Appeals Court Decision Saves 200 Amsterdam Ave. from Chopping Block

New York City developers collectively sighed with relief when 200 Amsterdam Avenue, a mixed-use, high-rise building on Manhattan's Upper West Side, was saved from the guillotine when a New York State intermediate appellate court reversed a lower court's decision that retroactively revoked the developer's building permit for an as-of-right development. The affirmance of the controversial ruling, issued by the New York County Supreme Court on February 27, 2020, would have resulted in the demolition of more than 20 top floors of the fully-constructed 668 feet high 55-story tower.

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On September 27, 2017, the New York City Department of Buildings (DOB) issued a building permit to Amsterdam Avenue Redevelopment Associates LLC, a joint venture between SJP Properties and Mitsui Fudosan, to construct 200 Amsterdam. After the validity of the permit was twice approved by the New York City Board of Standards and Appeals (BSA), the Committee for Environmentally Sound Development (CFESD) commenced a special proceeding in the New York County Supreme Court seeking to annul BSA's determination, vacate the DOB-issued permit, and remove a bulk of

the skyscraper's top floors. On February 27, 2020, the Court granted CFESD's request and, on March 3, 2020, the developer appealed.

On appeal, the developer, one of the appellants in the proceeding, sought review of the February 27th decision to determine whether a DOB-issued building permit that was affirmed by BSA can be retroactively invalidated by a trial court based on the court's new interpretation of Section 12-10(d) of the New York City Zoning Resolution.

Section 12-10(d), a fundamental part of New York City's zoning scheme, defines the area of land DOB must use to assess a project's compliance with various zoning requirements, such as limitations on building height. Almost from the time of its adoption in 1977, DOB had consistently interpreted this section to mean that "a single zoning lot … may consist of one or more tax lots or parts of tax lots."

In reversing the February 27th decision, the Appellate Court found that Section 12-10(d) of the Zoning Resolution was "ambiguous." Nevertheless, the court held that BSA "rationally interpreted" Section 12-10(d) to allow the developer to include "partial tax lots" in its declared "zoning lot" based on DOB's "longstanding interpretation" of this section of the Zoning Resolution.

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Zetlin & De Chiara LLP represented New York Building Congress, Inc., a New York City-based not-for-profit trade organization that promotes real estate development and construction in New York City, as amicus curiae in the appeal.

To read the Appeals Court decision, click here.

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