

**360-05-BZY**

APPLICANT – Greenberg & Traurig, LLP for 400 15<sup>th</sup> Street, LLC, owner.

SUBJECT – Application December 14, 2005 – Proposed extension of time to complete construction of a minor development pursuant to Z.R. 11-331 for a multi family 3 story residential building under the prior Zoning R5. New Zoning District is R5B as of November 16, 2005.

PREMISES AFFECTED – 400 15<sup>th</sup> Street, Brooklyn, south side of 15<sup>th</sup> Street, 205' feet 5" west of intersection of 8<sup>th</sup> Avenue and 15<sup>th</sup> Street, Borough of Brooklyn.

**COMMUNITY BOARD #7BK**

**APPEARANCES –**

For Applicant: Deidre Carson.

**ACTION OF THE BOARD –** Application denied.

**THE VOTE TO GRANT –**

Affirmative: .....0

Negative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

**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 five-story residential building; and

WHEREAS, this application was brought concurrently with a companion application under BSA Cal. No. 368-05-A, decided the date hereof, which is a request to the Board for a finding that the owner of the premises has obtained a vested right to continue construction under the common law; and

WHEREAS, the Board notes that while separate applications were filed according to Board procedure, in the interest of convenience, it heard the cases together and the record is the same for both; and

WHEREAS, a public hearing was held on this application on March 29, 2006 after due notice by publication in *The City Record*, with continued hearings on May 2, 2006 and May 16, 2006, and then to decision on June 20, 2006; and

WHEREAS, the site was inspected by a committee of the Board, consisting of Chair Srinivasan and Commissioner Collins; and

WHEREAS, Community Board 7, Concerned Citizens of Greenwood Heights, and South Slope Community Group, appeared in opposition to the application; and

WHEREAS, certain elected officials, including State Senator Velmanette Montgomery, State Assemblyman James Brennan and Public Advocate Betsy Gotbaum, also provided testimony in opposition to the application; and

WHEREAS, the above-mentioned elected officials, community groups, and neighbors (hereinafter, collectively referred to as the “opposition”) opposed the granting of any relief to the applicant, for reasons

discussed below; and

WHEREAS, the subject premises is located on the south side of 15<sup>th</sup> Street, 205'-5" west of the intersection of Eighth Avenue and 15<sup>th</sup> Street; and

WHEREAS, the subject lot is approximately 75 ft. wide by 100 ft. deep, with a total lot area of 7,656 sq. ft.; and

WHEREAS, the applicant proposes to develop the site with a five-story residential building with 16,743 sq. ft. of residential floor area (2.2 FAR), with a full cellar, and a first-floor parking garage (the “Building”); and

WHEREAS, the subject premises is currently located within an R6B zoning district, but was formerly located within an R6 zoning district; and

WHEREAS, the Building complies with the former R6 zoning bulk parameters; specifically, building height (55 ft. was permitted), setback (a setback was required at 45 ft.) and floor area (2.2 FAR was the maximum permitted); and

WHEREAS, however, on November 16, 2005 (hereinafter, the “Enactment Date”), the City Council voted to adopt the Park Slope South rezoning, which rezoned the site to R6B, as noted above; and

WHEREAS, because the site is now within an R6B district, the proposed development would not comply with such parameters; and

WHEREAS, on July 8, 2005, the Department of Buildings issued a New Building permit (New Building Permit No. 301748777; hereinafter the “NB Permit”) for the Building; and

WHEREAS, the validity of the NB Permit when issued has not been questioned and is not at issue in this appeal; and

WHEREAS, because the Building violated the provisions of the new R6B zoning district and work on the foundation was not completed as of the Enactment Date, the NB Permit lapsed by operation of law; and

WHEREAS, additionally, the Department of Buildings issued a stop work order on November 22, 2005 for the NB Permit; and

WHEREAS, the applicant now applies to the Board to reinstate the 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

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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, 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, based upon its review of the evidence, the Board has determined that excavation was not completed; and

WHEREAS, the Board notes that due to litigation with the neighbor at 396 15<sup>th</sup> Street, the court issued a temporary restraining order on August 5, 2005, which halted all non-remedial excavation and construction within 15 ft. of the neighboring property; and

WHEREAS, based upon the record before it, the Board is unable to conclude that excavation for the proposed development was complete or would have been completed had there not been a stop work order; and

WHEREAS, as to substantial progress on the foundation, the Board has only considered work completed as of the Enactment Date and excluded all remedial work ordered by DOB since that date; and

WHEREAS, the Board observes that while 39 percent of the total foundation costs have been expended for helical piles, shoring, and steel plates, a considerably smaller percentage of actual physical foundation work was completed; and

WHEREAS, specifically, the applicant represents that only 3.0 percent, or 2.5 tons out of a total of 73 tons, of rebar have been installed, and only 6 percent, or 58.5 cubic yards out of a total of 757 cubic yards, of concrete has been poured; and

WHEREAS, additionally, the Board notes that substantial progress has not been made on other primary

elements of the foundation, including the reinforcement and concrete pouring; and

WHEREAS, again, based upon the record before it, the Board determines that substantial progress on the foundation was not completed; and

WHEREAS, accordingly, because excavation was not complete and substantial progress was not made on the foundation, the applicant is not entitled to relief pursuant to ZR § 11-331; and

WHEREAS, however, the Board notes that the applicant has also filed the above-mentioned companion application, which requests a determination that the applicant has obtained a vested right under the common law to complete construction under the NB Permit; and

WHEREAS, accordingly, although the Board, through this resolution, denies the owner of the site the six-month extension for completion of construction that is allowed under ZR § 11-331, this denial is not an impediment to the reinstatement of the permit made by the Board under BSA Cal. No. 368-05-A.

*Therefore it is Resolved* that this application to renew DOB Permit No. 301748777 pursuant to ZR § 11-331 is denied.

Adopted by the Board of Standards and Appeals, June 20, 2006.

**A true copy of resolution adopted by the Board of Standards and Appeals, June 20, 2006.**

**Printed in Bulletin Nos. 26, Vol. 91.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**