the completion of backfill, and the delivery of construction materials, all of which the applicant notes has been omitted from its calculation of foundation work and expenditures; and

WHEREAS, the Board notes that only the work that was performed after the Permit was issued and before the Enactment Date has been considered in its analysis under ZR § 11-331; and

WHEREAS, at hearing, the Board raised concerns about the concrete pour that took place on the Enactment Date and whether the ten cubic yards of concrete delivered on that date were poured prior to the City Council vote enacting the Astoria Rezoning; and

WHEREAS, in response, the applicant represents that the majority of the ten cubic yards of concrete were poured prior to the City Council vote, but acknowledges that it is unable to provide evidence of the exact timing of the concrete pour; and

WHEREAS, the Board notes that, even if all ten

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cubic yards of concrete poured on the Enactment Date are excluded from the work considered in its analysis under ZR § 11-331, the applicant has still documented that 72 out of the 84 total cubic yards required for the completion of foundation, or 86 percent, was poured prior to the Enactment Date; and

WHEREAS, in support of this statement, the applicant has submitted copies of concrete pour tickets, a foundation survey, and photographs of the foundation work as of the Enactment Date; and

WHEREAS, the applicant has also submitted financial documents, including cancelled checks, invoices, and accounting tables, which reflect significant expenditure associated with the excavation and foundation work incurred as of the Enactment Date; and

WHEREAS, specifically, the record indicates that the applicant spent \$95,276, or approximately 99 percent, of the total estimated foundation cost of \$96,026 as of the Enactment Date; and

WHEREAS, the Board finds all of the above-mentioned submitted evidence sufficient and credible; 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, the Opposition contends that work was performed on the site after the legal hours; and

WHEREAS, in response, the applicant submitted an after-hours variance work permit issued by DOB for the site, authorizing extended construction hours at the site; and

WHEREAS, the Opposition claims that work continued on the site beyond the extended hours authorized by DOB; and

WHEREAS, in response, the applicant submitted complaint reports from DOB reflecting that DOB inspectors visited the site on multiple occasions and did not issue any violations for work being performed beyond the approved hours; and

WHEREAS, the Opposition argues that the architect originally listed the project as a non-asbestos project and that the owner did not perform proper asbestos removal until the community notified DOB of the issue; and

WHEREAS, the Board notes that the architect's mischaracterization of the project as a non-asbestos project is not part of the Board's consideration under ZR § 11-331, and that, ultimately, the owner performed the necessary asbestos removal; and

A true copy of resolution adopted by the Board of Standards and Appeals, November 23, 2010.

Printed in Bulletin No. 48, Vol. 95.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

WHEREAS, accordingly, based upon its consideration of the arguments made by the applicant 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 ZR § 11-331 and is entitled to the requested reinstatement of the Permit, and all other related permits necessary to complete construction.

WHEREAS, because the Board finds that excavation was complete and that substantial progress had been made on the foundation, it concludes that the applicant has adequately satisfied all the requirements of ZR § 11-331.

Therefore it is Resolved that this application to renew New Building Permit No. 420092278-01-NB pursuant to ZR § 11-331 is granted, and the Board hereby extends the time to complete the required foundations for one term of six months from the date of this resolution, to expire on May 23, 2011.

Adopted by the Board of Standards and Appeals, November 23, 2010.