

Note.—This resolution is subject to formal revision before publication in the Bulletin. Please notify the General Counsel of any typographical or other formal errors so that corrections may be made before the Bulletin is published.

CORRECTION: This resolution adopted on February 11, 2020, under Calendar No. 2019-199-A, is hereby corrected to read as follows:

BOARD OF STANDARDS AND APPEALS

MEETING OF: February 11, 2020
CALENDAR NO.: 2019-199-A
PREMISES: 1045 Madison Avenue, Manhattan
Block 1491, Lots 21 and 23

ACTION OF BOARD — Appeal dismissed.

THE VOTE —

Affirmative: Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....3
Negative:.....0
Abstain: Chair Perlmutter.....1
Absent: Vice-Chair Chanda.....1

THE RESOLUTION —

The building permit issued by the Department of Buildings on July 1, 2019, under New Building Application No. 121188366 (the “Permit”), authorized 1039–1045 Madison Ave Owner LLC (the “Owner”) to construct an 18-story mixed-use building with 63,311 square feet of floor area (the “New Building”) on a zoning lot with 13,152 square feet of lot area (the “Zoning Lot” or “Premises”) occupied by an existing 14-story building on Tax Lot 23 (the “Existing Building”).

This is an appeal for interpretation under Section 72-11 of the Zoning Resolution of the City of New York (“Z.R.” or “Zoning Resolution”) and Section 666 of the New York City Charter, brought on behalf of Stuart Goode (“Appellant”), alleging errors in the Permit pertaining to whether the arrangement of the Zoning Lot with the New Building and the Existing Building does not comply with Section 28 of the Multiple Dwelling Law, pertaining to distance between buildings on a “lot,” and Section 23-711 of the Zoning Resolution, pertaining to distance between buildings containing dwelling units.

However, the Board need not reach these issues because the record reflects that the construction authorized by the Permit has changed so substantially that this appeal should instead be dismissed as moot.

I.

The Premises are located on the northeast corner of Madison Avenue and East 79th Street, in a C5-1 zoning district within the Special Madison Avenue Preservation District, in Manhattan. With 138 feet of frontage along Madison Avenue and 100 feet of frontage along East 79th Street, the Zoning Lot is occupied by the Existing Building and the under-construction New Building.

As authorized by the Permit, the New Building on Lot 21 would contain 63,311 square feet of floor area on a merged zoning lot made up of Lot 21 and Lot 23 with a lot area 13,152 square feet. Approximately 2,990 square feet of the floor area to be constructed in the New Building would be unused floor area from Lot 23.

On January 15, 2020, the Department of Buildings approved a post-approval amendment to the Permit such that the Existing Building and the proposed building are no longer on the same zoning lot. As a result, the Permit now authorizes the proposed building to contain 60,268 square feet of floor area (the “Redesigned Building”) on a zoning lot with 6,032 square feet of lot area (the “New Zoning Lot”).

A public hearing was held on this appeal on February 11, 2020, after due notice by publication in *The City Record*, and then to decision on the same date.

II.

The Department of Buildings and the Owner submit that this appeal should be dismissed because the approvals by the Department of Buildings that form the basis of the issues presented in this appeal are no longer in effect.

Although the issues presented by Appellant turn on the configuration of the Zoning Lot and distance between the New Building and the Existing Building on the same “lot” under M.D.L. § 28 and same “zoning lot” under Z.R. § 72-21, the latest drawings for the New Building approved by the Department of Buildings on January 15, 2020, reflect that the Zoning Lot no longer exists.

Instead, the latest DOB-approved drawings reflect that the Permit authorizes construction of the Redesigned Building with 60,268 square feet of floor area on the New Zoning Lot, which contains 6,032 square feet of lot area.

Notwithstanding these changed circumstances, Appellant contends that the creation of the New Zoning Lot is invalid because the Owner needs to record a declaration or waiver from all parties in interest to effectuate a zoning-lot subdivision; subdivision of the Zoning Lot to create the New Zoning Lot would create new non-compliances; legally required windows are still relevant; and the original issues would recur should the Owner attempt to recreate the Zoning Lot by effectuating another zoning-lot merger.

None of these arguments are persuasive for this appeal. Because the Board sits to review final determinations made by the Department of Buildings, all of these newly raised issues should be reviewed by the Department of Buildings in the first instance with respect to the

Revised Zoning Lot. At hearing, Appellant acknowledged and the Department of Buildings confirmed that new zoning challenges to the Revised Zoning Lot were under consideration. Responses from the Department of Buildings to these challenges in the form of a new final determination could then form the basis of a new interpretive appeal, and the same could be said for any attempt by the Owner to recreate the Zoning Lot, though this concern appears to be pure speculation on Appellant's part. Accordingly, it would be premature for the Board to consider in this appeal newly raised issues with respect to the New Zoning Lot.

Based on the foregoing, the Board finds that the circumstances underlying this appeal—namely, the continued existence of the Zoning Lot and the presence of the New Building on the same zoning lot as the Existing Building—are no longer in effect, rendering the basis of this interpretive appeal moot and the application incomplete. However, nothing herein shall prevent Appellant from filing a new interpretive appeal to challenge a Department of Buildings final determination with respect to the New Zoning Lot or the Revised Building.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *dismiss* this appeal for interpretation as moot.

Adopted by the Board of Standards and Appeals, February 11, 2020.

CERTIFICATION

***This copy of the Resolution
dated February 11, 2020
is hereby filed by
the Board of Standards and Appeals
dated November 16, 2020***

A handwritten signature in black ink, appearing to read 'Carlo Costanza', is written on a white rectangular piece of paper that is slightly tilted and placed over the certification text.

***Carlo Costanza
Executive Director***