

Appellate Division, First Judicial Department

Gische, J.P., Webber, Friedman, Oing, Kennedy, JJ.

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In the Matter of LANDMARK WEST! INC.,
Petitioner-Appellant,

Index No. 160565/20
Case No. 2021-02808
2021-04423

-against-

NEW YORK CITY BOARD OF STANDARDS AND
APPEALS, et al.,
Respondents-Respondents.

Klein Slowik PLLC, New York (Mikhail Sheynker of counsel), for appellant.

Sylvia O. Hinds-Radix, Corporation Counsel, New York (Philip W. Young of counsel), for New York City Board of Standards and Appeals and New York City Department of Buildings, respondents.

Cyrulnik Fattaruso LLP, New York (Jason Cyrulnik of counsel), for Extell Development Company and West 66th Sponsor LLC, respondents.

Judgment, Supreme Court, New York County (Eileen Rakower, J.), entered May 6, 2021, denying the petition to annul the determination of respondent New York City Board of Standards and Appeals (BSA), dated November 16, 2020, which affirmed the issuance of a building permit, and dismissing the proceeding brought pursuant to CPLR article 78, unanimously affirmed, without costs. Order, same court and Justice, entered November 16, 2021, which denied petitioner’s motion for leave to renew, unanimously affirmed, without costs.

BSA rationally relied on its precedent in 15 East 30th Street (BSA Decision, Calendar No. 2016-4327-A [Sept. 20, 2017]) to find that when this project vested in 2019, ZR § 12-10, did not provide a basis for rejecting Extell’s floor space deductions for

mechanical equipment (*see Matter of City Club of N.Y. v New York City Bd. of Stds. & Appeals*, 198 AD3d 1, 7 [1st Dept 2021]). That determination by BSA is entitled to substantial deference (*see Matter of Committee for Environmentally Sound Dev. v Amsterdam Ave. Redevelopment Assoc. LLC*, 194 AD3d 1, 10 [1st Dept 2021], *lv denied* 37 NY3d 906 [2021]). To the extent that the May 2021 amendment to ZR § 12-10 articulates a different standard for calculating floor space deductions, assuming without deciding it otherwise applies to this project, the amendment lacks a clear expression as to its retroactive effect. Here, the completion of the building's foundation before the effective date of ZR § 12-10's May 2021 amendment permits the project to proceed with construction as of right under ZR § 11-331.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: April 28, 2022



Susanna Molina Rojas
Clerk of the Court