

261-08-BZY

APPLICANT – Eric Palatnik, P.C., for Henry Zheng, owner.

SUBJECT – Application October 21, 2008 – Extension of time to complete construction (§11-331) of a minor development commenced prior to the amendment of the zoning district regulations. R7B/C1-3.

An appeal seeking a determination that the owner of the premises has acquired a common law vested right to continue the development commenced under the prior R7-1/C1-2 Zoning District.

PREMISES AFFECTED – 140-75 Ash Avenue, between Kissena Boulevard and Bowne Streets, Block 5182, Lot 34, Borough of Queens.

COMMUNITY BOARD # 7Q

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

WHEREAS, this application was heard concurrently with a companion application under BSA Cal. No. 262-08-A, withdrawn prior to the date of decision, which was a request for a finding that the owner of the site has obtained a vested right to continue construction under the common law; and

WHEREAS, a public hearing was held on this application on December 16, 2008, after due notice by publication in *The City Record*, with a continued hearing on January 13, 2009, and then to decision on January 27, 2009; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, Community Board 7, Queens, recommends disapproval of this application, citing concerns about neighborhood character and questioning whether substantial progress was made on the foundations; and

WHEREAS, the subject site is located on the north side of Ash Avenue between Kissena Boulevard and Bowne Street; and

WHEREAS, the site has a frontage of 100 feet and a depth of approximately 96 feet, and a total lot area of approximately 9,614 sq. ft.; and

WHEREAS, the site is proposed to be developed with a seven-story mixed-use building (the “Building”) with commercial use on the first floor, community facility use on the second floor, and residential use on the third through seventh floors; and

WHEREAS, the Building is proposed to have a total floor area of 46,133 sq. ft. (4.8 FAR) and a total residential floor area of approximately 33,007 sq. ft. (3.43 FAR); and

WHEREAS, the site was formerly located within a

C1-2 (R7-1) zoning district; and

WHEREAS, on April 28, 2008, New Building Permit No. 402510216-01-NB (the “Permit”) was issued by the Department of Buildings (“DOB”) permitting construction of the Building, and work commenced on May 12, 2008; and

WHEREAS, on September 24, 2008 (hereinafter, the “Enactment Date”), the City Council voted to enact the Waldheim Rezoning, which changed the zoning district to C1-3 (R7B); and

WHEREAS, the applicant represents that the Building complies with the former C1-2 (R7-1) zoning district parameters; specifically, the proposed FAR of 4.8; and

WHEREAS, because the site is now within a C1-3 (R7B) zoning district, the Building would not comply with the maximum FAR of 3.0; and

WHEREAS, because the Building is not in compliance with this provision of the C1-3 (R7B) 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 September 25, 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 parameters of the prior C1-2 (R7-1) 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,

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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 April 28, 2008, authorizing construction of the proposed Building; and

WHEREAS, by letter dated December 12, 2008, DOB states that the Permit was lawfully issued on April 28, 2008; and

WHEREAS, DOB initiated an audit of the Permit on November 14, 2008, and certain zoning and Building Code objections were raised (the “Objections”); and

WHEREAS, on November 18, 2008, DOB issued a letter to the owner providing notice of its intent to revoke the Permit based on the Objections; and

WHEREAS, on December 12, 2008, DOB issued a letter indicating that all of the objections identified by the audit had been satisfied by the owner; and

WHEREAS, thus, the Board finds that the Permit was lawfully issued by DOB on April 28, 2008; 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 June 3, 2008 and was completed on June 23, 2008, and that substantial progress was made on the foundation as of the Enactment Date; and

WHEREAS, in support of this statement, the applicant has submitted construction logs documenting the amount and type of work performed each day of construction, and dated photographs of the site showing the progress of excavation; 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 79 percent complete as of the Enactment Date; and

WHEREAS, specifically, the applicant states that as of the Enactment Date, the following work had been completed: (1) 320 linear feet of shoring, constituting 100 percent of shoring; (2) 100 cubic yards of underpinning, constituting 100 percent of underpinning; (3) 378 cubic yards of concrete was poured and 37 tons of rebar was installed for footings, constituting 75 percent of the footings; and (4) 134 cubic yards of concrete was poured and 12.5 tons of rebar was

installed for the foundation walls, constituting 50 percent of the foundation walls; and

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

WHEREAS, the applicant has also submitted financial documents indicating that the applicant spent \$577,650, or approximately 79 percent of the total estimated foundation cost of \$733,800 as of the Enactment Date; and

WHEREAS, the Board finds all of the above-mentioned submitted evidence sufficient and credible; and

WHEREAS, the Community Board noted that it found the data submitted by the applicant to be confusing, and that it therefore believed that substantial progress had not been made on the foundation as of the Enactment Date; and

WHEREAS, in response, the applicant submitted a revised “Foundation Component Summary Chart,” clarifying the work performed and expenditures made as of the Enactment Date; 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. 402510216-01-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 27, 2009.

Adopted by the Board of Standards and Appeals, January 27, 2009.

A true copy of resolution adopted by the Board of Standards and Appeals, January 27, 2009.

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Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.