

***CORRECTION**

The resolution adopted on July 15, 2014, under Calendar No. 266-07-A and printed in Volume 99, Bulletin Nos. 27-29, is hereby corrected to read as follows:

266-07-A

APPLICANT – Law Office of Fredrick A. Becker, for 1610 Avenue S LLC, owner.

SUBJECT – Application January 9, 2013 – Extension of time to complete construction and obtain a certificate of occupancy of a previously granted common law vested rights application, which expired on December 9, 2012. R4-1 Zoning District.

PREMISES AFFECTED – 1602-1610 Avenue S, southeast corner of Avenue S and East 16th Street. Block 7295, Lot 3. Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of time to complete construction and obtain a certificate of occupancy for a six-story mixed residential and community facility building at the subject site; and

WHEREAS, a public hearing was held on this application on March 25, 2014, after due notice by publication in *The City Record*, with continued hearings on May 13, 2014 and June 10, 2014, and then to decision on July 15, 2014; and

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

WHEREAS, Community Board 15, Brooklyn recommends disapproval of this application, citing concerns about the lack of maintenance of the site and its effect on nearby residents; and

WHEREAS, Assemblyman Steven Cymbrowitz provided testimony in opposition to this application; and

WHEREAS, the Madison-Marine-Homecrest Civic Association provided testimony in opposition to this application; and

WHEREAS, certain members of the surrounding community provided testimony in opposition to this application; and

WHEREAS, collectively, the parties who provided testimony in opposition to the proposal are the “Opposition”; and

WHEREAS, the Opposition raised the following concerns with respect to the instant application: (1) that a “For Sale” sign has been posted at the site recently; (2) that the owner does not have the financing to complete

the project; (3) that there are open Department of Buildings (“DOB”) and Environmental Control Board (“ECB”) violations at the site; (4) that the sidewalk along the perimeter of the building is in disrepair; (5) that the site is a dumping ground; and (6) that the site negatively affects the quality of life and property values of the surrounding neighborhood; and

WHEREAS, the subject site is located on the southeast corner of the intersection of Avenue S and East 16th Street, within an R4-1 zoning district; and

WHEREAS, the site has 85 feet of frontage along Avenue S, 95 feet of frontage along East 16th Street, and 8,075 sq. ft. of lot area; and

WHEREAS, the applicant proposes to develop the site with a six-story mixed residential (Use Group 2) and community facility (Use Group 4) building with 25 dwelling units; and

WHEREAS, the site was formerly located within an R6 zoning district; and

WHEREAS, the applicant states that New Building Permit No. 302054568-01-NB was issued on January 11, 2006 (the “New Building Permit”), authorizing construction of the building in accordance with the R6 zoning district regulations; and

WHEREAS, on February 15, 2006 (the “Enactment Date”), the City Council voted to adopt the Homecrest Rezoning, which rezoned the site from R6 to R4-1; and

WHEREAS, the New Building Permit lapsed by operation of law on the Enactment Date because the plans did not comply with the new R4-1 zoning district regulations and foundations were not complete; and

WHEREAS, the applicant notes that by letter dated November 18, 2008, DOB acknowledged that the New Building Permit was lawfully issued; and

WHEREAS, on December 9, 2008, under the subject calendar number, the Board adopted a resolution recognizing that a vested right to continue construction under the New Building Permit had accrued under the common law doctrine of vested rights, and the Board reinstated the New Building Permit for a term of four years, to expire on December 9, 2012; and

WHEREAS, the applicant represents that, subsequent to the 2008 grant, construction did not proceed due to insufficient financing; thus, as of December 9, 2012, construction had not been completed and a certificate of occupancy had not been issued for the building; and

WHEREAS, consequently, the applicant now seeks an additional four-year term in which to complete construction and obtain a certificate of occupancy; and

WHEREAS, at hearing, the Board directed the applicant to: (1) demonstrate that financing has been secured to complete the project; (2) clarify the status of open violations; and (3) respond to the concerns of the Opposition regarding the disrepair of the sidewalk and the lack of maintenance at the site; and

WHEREAS, as to the financing, the applicant provided an affidavit from an owner of the site, which

266-07-A

indicates that Besyata Investment Group has committed up to \$6,000,000 to complete construction of the building; and

WHEREAS, as to the open violations, the applicant represents that although the violating conditions have been eliminated, the fines have yet to be paid; as such, the violations remain open; and

WHEREAS, the applicant states that it will resolve all outstanding violations upon the renewal of the New Building Permit by the Board; and

WHEREAS, as to the disrepair of the sidewalk, the applicant states that because construction machinery must access the site by traversing the sidewalk, the developer did not plan to repair the sidewalk until the building is nearing completion; and

WHEREAS, the Board directs the applicant to remove the broken portions of the sidewalk and install had gravel or a similar temporary surface in order to provide a level walkway; and

WHEREAS, as to the maintenance of the site, the applicant provided an invoice and photographs of the site, which demonstrate that the site has been cleared of all debris and garbage; and

WHEREAS, as to the Opposition's concern regarding the "For Sale" at the site; in sum and substance, the Opposition is concerned that the applicant seeks renewal of the New Building Permit for the sole purpose of conveying the site to another developer, which the Opposition characterizes is inconsistent with the owner's statement that it has obtained financing to complete the building; and

WHEREAS, the Board notes, however, that under the common law doctrine of vested rights, such rights accrue not to a specific owner but rather to the real property itself; as such, a change in ownership—let alone an anticipated change in ownership or control—is not a basis for the Board to deny a request for an extension of time to complete construction; and

WHEREAS, likewise, the Board acknowledges the limitations on its authority to deny a request for an extension of time to complete construction where it has already recognized that the right to continue construction has vested, as set forth in Lefrak Forest Hills Corp. v Galvin, 40 AD2d 211, 217 [2d Dept 1972] *affd*, 32 NY2d 796, 298 NE2d 685 [1973]; and

WHEREAS, the Board has reviewed the evidence in the record and determined that the requested extension of time is warranted; and

A true copy of resolution adopted by the Board of Standards and Appeals, July 15, 2014.

Printed in Bulletin Nos. 27-29, Vol. 99.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

WHEREAS, accordingly, the Board hereby grants the owner of the site a two-year extension of time to complete construction and obtain a certificate of occupancy.

Therefore it is Resolved, that this application to renew New Building Permit No. 302054568-01-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 construction and obtain a certificate of occupancy for two years from the date of this resolution, to expire on July 15, 2016.

Adopted by the Board of Standards and Appeals, July 15, 2014.

The resolution has been amended. Corrected in Bulletin No. 31, Vo. 99, dated August 6, 2014.

