

195-10-BZY

APPLICANT – Eric Palatnik, P.C., for Michael Batalia, owner.

SUBJECT – Application October 26, 2010 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior M1-3D zoning, M1-2/R5B zoning district.

PREMISES AFFECTED – 38-28 27th Street, between 38th and 39th Avenue, Block 387, Lot 31, 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 § 11-332, to permit an extension of time to complete construction and obtain a certificate of occupancy for a minor development currently under construction at the subject site; and

WHEREAS, a public hearing was held on this application on May 3, 2011, after due notice by publication in *The City Record*, with a continued hearing on June 7, 2011, and then to decision on July 12, 2011; and

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

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

WHEREAS, the subject site is located on the west side of 27th Street, between 38th Avenue and 39th Avenue, in a M1-2/R5D zoning district within the Special Long Island City Mixed-Use District, Dutch Kills Sub-district; and

WHEREAS, the site has a total lot area of 11,716 sq. ft.; and

WHEREAS, the site is proposed to be developed with a 13-story hotel building (the “Building”); and

WHEREAS, the Building is proposed to have a floor area of 57,152 sq. ft. (5.0 FAR) and a total height of 126 feet; and

WHEREAS, the Building complies with the former M1-3D zoning district parameters; and

WHEREAS, however, on October 7, 2008 (hereinafter, the “Enactment Date”), the City Council voted to enact the Dutch Kills Rezoning, which rezoned the site from M1-3D to M1-2/R5D; and

WHEREAS, the Building does not comply with the current M1-2/R5D zoning district parameters as to height and floor area; and

WHEREAS, on May 29, 2008, New Building

Permit No. 402632246-01-NB (the “Permit”) was issued by the Department of Buildings (“DOB”) permitting construction of the proposed 13-story hotel building; and

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

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

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

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

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

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

WHEREAS, as a threshold issue, the Board must determine that proper permits were issued, since ZR § 11-31(a) requires: “[F]or the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not

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merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes "complete plans and specifications" as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met."; and

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

WHEREAS, by letter dated November 22, 2010, DOB stated that the Permit was lawfully issued, authorizing construction of the proposed Building prior to the Enactment Date; and

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

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

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

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

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

WHEREAS, the Board further notes that any work performed after the two-year time limit to complete construction and obtain a certificate of occupancy cannot be considered for vesting purposes; accordingly, only the work performed as of October 7, 2010 has been considered; and

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

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permit includes: 100 percent of the foundation, 100 percent of sewer and water connection installation, 94 percent of structural concrete work, 12 percent of drywell and metal work, three percent of electrical work, and the installation of exterior elevators; and

WHEREAS, in support of this statement, the applicant has submitted the following: construction tables; financial records; a list of expenditures; a

detailed check register; and photographs of the site; and

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

WHEREAS, as to costs, the applicant represents that the total expenditure paid for the development is \$4,706,782, or 39 percent, out of the approximately \$12,047,523 cost to complete; and

WHEREAS, as noted above, the applicant has submitted financial records, a list of expenditures, and a detailed check register as evidence of the payments made by the applicant; and

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

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

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

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

Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew New Building Permit No. 402632246-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on July 12, 2013.

Adopted by the Board of Standards and Appeals, July 12, 2011.

A true copy of resolution adopted by the Board of Standards and Appeals, July 12, 2011.

Printed in Bulletin Nos. 27-29, Vol. 96.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.