

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of

DEVELOP DON'T DESTROY BROOKLYN; Index No.
DANIEL GOLDSTEIN;
ATLANTIC AVENUE BETTERMENT ASSOCIATION; RJI No.
FORT GREENE ASSOCIATION;
BOERUM HILL ASSOCIATION;
FIFTH AVENUE COMMITTEE;
EAST PACIFIC BLOCK ASSOCIATION;
PROSPECT HEIGHTS ACTION COALITION by its President PATTI HAGAN;
PRATT AREA COMMUNITY COUNCIL;
SOCIETY FOR CLINTON HILL;
DEAN STREET BLOCK ASSOCIATION (4th and 5th) by its President JUDY
SACKOFF;
PROSPECT HEIGHTS NEIGHBORHOOD DEVELOPMENT COUNCIL;
ELISELLE ANDERSON
DAVID SHEETS
KEN DIAMONDSTONE; and
PACIFIC CARLTON DEVELOPMENT CORP.

Petitioners - Plaintiffs

For a Judgment Pursuant to Article 78 of the CPLR and
Declaratory Judgment

- against -

EMPIRE STATE DEVELOPMENT CORPORATION and
FOREST CITY RATNER COMPANIES

Respondents - Defendants

STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

JAY E. BUTLER, being first duly sworn deposes and states as follows:

1. I am a Professional Engineer licensed in the State of New York. I have been a Professional Engineer for 39 years. I began my own practice in 1984 specializing

in building exteriors: facades and roofing. I also provide structural engineering services to a number of architects. I have extensive experience assessing, stabilizing and renovating buildings in New York City. A copy of my resume is attached as Exhibit A.

2. In late December 2005, I was contacted by representatives of Develop Don't Destroy Brooklyn (DDDB) and asked to review a report prepared by LZA Technology (LZA) and inspect the buildings proposed for demolition that were included in the LZA report.
3. I was told that Forest City Ratner Companies (FCRC) would allow me access to the buildings to inspect their condition. Initially the inspection was scheduled for December 21, 2005. That date was cancelled and the inspection was re-scheduled for December 22, 2005. However, FCRC declined to permit me as an independent engineer to be present at the inspection.
4. As a result my review of the proposed demolition of the buildings is limited to a review of the LZA report entitled "Summary Report of the Existing Structural Condition Surveys" prepared for Forest City Ratner Companies and dated November 7, 2005. Additionally I conducted an external inspection of the buildings to the best I could without having access to the properties themselves.
5. Based upon that review I cannot conclude that the buildings pose an imminent threat to public safety. Any defects to the buildings or threats to public safety appear to be consistent with conditions found at countless other buildings in New York City. Such defects can be safely stabilized with commonly-used repair measures. Of course, I cannot give a definitive opinion on the state of these

specific buildings without an opportunity for an inspection of the interiors of the structures.

6. The LZA report is notable for relevant information that is obliquely referenced but not included. Particularly there appears to have been at least two previous inspections by LZA of some or all of the buildings. Those inspections apparently occurred in May and November 2004. However the results of those inspections are not provided nor are the reports or any recommendations that were provided at those times to the owners. Those reports are very important to determine the nature and pace of any deterioration that occurred since those reports and whether the owner failed to undertake any of the engineers' recommendations.
7. Set forth below are the results of my examination of exterior conditions of each of the buildings.

608-620 Atlantic Avenue – The Underberg Building

8. This building is comprised of (7) 4-story attached buildings dating to 1880 or so. There are cast iron columns at the street level suggesting that these units had commercial space at the 1st floor.
9. There is a 4-story high concrete block façade across the seven buildings. The concrete block facade is in good condition. Vertical cracks (2) and horizontal cracks (3) have been sealed.
10. At the west end there is a large printed sign covering 90% of the wall. Brick masonry joints are eroded at the parapet levels of the northwest and southwest corners.

11. Most of the rear windows are sealed with sheet metal, plywood or concrete block.
About 10% of these coverings have failed.
12. The rear walls of the 7 buildings are in generally good condition. The brick masonry is either painted or coated with a cement wash. There is some joint erosion behind leaders at 2 of the buildings.
13. At the east wall (620 Atlantic, corner of 5th Avenue) the spandrel masonry has failed at one window line. The wood joists framed into this area should be shored immediately. If shored, there is no reason to expect further failure at this wall.
The spandrel panel should be rebuilt.
14. From the exterior these buildings appear to be sound.
15. The LZA report refers to significant damage to the interior of the buildings, particularly the floors due to a partially collapsed roof and general exposure to the elements. Without an internal inspection it is impossible to determine the actual extent of the damage and whether standard measures of care to maintain the buildings would have prevented the deterioration.

620 Pacific Street

16. This building is a two-story commercial building with a large garage door opening. There is a new sidewalk in front of this building.
17. Façade masonry is in good condition, except for brick masonry joint openings at the bearing points for the 2nd story windows lintels. Three of the 6 windows on the street façade are broken out. About 8 bricks are broken at one side of the 1st floor window at the point where iron security bars are anchored.
18. The east parapet appears sound when viewed from Pacific Street.

19. At the south side there is a one-story extension which appears to run to the property line. The extension masonry is in good condition. The second floor masonry of the building is repointed. There are open joints along the lintel line. One of four windows is still intact, two openings are partially protected, and a fourth is completely open to the elements.
20. The exterior appearance of this building does not warrant demolition.
21. The LZA report refers to holes in the roof and continuing deterioration due to water damage. There is no assessment of the feasibility of securing the building and preventing on-going water damage or whether the problems with water damage were discovered in previous inspections and were allowed to continue.

461-463 Dean Street

22. These two buildings are 4-story residential buildings with ground floor commercial space dating to approx. 1875. The storefront openings are partly bricked-in to create smaller storefront window openings.
23. Street façade masonry at the 2nd, 3rd and 4th floors is cleaned and repointed. New ornamental lintels and sills are installed.
24. At both buildings the center window line and the piers on each side of the center window line have settled approx. 2" lower than the bearing wall piers. This settlement is not a new condition. It pre-dates the re-pointing and lintel/sill replacement work. It is not possible to evaluate this condition without examining the building interiors.
25. The LZA report refers to floors in 461 Dean as sagging severely towards the center and compromising the integrity of the building. The report refers to and

- contains pictures of timber shoring placed beneath the floors to prevent further sagging. There is no reference as to when the supports were installed. While the pictures in the report do show a cracking of the timber supports there is no information as to how they were installed or how long they have been there. Importantly, to preserve a sagging floor normal bracing methods would have relied upon metal support structures which have far greater strength in supporting beams of this type as opposed to the apparent 2 x 4s or 2 x 6s that were used.
26. The painted west wall of 461 Dean is in good condition except for:
partial paint delamination over an 8' wide band along the top of the wall. There is masonry cracking and displacement at the SW corner from the middle of the 1st floor to the middle of the 2nd floor. This condition must be examined from the interior. Masonry damage at the 1st floor (approx. 10 SF) was probably caused by a vehicle at the adjoining service station.
27. The painted east wall of 463 Dean shows minor paint delamination.
28. The south walls of 461-463 Dean are partly visible from the adjoining Mobil station. There are no signs of masonry distress at the visible areas.
29. There is a 3-story structure in the rear yard of 463 Dean Street. This type of building is potentially valuable because construction in the rear 30 feet of a lot is no longer permitted (except at corner lots). If demolished it could not be rebuilt. For this reason, most owners would invest in preservation rather than allow it to fall into ruin.
30. The north and west walls of this rear-yard building are partially-visible from the Mobil station. The brick masonry is substantially eroded over the upper 6-8 feet

of the west wall. Windows are missing from the masonry window openings. At the south wall of the building, one brick pier is collapsed, taking the spandrel panels on each side with it.

31. In other parts of New York City (Harlem, Clinton, Greenwich Village, Brooklyn Heights, etc.) buildings with these exterior conditions would be restored, particularly the severely damaged rear unit.

585-601 Dean Street

32. These buildings are 2-story commercial structures built for manufacturing operations. The buildings are estimated to be 80-90 years old. The facades are brick masonry. South and west facades are painted. Paint is delaminating at isolated areas.
33. The south (street) facades of both buildings are in good condition, except as noted below.
34. The (5) 2nd story lintels at 585 Dean are rusted. Two of the 5 lintels are severely rusted. There are vertical cracks extending to the roof line above 2 of the lintels. All windows on the south façade are in place.
35. The west façade has a few crack conditions toward the north end, roughly at the level of the 2nd floor of the building. Masonry above this level – the 2nd floor wall and the west parapet – is in very good condition. All windows are in place. There is no evidence of window deterioration along the west wall.
36. There is a 2-story extension at the north (rear) side of both buildings. There is no sign of masonry bulging or distress at these walls.

37. From the exterior these buildings appear to be in better than average condition.

Signs on the north, west and south advertise these buildings as “Available”.

38. As a result, based upon my review of the LZA Report and my visual inspection of the buildings, I cannot conclude that the buildings present an imminent threat to public health and safety. I strongly urge that an independent assessment be performed that includes an interior inspection of the buildings.

Dated: January ____, 2006

Jay E. Butler

Sworn to before me this
____ day of January, 2006

Notary Public