

**Brown v 255 E. Houston Mgr. LLC**

2025 NY Slip Op 34239(U)

November 5, 2025

Supreme Court, New York County

Docket Number: Index No. 153513/2025

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 11M**

*Justice*

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TICE BROWN,

Plaintiff,

- v -

255 EAST HOUSTON MANAGER LLC, NEW YORK CITY,  
NEW YORK CITY DEPARTMENT OF BUILDINGS, NEW  
YORK CITY BOARD OF STANDARDS AND APPEALS,  
DAVID MOUSSAZADEH, 280 EH REALTY LLC, DMZ  
ALLEN, LLC, DMZ 4 LLC, SASSAN MAHFAR, 99 ALLEN  
STREET SM, LLC, BELLE POINTE LLC, SM BLEECKER  
LLC, JAN SOLEIMANI, JS BLEECKER EH LLC, 156 THIRD  
HOLDINGS, LLC, FSM HOLDINGS V LLC, ATLANTIC  
BEACH CAPITAL MANAGEMENT LLC

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 39, 40, 41, 42, 44, 45, 46, 48, 49, 55, 56, 82, 83, 84, 85, 86

were read on this motion to/for PREL INJUNCTION/TEMP REST ORDR.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 38, 43, 47, 50, 53, 54, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

The following e-filed documents, listed by NYSCEF document number (Motion 004) 87, 88, 89, 90, 91

were read on this motion to/for DISCOVERY.

Petitioner, Tice Brown, bring this proceeding pursuant to Article 78 of the New York Civil Practice Law and Rules (“CPLR”) to challenge the determination of the New York City Board of Standards and Appeals (“BSA”), which denied Petitioner’s appeal concerning the approval of a New Building Permit for a construction project located at 280 East Houston Street, New York, NY 10002 (Block 397, Lot 58) (the “Project”).<sup>1</sup> Petitioner seeks judicial review of

<sup>1</sup> The Court would like to thank Special Master to the Court, Jason Lowe, for his assistance in this matter.

the BSA's decision to allow the Project to proceed despite alleged violations of the New York City Zoning Resolution requirements, particularly the rear yard setback reduction provisions. Petitioner argues the Project was not eligible for rear yard reduction under the Zoning Resolution requirements.

The respondents include the City of New York, the New York City Department of Buildings ("DOB"), and the New York City Board of Standards and Appeals. Further, there are private developer respondents which include 255 East Houston Manager, LLC, David Moussazadeh, 280 EH Realty LLC, DMZ Allen, LLC, DMZ 4 LLC, Sassan (Samy) Mahfar, 99 Allen Street SM, LLC, Belle Point, LLC, SM Bleecker LLC, Jan Soleimani, JS Bleecker EH, LLC, 156 Third Holding, LLC, FSM Holdings V LLC, and Atlantic Beach Capital Management LLC (the "Developer Respondents").

In January 2023, Developer Respondents commenced construction of a project (the "Project") to erect a new, 12-story mixed-use building (the "Building") on the site located at 280 East Houston Street (the "Site"). The DOB approved the Project in February 2024. The Project is now virtually complete and the Building has been built.

In motion sequence number 2, Petitioner, who lives across the street from the Building, seeks to enjoin the Developer Respondents from further construction on the Building (to the extent any is left) and an injunction enjoining the DOB from issuing a certificate of occupancy. Further, Petitioner seeks to challenge the resolution of the BSA's denial of Brown's appeal concerning the issuance of the Work Permit for the Project (the "DOB Permit"). Petitioner argues that the DOB Permit is in violation of the New York City Zoning Resolution.

The Developer Respondents cross-move seeking to dismiss the Petition. Further, Plaintiff filed a separate motion seeking discovery.

## Discussion

### **The Relief Petitioner Requests is Moot**

“[T]he doctrine of mootness is invoked where a change in circumstances prevents a court from rendering a decision that would effectively determine an actual controversy.” *Matter of Dreikausen v Zoning Bd. of Appeals of City of Long Beach*, 98 N.Y.2d 165, 172 (2002). “In the construction context, ‘several factors [are] significant in evaluating claims of mootness[,] [c]hief among them [being] a challenger’s failure to seek preliminary injunctive relief or otherwise preserve the status quo to prevent construction from commencing or continuing during the pendency of the litigation.’” *Matter of Committee for Environmentally Sound Dev. v Amsterdam Ave. Redevelopment Assoc. LLC*, 194 A.D.3d 1, 12 (1st Dep’t 2021) quoting *Matter of Dreikausen* 98 N.Y.2d at 173. “Also significant are whether work was undertaken without authority or in bad faith, and whether substantially completed work is ‘readily undone, without undue hardship.’” *Citineighbors Coalition of Historic Carnegie Hill v. N.Y. City Landmarks Pres. Comm’n*, 2 N.Y.3d 727, 729 (2004) quoting *Matter of Dreikausen* 98 N.Y.2d at 173.

Developer Respondents commenced construction on the Project in January 2023 pursuant to validly issued DOB permits. The Building is virtually complete with only punch list items remaining to be performed. Petitioner failed to obtain injunctive relief to stop the construction prior to the building being almost completed. “[G]iven that the building is substantially complete, ‘the work . . . could not be readily undone without undue hardship.’” *Matter of Comm. for Environmentally Sound Dev. v Amsterdam Ave. Redevelopment Assoc. LLC*, 194 AD3d 1, 13 (1st Dept 2021) quoting *Matter of Weeks Woodlands Assn., Inc. v Dormitory Auth. of the State of*

N.Y., 95 AD3d 747, 747 (1st Dept 2012). Therefore, since Petitioner failed to preserve the status quo at an earlier date, and did not take all steps to ensure to challenge the status quo, Petitioner's request for relief is moot at this point.

### **The BSA's Decision Was Not Arbitrary and Capricious**

In an Article 78 proceeding to review a determination of a local zoning body, such as the BSA, judicial review is limited in scope to the question of whether the determination was arbitrary, unlawful, or an abuse of discretion. CPLR § 7803; *Cowan v. Kern*, 41 N.Y.2d 591, 599 (1977); *Fiore v. Zoning Bd. of Appeals*, 21 N.Y.2d 393, 396 (1968); *Human Dev. Servs., Inc. v. Zoning Bd. of Appeals*, 110 A.D.2d 135 (2d Dept. 1985), *aff'd*, 67 N.Y.2d 702 (1986). This Court cannot substitute its judgment for that of the local zoning board. If the decision of the BSA has any reasonable basis in fact, the challenged determination must be sustained. See *Guggenheim Neighbors v. Bd. of Estimate*, 145 A.D.2d 998 (1st Dept. 1988), *lv. denied*, 74 N.Y.2d 603 (1989); *Cowan*, 41 N.Y.2d at 599; *Conley v. Town of Brookhaven Zoning Bd. of Appeals*, 40 N.Y.2d 309, 314 (1976).

This Court finds that the BSA's decision was not arbitrary, unlawful, or an abuse of discretion. Though the rear yard in this case was smaller than the standard depth, the DOB approved the yard and therefore it qualified for reduced minimum rear yard setbacks. The BSA made specific findings of fact and law to support the above conclusion, that the Court does not find was irrational. Therefore, this Court defers to the BSA which is responsible for administration of the zoning regulation.

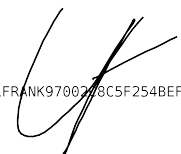
Considering the findings of this Court, Petitioner does not have a likelihood of success on the merits of its claims and therefore Petitioner's request for injunctive relief is denied. Further,

for the same reasons, the petition is denied, this action is dismissed, and the request for discovery is similarly denied.

Accordingly, it is hereby

ORDERED the Petition is dismissed.

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11/5/2025

DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE