

103-08-BZY

APPLICANT – Law Office of Fredrick A. Becker, for Carlilis Realty by Carlos Isdith, owner.

SUBJECT – Application April 21, 2008 – Extension of time (§11-331) to compete construction of a minor development commenced prior to the amendment of the zoning district regulations on March 25, 2008. C2-4 in R6B.

PREMISES AFFECTED – 208 Grand Street, south side of Grand Street, between Bedford Avenue and Driggs Avenue, Block 2393, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #1BK**APPEARANCES –**

For Applicant: Lyra Altman.

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 extend the time for the completion of the foundation of a four-story and penthouse mixed-use residential/commercial/community facility building; and

WHEREAS, a public hearing was held on this application on November 25, 2008, after due notice by publication in *The City Record*, with a continued hearing on December 16, 2008, and then to decision on January 13, 2009; and

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

WHEREAS, the subject site is located on the south side of Grand Street between Bedford Avenue and Driggs Avenue; and

WHEREAS, the site has a frontage of 25 feet and a depth of 100 feet, and a total lot area of 2,500 sq. ft.; and

WHEREAS, the site is proposed to be developed with a four-story and penthouse seven-unit residential building (the “Building”) with commercial and community facility uses on the first floor; and

WHEREAS, the Building is proposed to have a total floor area of approximately 8,020 sq. ft. (3.2 FAR) and a total residential floor area of approximately 5,500 sq. ft. (2.2 FAR); and

WHEREAS, the site was formerly located within a C2-4 (R6) zoning district; and

WHEREAS, on December 5, 2007, New Building Permit No. 302308321-01-NB (the “Permit”) was issued by the Department of Buildings (“DOB”) permitting construction of the Building, and work commenced on December 6, 2007; and

WHEREAS, on March 26, 2008 (hereinafter, the “Enactment Date”), the City Council voted to enact the

Grand Street Rezoning, which changed the zoning district to C2-4 (R6B); and

WHEREAS, the applicant represents that the Building complies with the former C2-4 (R6) zoning district parameters; specifically, the proposed 3.2 FAR, base height of 44'-6", and total building height of 55'-0" were permitted; and

WHEREAS, because the site is now within a C2-4 (R6B) zoning district, the Building would not comply with the maximum FAR of 2.0, the maximum base height of 40'-0", or the maximum total building height of 50'-0"; and

WHEREAS, because the Building violated these provisions of the C2-4 (R6B) 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 on March 26, 2008 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 prior C2-4 (R6) 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. 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,

103-08-BZY

and is issued prior to any applicable amendment to this Resolution;" and

WHEREAS, the record indicates that the Permit was issued to the owner by DOB on December 5, 2007 authorizing construction of the proposed Building; and

WHEREAS, by letter dated November 18, 2008, DOB stated that the Permit was lawfully issued on December 5, 2007; and

WHEREAS, DOB initiated a special audit review of the Permit on June 23, 2008, and certain zoning and Building Code objections were raised (the "Objections"); and

WHEREAS, on June 26, 2008, DOB issued a letter to the owner providing notice of its intent to revoke the Permit based on the Objections (the "Notice of Intent"); and

WHEREAS, DOB approved revised plans on November 12, 2008 that addressed the objections identified by the audit and rescinded the letter of intent to revoke the Permit on November 17, 2008; and

WHEREAS, thus, the Board finds that the Permit was lawfully issued by DOB on December 5, 2007; 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 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 December 6, 2007 and was completed on March 24, 2008, and that substantial progress was made on the foundation 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 represents that the foundation was 85 percent complete as of the Enactment Date; and

WHEREAS, specifically, the applicant states that as of the Enactment Date, all shoring and underpinning was complete and the majority of the concrete for the

**A true copy of resolution adopted by the Board of Standards and Appeals, January 13, 2009.
Printed in Bulletin Nos. 1-3, Vol. 94.**

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

foundation was poured; and

WHEREAS, the applicant further states that approximately 75 percent of the first floor was complete as of the Enactment Date; and

WHEREAS, the Board notes that the Stop Work Order issued by DOB on March 26, 2008 also indicates that the foundation was approximately 85 percent complete 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 \$147,360, or approximately 94 percent, of the total estimated foundation cost of \$157,360 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, 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. 302308321-01-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 July 13, 2009.

Adopted by the Board of Standards and Appeals, January 13, 2009.