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publication in the New York Reports.
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2 No. 132
In the Matter of Sinclair
Haberman et al.,
Appellants,
v.
Zoning Board of Appeals of City
of Long Beach, et al.,
Respondents.

Victor A. Kovner, for appellants.
Corey E. Klein, for respondent City of Long Beach.
Michael G. Zapson, for respondent Xander Corp.
New York State Builders Association, Inc., _amicus curiae_.

SMITH, J.:

We hold that, where a zoning board of appeals has voted to grant a variance, the board's lawyer, acting with actual or apparent authority, may agree to extend the time to build the improvements permitted by the variance. A second board meeting

and vote are not required.

Facts and Procedural History

Sinclair Haberman sought a variance from the City of Long Beach Zoning Board of Appeals (ZBA) to build a four-tower residential condominium complex. The ZBA granted the variance, but after one of the towers was built a dispute arose about the other three. Haberman brought a lawsuit against the City, the ZBA and the City's building commissioner, which was settled by a stipulation in 1989.

Paragraph 4 of the stipulation said that Haberman would apply for new variances to permit construction of the remaining three buildings. These variances were to be subject to certain conditions, including time limits in which Haberman must apply for building permits: within five years of the grant of the variance for building 2, six and a half years for building 3 and seven years for building 4. In paragraph 5 of the stipulation, Haberman agreed to pay $200,000 to the City to fund public improvements for the benefit of his project, including the installation of underground utility lines; and the City agreed to begin construction of the improvements not later than two years after receiving the $200,000.

Haberman did apply for the new variances, and the ZBA granted them on August 4, 1989. Haberman paid the $200,000 to the City in December 1989, so that, under paragraph 5 of the stipulation, the City was required to install the underground

utility lines not later than December 1991. That deadline was not met, and the City asked Haberman for an extension of time. Haberman agreed to grant it, on condition that the paragraph 4 time limits, governing his time to apply for building permits, were also extended.

These terms were reflected in a letter dated April 7, 1992 from Haberman to the City's Corporation Counsel, who represented all the defendants -- including the ZBA -- in Haberman's lawsuit. The letter said, in relevant part:

> "The undersigned Plaintiff-Petitioner in the above entitled action does hereby agree to extend the time of The City of Long Beach ('The City'), to comply with paragraph '5' of the Stipulation of Settlement of the above entitled action, dated March 8, 1989 ('Stipulation'), without time limitation.
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> "In consideration for this extension, it is agreed by the parties that the time limitations contained and set forth in paragraph '4' of the Stipulation shall be tolled and shall not run against the Plaintiff-Petitioner until such time as The City has complied with the terms of paragraph '5' of the Stipulation.
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> "Please indicate all of the defendants' consent to the foregoing by signing and returning the enclosed copy of this letter."

The Corporation Counsel signed an acknowledgment that he "consented and agreed to" the April 1992 letter as attorney for all of the defendants, including the ZBA. The letter agreement was then attached to a new stipulation, providing that the 1989 stipulation "be, and hereby is, modified in accordance with the letter dated April 7th, 1992." The new stipulation was

signed by counsel for all parties and "so ordered" by Supreme Court.

For the next decade, it seems, nothing of significance happened. The City did not install the underground utility lines, and Haberman did not apply for a building permit. Finally, in 2002, Haberman's construction company applied for a permit to begin work on building 2, and in 2003 the City's Building Department issued the permit. The cooperative corporation that had acquired building 1 back in the 1980s opposed the new construction, and asked the ZBA to revoke the permit; the ZBA did so, relying on Haberman's failure to meet the schedule contained in the 1989 stipulation. The ZBA rejected the argument that Haberman's time had been extended by the April 1992 letter agreement, saying that "[s]uch a major change . . . required a ratification by the ZBA after a public hearing."

Haberman brought this litigation to annul the ZBA's revocation and reinstate his building permit. Supreme Court annulled the ZBA's action, but the Appellate Division reversed, holding that the ZBA "had a rational basis for finding that the stipulation purporting to extend the prior variance was unenforceable." We granted leave to appeal, and now reverse the Appellate Division's order.

Discussion

The only question before us is whether the ZBA is bound by the Corporation Counsel's agreement, as its attorney, to the

April 1992 letter extending Haberman's time to apply for building permits. Ordinarily, of course, parties to litigation are bound by their lawyers' agreements on their behalf (see Hallock v State of New York, 64 NY2d 224 [1984]), but the ZBA claims this rule does not apply here, because Haberman's time could be extended only by a vote of the ZBA itself. We reject the ZBA's argument.

It is true that, as Haberman concedes, the grant of a variance requires ZBA action (see Matter of Commco, Inc. v Amelkin, 62 NY2d 260 [1984]; Carbone v Town of Bedford, 144 AD2d 420 [2d Dept 1988]). That is, presumably, why the parties' original stipulation, in 1989, provided for the issuance of new variances by the ZBA. We have held, however, that once a variance has been issued, the same formality is not required to extend the variance's duration: "It is not required that . . . an application [for an extension] be treated as a new application for which public notice and a hearing are mandatory" (Matter of New York Life Ins. Co. v Galvin, 35 NY2d 52, 59 [1974]). The ZBA concedes that, under Galvin, a new notice and hearing were not necessary, but says that an extension should still require a ZBA vote. It cites no authority for this rule, and we see no good reason to adopt it.

The agreement to extend Haberman's time was entered into in writing, after negotiations between counsel, and was approved by the court. It was a benefit given to Haberman in exchange for a benefit received by the City -- an extension of

the City's time to install underground utility lines. It is admitted that the Corporation Counsel was the ZBA's attorney in the litigation Haberman brought. The ZBA does not claim that, in signing the April 1992 letter agreement and the stipulation adopting it, its lawyer was violating the ZBA's instructions, or concealing his actions from his client -- and clearly no such problem, if it existed, was known to Haberman. In other words, the Corporation Counsel had at least apparent, if not actual, authority to act on the ZBA's behalf. It would be unfair to hold, many years after the event, that the lawyer's agreement was a nullity because the parties did not follow a procedure that no statute and no precedent required.

Accordingly, the order of the Appellate Division, insofar as appealed from, should be reversed, with costs, and the matter remitted to the Appellate Division for consideration of issues raised but not determined on the appeal to that court.

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Order, insofar as appealed from, reversed, with costs, and matter remitted to the Appellate Division, Second Department, for consideration of issues raised but not determined on the appeal to that court. Opinion by Judge Smith. Chief Judge Kaye and Judges Ciparick, Graffeo, Read, Pigott and Jones concur.

Decided November 19, 2007