

114-10-BZY

APPLICANT – Nikolaos Sellas, for HX Holdings LLC, owner.

SUBJECT – Application June 24, 2010 – Extension of time (§11-331) to complete construction of a major development commenced under the prior R6 zoning district. R6B zoning district

PREMISES AFFECTED – 26-58 30th Street, north side of 30th Street, 540.78’ and 565.80’ west of corner formed by Astoria Boulevard and 30th Street, Block 597, Lot 223, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Nikolaos Sellas.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Otley-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 foundations of a major development under construction; and

WHEREAS, a public hearing was held on this application on November 23, 2010, after due notice by publication in *The City Record*, with a continued hearing on December 14, 2010, and then to decision on January 11, 2011; and

WHEREAS, Community Board 1, Queens, recommends approval of this application; and

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

WHEREAS, the subject site is located on a single zoning lot consisting of two contiguous tax lots, located on the north side of 30th Street between Astoria Boulevard and Newtown Avenue, and has a combined lot area of 5,010 sq. ft.; and

WHEREAS, Lot 124 corresponds to 26-60 30th Street and Lot 223 corresponds to 26-58 30th Street; and

WHEREAS, the two tax lots are the result of a subdivision of a larger preexisting tax lot; and

WHEREAS, each tax lot is approximately 25 feet wide by 100 feet deep; and

WHEREAS, each tax lot is proposed to be developed with a four-story eight-family semi-detached residential building, for a total of 16 dwelling units (the “Proposed Development”); and

WHEREAS, on April 28, 2010, the Department of Buildings (“DOB”) issued NB Permit No. 420116840-01-NB for the building on Lot 124, and on April 30, 2010 DOB issued NB Permit No. 420116831-01-NB for the building on Lot 223 (collectively, the “NB Permits”);

WHEREAS, when the NB Permits were issued and when construction commenced, the site was within an R6 zoning district; and

WHEREAS, the Proposed Development complies with the former R6 zoning district parameters; specifically the floor area ratio (“FAR”) of 2.13 (2.2 FAR was the maximum permitted for residential buildings), and the street wall height of 44’-2” (45 feet was the maximum street wall base height) for each of the two respective buildings; and

WHEREAS, however, on May 25, 2010 (the “Enactment Date”), the City Council voted to adopt the Astoria Rezoning, which rezoned the site to R6B; and

WHEREAS, because the site is now within an R6B zoning district, the Proposed Development would not comply with the new zoning provisions regarding FAR (2.0 FAR is the maximum permitted for residential buildings) and street wall height (40 feet is the maximum permitted street wall base height) for each of the two respective buildings; and

WHEREAS, the applicant now applies to the Board to reinstate the NB Permits pursuant to ZR § 11-331; 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,

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

WHEREAS, the record indicates that on April 28, 2010 and April 30, 2010, the NB Permits were issued by DOB authorizing construction of the Proposed Development; and

WHEREAS, by letter dated September 20, 2010, DOB states that the NB Permits were lawfully issued; and

WHEREAS, thus, the Board finds that the NB Permits were lawfully issued by DOB on April 28, 2010 and April 30, 2010, respectively; 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 two buildings on a single zoning lot, it meets the definition of a major development; and

WHEREAS, since the proposed development is a major development, the Board must find that excavation was completed and substantial progress was made as to one of the required foundations; and

WHEREAS, the applicant states that excavation began on May 10, 2010 and was completed on May 17, 2010, and that substantial progress was made on the foundations of both buildings 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 foundations for both buildings were 69 percent complete as of the Enactment Date; and

WHEREAS, specifically, the applicant states that as of the Enactment Date, 100 percent of shoring, wood lagging, drywell installation, steel reinforcement bar installation, and formwork was complete, and the only work that remains to be performed on the foundations is the pouring and waterproofing of concrete; and

WHEREAS, in support of this statement, the applicant has submitted the following: construction contracts; dated photographs of the site; a construction timeline; affidavits from the contractor describing the completed work; dated invoices; and copies of cancelled checks; and

**A true copy of resolution adopted by the Board of Standards and Appeals, January 11, 2011.
Printed in Bulletin Nos. 1-3, Vol. 96.**

**Copies Sent
To Applicant
Fire Com'r.
Borough Com'r.**

WHEREAS, the applicant notes that the foundation work completed at the time of the rezoning, including the steel reinforcement bar installation and formwork, accounted for \$73,000 out of the total foundation cost of \$106,000, or 69 percent, as evidenced by the construction contract; and

WHEREAS, the Board notes that while all the concrete was poured after the rezoning, the completion of the steel reinforcement bar installation and formwork nonetheless represents substantial progress on the foundations based on the significant cost and complexity of the work; and

WHEREAS, at hearing, the Board questioned whether the applicant had completed all formwork for the foundations; and

WHEREAS, in response, the applicant submitted a letter from the contractor stating that all formwork was completed as of the Enactment Date and dated photographs reflecting that all formwork had been completed prior to the rezoning; and

WHEREAS, the Board notes that only the work that was performed after the NB Permits were issued and before the Enactment Date has been considered in its analysis under ZR § 11-331; 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 NB Permits, and all other related permits necessary to complete construction.

Therefore it is Resolved that this application to renew New Building Permit Nos. 420116840-01-NB and 420116831-01-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 11, 2011.

Adopted by the Board of Standards and Appeals, January 11, 2011.