

Ray v City of New York
2020 NY Slip Op 30470(U)
February 13, 2020
Supreme Court, New York County
Docket Number: 156021/2019
Judge: Lyle E. Frank
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LYLE E. FRANK PART IAS MOTION 52EFM

Justice

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INDEX NO. 156021/2019

RACHAEL RAY, JOHN CUSIMANO, LISA LOREN, LAURA ROBERTS, MICHAEL MURRAY, JANET MARKOFF, SHILPA TAUFIQUE, SIMON TAUFIQUE, KACEY MCCAFFREY, PATRICIA MCCAFFREY, LENA SONG, JAN REJESKI, TIZA TJOKROADISUMARTO, LAURA GONZALEZ, KAREN NACHBAR, KAVITA DAS, OM ARORA, JOSEPH SAPIENZA, 49 EAST OWNERS CORP.

MOTION DATE 02/10/2020

MOTION SEQ. NO. 001

Petitioner,

- v -

DECISION + ORDER ON MOTION

CITY OF NEW YORK, NEW YORK CITY LANDMARKS PRESERVATION COMMISSION, BH QUALITY BROADWAY INVESTORS LLC, BH BROADWAY OWNER LLC,

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 10, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 were read on this motion to/for ARTICLE 78 (BODY OR OFFICER)

Petitioners are seeking an order and judgment, pursuant to Article 78 of the Civil Practice Law and Rules: (i) annulling, vacating, and/or reversing the Certificate of Appropriateness (“CofA”) issued by the Landmarks Preservation Commission (“LPC”) on February 15, 2019, which granted respondents BH Quality Broadway Investors LLC and BH Broadway Owner LLC (collectively, the “Developer”) the right to modify the landmark buildings located at 827-831 Broadway in Greenwich Village (“Landmark Buildings”); (ii) remanding the CofA to the LPC for further proceedings; and (iii) permitting Petitioners to obtain discovery from the LPC. Respondents, the City of New York and the New York City Landmarks Preservation

Commission¹, argue that a public hearing was not required because the Developer's new plans were not a substantial deviation from those already approved. Further, respondents contend that all lawful procedures were followed and that the LPC's review is limited solely to the "effects" of the proposed work on the exterior architectural features of the landmark. Based on the reasons set forth below the petition is granted to the extent that the Certificate of Appropriateness is remanded to the Landmarks Preservation Committee for further proceedings.

A public hearing was held on January 9, 2018, with respect to the CofA, at which the public was able to be heard and several people spoke in opposition to the First Proposal, including petitioners' attorney. The Developer continued to submit additional plans with revisions to LPC. Thereafter, there were two public meetings, one on April 24, 2018 and one on May 15, 2018. The public was not allowed to participate in either of the public meetings. On February 15, 2019, the CofA in question was issued.

The law is well-settled and is undisputed that another public hearing would have been required if the revised proposal substantially deviated from the initial proposal. *See Maxtone-Graham v Landmarks Preservation Commission of the City of New York*, 1 AD3d 295 [1st Dept 2003].

It appears undisputed that the Developer's original plans, the plans subject to the public hearing, were changed substantially and approved by LPC. Respondent's position however, is that the substantial deviation, changes in the plans, were not changes that required additional hearings because the changes limited the impact on the landmarked site and additional seven story structure was to be placed on non-landmarked site, therefore that structure was out of the

¹ Respondents, BH QUALITY BROADWAY INVESTORS LLC, BH BROADWAY OWNER LLC, have not appeared in this special proceeding.

purview of the LPC. However, this argument is not entirely accurate. While a large portion of the additional seven-story structure will be placed on a non-landmarked site, still at least 4-foot 10-inches² of this new structure will be on the landmarked site.

The proposal approved by the LPC and the proposal of which there was a public hearing bore no resemblance to each other in terms of size, shape and location. While this Court agrees that the impact on the landmarked building would be on a smaller area of the landmarked parcel in the final proposal as in the original proposal, the height of the parcel on the landmarked building would be much higher. It is this Court's ruling therefore that the final design so deviated from the original design that an additional public hearing on the new design was required. It must be made clear that this Court does not reach whether the decision made by the LPC was arbitrary and capricious.

Moreover, this Court does not find that there was a violation of the Open Meetings Law based on the mere suspicions raised by petitioner. The Court is convinced that normal procedure followed by the LPC on such an action would not violate the Open Meetings Law, and there is simply no evidence other than conjecture that such a violation occurred. Finally, as to respondent's argument that a motion was required to keep the record open in this case, this Court rules that to the extent a motion was necessary to keep the record open, it was simply a ministerial error, and not one that impacted the decision of the LPC in any way. Moreover, it does not appear that the record was kept open, but rather the applicant could continue to provide modifications to the proposal. Accordingly, it is hereby

² This measurement was provided by respondents and is disputed by petitioners.

ORDERED that the Certificate of Appropriateness issued by the Landmarks Preservation Commission is vacated and the matter is remanded for further proceedings consistent with this decision.

2/13/2020
DATE

LF

LYLE E. FRANK
HON. LYLE E. FRANK
J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE