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Court of Appeals of New York.  
Matter of GRA V, LLC, et al., Appellants,  
v.  
Meenakshi SRINIVASAN, et al., Respondents.  
June 4, 2009.

Sheldon Lobel, P.C., New York City (**Richard Lobel** and **Jordan Most** of counsel), for appellants.

**Michael A. Cardozo**, Corp. Counsel, New York City (**Leonard J. Koerner**, **Stephen J. McGrath** and **Victoria Scalzo** of counsel), for respondents.

## MEMORANDUM.

**\*864 \*\*577** 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 **\*\*578**, affirmed. On appeal to this **\*\*\*656** 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' **\*865** 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.

Chief Judge **LIPPMAN** and Judges **CIPARICK**, **GRAFFEO**, **READ**, **SMITH**, **PIGOTT** and **JONES** concur in memorandum.

Order reversed, etc.

N.Y. 2009.

GRA V, LLC v. Srinivasan

12 N.Y.3d 863, 909 N.E.2d 577, 881 N.Y.S.2d 655,  
2009 N.Y. Slip Op. 04298

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