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This memorandum is uncorrected and subject to revision before
publication in the New York Reports.

No. 85

Matter of GRA V, LLC, et al.,
Appellants,

v.

Meenakshi Srinivasan, et al.,
Respondents.

Submitted by Richard Lobel, for appellants.
Submitted by Leonard J. Koerner, for respondents.

MEMORANDUM:

The order of the Appellate Division should be reversed,
with costs, and the matter remitted to Supreme Court with
directions to remand to the New York City Board of Standards and
Appeals (BSA) for further proceedings in accordance with this
memorandum.

Petitioners brought this article 78 proceeding to annul a BSA resolution. The challenged resolution denied petitioners' appeal from a determination of the New York City Department of Buildings (DOB) that required petitioners to stop work on a proposed apartment building. The proposed building was not a permissible use under a newly-adopted amendment to the New York City Zoning Resolution. The DOB decided, and the BSA agreed, that petitioners had not acquired a vested right to build before the amendment was adopted.

Supreme Court rejected petitioners' claim and dismissed the proceeding. The Appellate Division, with two justices dissenting, affirmed. On appeal to this Court, however, the BSA concedes that it and the lower courts were in error and that its determination must be vacated. The only issue on which the parties now disagree is whether petitioners have established their right to proceed with their building as a matter of law, or whether the BSA should consider the matter further.

We are unable to say that petitioners' right to build is established as a matter of law by this record. While no legal obstacle to the building is apparent, the BSA, basing its decision on what it erroneously thought to be a fatal flaw in petitioners' application, may not have reviewed all other material aspects of it. The matter must therefore be remitted to the BSA to enable it to do so.

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Order reversed, with costs, and matter remitted to Supreme Court, Bronx County, with directions to remand to respondent Board of Standards and Appeals of the City of New York for further proceedings in accordance with the memorandum herein. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided June 4, 2009