

CITY COUNCIL  
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON GOVERNMENTAL OPERATIONS

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April 27, 2012  
Start: 1:04 p.m.  
Recess: 3:38 p.m.

HELD AT: Committee Room - 14<sup>th</sup> Floor  
250 Broadway

B E F O R E:

GALE A. BREWER  
Chairperson

COUNCIL MEMBERS:

Elizabeth S. Crowley  
Inez E. Dickens  
Daniel J. Halloran III  
Peter F. Vallone, Jr.  
James G. Van Bramer

## A P P E A R A N C E S

Jeff Mulligan  
Executive Director  
Board of Standards and Appeals

Becca Kelly  
General Counsel  
Board of Standards and Appeals

Susan Seinfeld  
District Manager  
Queens Community Board #11

Eve Baron  
Senior Fellow for Planning & Policy  
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Alex Camarda  
Director of Public Policy & Advocacy  
Citizens Union of the City of New York

Rhea O'Gorman  
President  
Station Road Civic Association

Richard Hellenbrecht  
Executive Vice President  
Queens Civic Congress

Sheldon Lobel  
President  
New York City Zoning Advisory Council

Robert Altman  
Legislative Consultant  
Building Industry Assn. of New York City  
Queens & Bronx Building Assn.

Mark Diller  
Chairperson  
Manhattan Community Board #7

## A P P E A R A N C E S (CONTINUED)

Marc Fleisher  
Representative  
Manhattan Beach Community Group

Susan Clapp  
Representative  
Manhattan Beach Community Group

Francine Oak  
Representative  
Manhattan Beach Community Group

Henry Euler  
First Vice President & Zoning and Housing Chair  
Auburndale Improvement Association

Michael Feiner  
President  
Bayside Hills Civic Association

David Goldstein  
Zoning Chairman  
Bayside Hills Civic Association

Enid Braun  
Representative  
Fort Greene Association

Linda Eskenas  
President  
North Shore Waterfront and Greenbelt

Edward Jaworski  
President  
Madison-Marine-Homecrest Civic Association

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2 CHAIRPERSON BREWER: ... and I'm here  
3 with Council Member Vallone and Council Member  
4 Halloran and our great staff, Seth Grossman, who  
5 is counsel to the Committee, and Tim Matusov, who  
6 is legislative policy analyst, and he doesn't want  
7 me to say this, but today is his birthday. So the  
8 Committee on Governmental Operations will consider  
9 four pieces of legislation today relating to the  
10 operations of the Board of Standards and Appeals,  
11 known as the BSA. Intro #78 in relation to  
12 requiring reports to the City Council of any  
13 variance or special permit granted, despite the  
14 community board's recommendation of disapproval or  
15 approval with conditions; Intro #650 in relation  
16 to expiration of variances granted by the Board of  
17 Standards and Appeals; Intro #678 in relation to  
18 community involvement in decisions of the Board of  
19 Standards and Appeals; Intro #680 in relation to  
20 the creation of a community advisory review panel  
21 for zoning variance and special permit  
22 applications. I think we all know that the BSA,  
23 because so many community boards spend so much  
24 time dealing with it, the BSA is an independent  
25 agency that reviews applications from property

1 owners for relief from our city's zoning  
2 resolutions. The origins of the BSA date back to  
3 1960, when New York City adopted its first  
4 comprehensive zoning resolution and created a  
5 zoning board of appeals with the power to  
6 determine and vary application of the resolution,  
7 restrict application that would impose unnecessary  
8 hardship or practical difficulties. In essence,  
9 the BSA acts as a safety valve for property  
10 owners. The BSA must also, however, insure that  
11 the essential character of New York City's  
12 neighborhoods are maintained and preserved, and I  
13 know a lot of people feel strongly about that.  
14 Regarding variances and special permits, the BSA  
15 is empowered to grant variance land issue special  
16 permits in order to grant a variance. The BSA  
17 must determine that five ... and I emphasize five,  
18 specific findings are met, each of them has to be  
19 found: 1. That they are unique physical conditions  
20 inherent in the particular zoning lot, and that as  
21 a result of such unique physical conditions  
22 practical difficulties or unnecessary hardship  
23 arise; 2. That because of such physical conditions  
24 there is no reasonable possibility that the  
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2 development of the zoning lot will bring a  
3 reasonable return; 3. That the variance if granted  
4 will not alter the essential character of the  
5 neighborhood; 4. That the practical difficulties  
6 or unnecessary hardship claimed as a ground for a  
7 variance have not been created by the owner; and  
8 5. The variance, if granted, is the minimum  
9 variance necessary to afford relief. I'm sure  
10 many people have those five memorized. Community  
11 involvement: prior to consideration by the BSA,  
12 application for variances and special permits are  
13 also reviewed by community boards and in  
14 appropriate instances borough boards, if they  
15 cross the line and involve many communities.  
16 Community boards conduct public hearings and issue  
17 recommendations to the BSA, as we know. The BSA  
18 must also afford an equal right to the City  
19 Planning Commission, community boards and borough  
20 boards and lessees and tenants, as well as owners,  
21 to appear before it for the purpose of proposing  
22 arguments or submitting evidence in support of or  
23 opposition to the application. Regarding  
24 community concerns, many community boards and  
25 civic organizations have raised concerns about the

1 BSA's operations, including: 1. The high frequency  
2 with which it grants variances and special  
3 permits, it being the BSA; 2. A perceived lack of  
4 consideration for recommendations made by  
5 community boards; and 3. The lack of enforcement  
6 of expired variances. A 2003 study by the  
7 Municipal Arts Society of New York, known as MAS,  
8 found that in 2001 and 2002 the BSA granted 93% of  
9 applications for variances. In some instances  
10 clustering of variances in certain communities may  
11 threaten community character and pave the way for  
12 eventual zoning change. Today legislation being  
13 considered seeks to address these issues and to  
14 encourage and improve the level of community  
15 involvement in the BSA's decision-making. Today  
16 we will hear from representatives of the BSA,  
17 community boards, civic organizations, good  
18 government groups and land use practitioners  
19 regarding their experiences with the BSA and their  
20 views on the legislation being considered. Now  
21 I'd like to hear from either one of the sponsors,  
22 Council Member Vallone, Council Member Halloran,  
23 if you'd like to talk, Council Member Halloran, I  
24 know you have one of these bills.  
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2 COUNCIL MEMBER HALLORAN III: Thank  
3 you. Thank you, Madam Chair, I appreciate the  
4 fact that you brought these bills to the table,  
5 and that we're having this hearing. I looked  
6 through the testimony submitted to us by the BSA,  
7 and I noticed that, of course, they're opposed to  
8 all four pieces of legislation. That is no shock  
9 to those of us who have been fighting with the BSA  
10 about their standards. I'd like to call this  
11 body's attention to the fact that last year the  
12 BSA approved a variance in Bayside Hills. That  
13 variance did not meet criterion #4 in any way,  
14 shape or form, the BSA nonetheless, in violation  
15 of their obligations, still approved the variance.  
16 Number four is the hardship not self-created.  
17 There's a parcel of land which was subdivided by  
18 the owner intentionally, in order to create a  
19 second parcel of land that did not meet the  
20 minimum zoning requirements. That builder was  
21 then able to argue to the BSA, successfully, that  
22 they should grant a variance despite the fact that  
23 it was his own self-created hardship that  
24 subdivided the lot and created the impossibility  
25 of building in accordance with the zoning. That



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2 is a violation of the public officer's law,  
3 period, the end. We do absolutely nothing to hold  
4 our elected officials and appointed officials to  
5 that piece of governing state law. Under the  
6 public officer's law, the BSA had an obligation to  
7 stick to the rules, it doesn't, and that is a  
8 clear unequivocal example of the types of things  
9 that the BSA has done in the past. That self-  
10 created hardship disrupted the Bayside Hills  
11 community, and I know we're going to be hearing  
12 from members of Community Board #11, the Bayside  
13 Hills Civic and other leaders in the issue related  
14 to the BSA's granting of these variances.

15 However, I would remind all of us that when the  
16 charter of the City of New York was revised, land  
17 use power was given to the City Council as the  
18 check and balances on mayoral control. And in  
19 fact we don't have that power, because despite the  
20 fact that we can grant and remove zoning, at the  
21 end of the day the BSA can trump that power by  
22 being able to overturn a zoning obligation. I  
23 think it's incumbent on this body to take back the  
24 powers that were intended for it, one of which  
25 being chiefly land use, and these bills, while

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2 imperfect, are an excellent step forward, and I  
3 encourage all of my colleagues to support them, to  
4 rein in the BSA, and to hold the BSA accountable  
5 when it violates its own rules.

6 CHAIRPERSON BREWER: Thank you very  
7 much, and we'd now like to hear from Jeff  
8 Mulligan, who is the Executive Director of the  
9 BSA.

10 MR. MULLIGAN: Good afternoon,  
11 Chair Brewer and members of the Council Committee  
12 on Governmental Operations, I am Jeff Mulligan,  
13 Executive Director of the Board of Standards and  
14 Appeals. Thank you for the opportunity to speak  
15 today regarding the four bills that affect the  
16 Board. Before commenting on the proposed  
17 legislation, I would like to take a couple of  
18 minutes to provide an overview of the Board's  
19 authority, the types of applications we review,  
20 the basis of the Board's decisions, and the public  
21 review process. Chair Brewer, you've touched on a  
22 number of these points, so maybe I'll skip through  
23 where ... so I don't repeat what you had said, but  
24 pursuant to the charter, the Board is an  
25 independent administrative body with quasi-

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2 judicial functions that reviews and decides  
3 applications related to zoning, land use and  
4 construction in New York City. The Board grants  
5 property owners relief from the zoning code and  
6 serves as a forum for appeals to final  
7 determinations made by the Buildings Department  
8 and certain other agencies. The Board's  
9 jurisdiction includes applications for zoning  
10 variances and special permits, vested rights  
11 applications, administrative appeals, waivers from  
12 the general city law, and amendments and renewals  
13 of previous Board approvals. The Board was  
14 created in 1916 as a venue to seek relief from the  
15 city's zoning code, also adopted the same year,  
16 caused undue and unique hardship on property  
17 rendering development infeasible. The Board was  
18 conceived as a relief valve, as you mentioned, for  
19 such claims, potentially eliminating the  
20 possibility of broad constitutional challenges to  
21 the overall zoning. The creation of a relief  
22 board in fact protects the ability for city  
23 governments to regulate development on private  
24 property. Historically, variance boards were  
25 created all over the country when municipalities

1 established land use regulations. The Board  
2 comprises five full-time members appointed by the  
3 Mayor, including experts in planning, architecture  
4 and engineering. The Board staff currently totals  
5 12 full-time and three part-time employees and we  
6 receive approximately 350 applications a year, of  
7 which about 50% are variances and special permits.  
8 Due to the public review process pursuant to the  
9 charter and the Board's rules, variances and  
10 special permit applications must be forwarded by  
11 applicants to community boards, borough  
12 presidents, Council members and the City Planning  
13 Commission. Community boards are given 60 days to  
14 hold a public hearing and review the application.  
15 The Board rules also require that applicants  
16 notify property owners when the Board's first  
17 public hearing is scheduled. The community boards  
18 and civic groups have been helpful to the Board  
19 when their testimony and their comments speak  
20 directly to the findings. Often community boards  
21 and civic groups and neighbors of the subject  
22 property testify at the Board's public hearings,  
23 and sometimes the most helpful input does come  
24 from these groups and individuals. The Board  
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2 typically directs applicants to respond to  
3 community concerns on the record, projects are  
4 often modified at the direction of the Board,  
5 based on community concerns, and the Board often  
6 includes conditions in its resolutions that arise  
7 directly from the community concerns. However,  
8 it's important to point out that the Board is  
9 ultimately guided by the law, including the zoning  
10 resolution and other state and local statutes and  
11 court holdings. The Board's decisions are subject  
12 to court challenges and therefore it is imperative  
13 that the decisions are principled and legally-  
14 defensible, and I would just add that the vast  
15 majority of court challenges against the Board's  
16 decisions have been upheld. I would now like to  
17 turn to the proposed legislation. Introduction  
18 #78, we are concerned that the quarterly reports  
19 that would compare votes by the Board with those  
20 by local community boards would be inconclusive  
21 and unnecessary. As I mentioned, the charter  
22 specifically allows community boards a 60 day  
23 review period following the filing of an  
24 application in which to hold a hearing and vote.  
25 In certain instances the Board will grant a

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2 community board's request for additional time to  
3 issue its recommendation. After the community  
4 board's vote, the Board begins its public hearing  
5 process, a process that can involve multiple  
6 hearings, depending on the complexity of the  
7 project. In response to Board concerns,  
8 applicants often modify the project during the  
9 process, and an application that may have been  
10 disapproved by a community board within the first  
11 60 days, could ultimately be approved by the  
12 community board in its final form. So the  
13 report's focus on only the consonance of the  
14 community board vote and the BSA vote would  
15 therefore be misconstrued. I would also add that  
16 we looked at the last year of votes, and 20% of  
17 the time in the case of variances and special  
18 permits we were not in agreement with the  
19 community board, 80% of the time we were, and in  
20 that 20%, the project was often modified after the  
21 community board vote, and as I mentioned,  
22 ultimately the community board may have supported  
23 the project. In addition, all of the Board's  
24 resolutions and disposition of its cases are  
25 posted on its website within one week of the vote,

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2 the resolutions which can be queried by a  
3 community board, we're trying to enhance our  
4 website increasingly, identify the community  
5 board's recommendations if it's received, and a  
6 full explanation of the proposal, and a full  
7 discussion of any modifications and the Board's  
8 rationale for making its decisions. So requiring  
9 a report as proposed would create additional work  
10 for the Board's small staff, for information that  
11 is already available to the public. Further, the  
12 Board's staff provides reports on a regular basis  
13 to agencies and elected officials on request. We  
14 could produce individual reports and distribute  
15 them as requested by the Council, rather than  
16 through legislation, and this may allow us more  
17 flexibility in responding to immediate concerns.  
18 Introduction #650, we believe that this proposal  
19 to require the Board to notify property owners in  
20 advance of their grant expiration is both  
21 impractical and considering the many thousands of  
22 grants that go all the way back to 1916, would be  
23 burdensome on the Board's limited staff and  
24 resources. The proposal shifts the burden of  
25 compliance from the property owner to the issuing

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2 agency, we believe it would not be good policy for  
3 the city to assume individuals are not responsible  
4 for their own obligations, and take on the added  
5 and costly burden of reminding individuals to  
6 renew their variances. The Board also doesn't  
7 have the authority to enforce these provisions  
8 itself, such authority is vested with the  
9 Department of Buildings, typically expiration  
10 dates and Board variances are documented in the  
11 certificate of occupancy. The charter establishes  
12 DOB as the enforcement agency, with the authority  
13 to inspect buildings for compliance and issue  
14 violations, and the charter doesn't provide the  
15 Board with similar duties or authority. We do  
16 acknowledge that in some instances businesses or  
17 institutions do continue to operate after a  
18 variance has expired, and when the Board receives  
19 a complaint regarding a variance and any non-  
20 compliance, we do contact the applicant of record  
21 immediately, but since complaints may require  
22 inspections onsite, we do forward the complaint to  
23 the Department of Buildings, and follow up to  
24 track the status of enforcement. This process has  
25 proven effective, however limited, and it has



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2 resulted in DOB issuing violations which can  
3 either be cured absent any Board involvement, or  
4 remedied by filing an application before the  
5 Board. And we continue to work with DOB to try to  
6 perfect this process, or again our grants go back  
7 to 1916, and we're trying to streamline the  
8 issuing of violations with DOB for non-complying  
9 grants. But while it's not in the Board's purview  
10 to exact recurring fines for non-compliance, we'd  
11 also point out that the Council recently has set  
12 additional fees for filing applications at the  
13 Board beyond the expiration date, to discourage  
14 untimely filings. Number 678, as noted the  
15 charter and the Board rules already require  
16 referral of variance and special permit  
17 applications to community boards. In addition,  
18 the Board's resolutions discuss the community  
19 board recommendations and thoroughly explain the  
20 Board's decision. Promulgating a rule regarding  
21 the review of community board decisions we think  
22 is unnecessary and unduly burdensome. In addition  
23 state courts have recognized the Board's authority  
24 and expertise to evaluate matters within its  
25 jurisdiction, and to determine which elements of

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2 the record are most relevant and necessary to make  
3 its decision. We believe that there would not be  
4 any reason for the Board in its resolutions to  
5 address issues that are outside of the Board's  
6 purview or that are not relevant to the legal or  
7 statutory basis for the Board's authority. And  
8 finally, 680, again the charter sets forth the  
9 detailed process for how the Board reviews  
10 variances, special permit applications, and  
11 includes the required process for a community  
12 board review. We believe that the proposed  
13 legislation may be unnecessary and redundant,  
14 since the Board's rules require applicants to  
15 forward copies of the applications to the entities  
16 on the panel and the entities or their  
17 representatives may provide testimony to the  
18 Board. Also, individuals who may otherwise  
19 petition the Board are granted multiple  
20 appearances before the Board at its hearings, and  
21 are often represented by counsel during  
22 proceedings. The proposal to add another layer of  
23 review based on an individual's petition to  
24 convene such panel leaves many questions  
25 unanswered and potentially creates a cumbersome

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2 and time-consuming process. The purpose of the  
3 panel and whose interests would be better served  
4 are not clear, and the practicality of  
5 implementing such a panel seems problematic.  
6 Finally, we're concerned that the proposed  
7 legislation isn't consistent with the land use  
8 review process detailed in the charter, by  
9 introducing another body whose recommendations  
10 must be reviewed by the Board into the land use  
11 review process laid out in the charter. The  
12 proposed legislation may effectively constitute a  
13 curtailment of the Board's authority. So in  
14 conclusion, we believe that the proposed  
15 legislation's objectives to encourage community  
16 board input are already achieved by the charter,  
17 as well as our rules and procedures. We are  
18 pleased to inform the Council that we are in the  
19 process of updating our agency's rules of practice  
20 and procedure, to insure even greater  
21 transparency, efficiency and predictability, and  
22 these updates will include clarifying the rules of  
23 application referral and hearing notice for all  
24 types of applications at the Board. However, the  
25 Board is concerned about the additional work, time

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2 and resources that would be necessary if the  
3 legislation were adopted. The Board will be  
4 forced to divert its limited resources, which  
5 could prevent it from achieving its charter  
6 mandate, and the Council would also have to  
7 increase fees again to cover the increased costs.  
8 I am happy to answer any questions you may have.

9 CHAIRPERSON BREWER: Thank you, I'm  
10 sure my colleagues have questions, we've been  
11 joined by Council Member Crowley. If you are in  
12 agreement with community boards 80% of the time,  
13 why are you concerned that the quarterly report  
14 would be misconstrued, is one question? We have  
15 many questions, as you can imagine, from the  
16 panel.

17 MR. MULLIGAN: Sure. So that  
18 leaves 20%, I guess it could be misconstrued  
19 because you could identify disapproval by the  
20 community board and approval by the BSA, but  
21 subsequent to that community board disapproval the  
22 project could be modified. So as I mentioned, it  
23 could ultimately show ... ultimately it could be an  
24 entirely different project, and the community  
25 board may have approved it.

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CHAIRPERSON BREWER: Okay.

MR. MULLIGAN: In its final form.

CHAIRPERSON BREWER: Do you have situations like that, many situations?

MR. MULLIGAN: There are a number, we went through the denials from the last year, and a number of times after the community board voted, as I said, we had a number that- -

CHAIRPERSON BREWER: (Interposing)  
Changed ... go ahead.

MR. MULLIGAN: Yes, the project changes, because there are multiple public hearings, and the Board asked for more evidence, and we'll get the community board recommendation, and they ask them to follow up and respond to what the community board had to say.

CHAIRPERSON BREWER: Okay.

MR. MULLIGAN: And we're happy to issue ... I would just say, we're happy to issue reports whenever the Council wants them, I just don't know if this would ... if they would be conclusive reports.

CHAIRPERSON BREWER: Okay, so that's something that we can negotiate on.

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MR. MULLIGAN: Yes.

CHAIRPERSON BREWER: Second

question is, how many variance applications did BSA consider in 2011? And how many did you approve? Do you have any numbers like that?

MR. MULLIGAN: I don't off the top of my head, you know, as I mentioned, we get on average 350 applications a year, and about half of those are variances and special permits. In terms of the approvals, I would just add it's sometimes misleading, folks often say the vast majority variance applications are approved by the BSA, there's two things, one, there's the pre-application process where folks can come in and meet with the staff on a proposal, and they may ultimately not end up filing if the response from the staff review is that if you ... it's a heavy lift to think you're going to get a variance.

CHAIRPERSON BREWER: How often does that happen?

MR. MULLIGAN: How often do we discourage applicants? Off the top of my head, you know, a number of times folks don't file, maybe the applicant community can speak to that.

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2 I don't have a percentage for you.

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CHAIRPERSON BREWER: Okay.

4 Something that I have run across is, do you have  
5 some sense of the cost of all of this? Obviously  
6 the owner has to pay for whatever is relevant and  
7 supportive of their application, but I guess my  
8 concern is the neighborhood, given that there are  
9 five specific charter-mandated mandates that have  
10 to be met, that usually engenders the need for  
11 engineers and architects and lawyers, and I have  
12 found that the cost is extremely high. When you  
13 are at a community board and you're making a  
14 proposal, you can be swayed sometimes by  
15 practicality, because you don't have to meet  
16 certain charter-mandated mandates on other  
17 projects, but my question is, does this issue of  
18 the cost of meeting those criteria something that  
19 BSA has thought about and considered is there some  
20 other way of approaching this problem of a safety  
21 valve? In other words, the cost is prohibitive,  
22 and so I think that's one of the things that we're  
23 all struggling with.

24

MR. MULLIGAN: The costs for the

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applicant?

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2 CHAIRPERSON BREWER: No, the cost  
3 for the person fighting the applicant.

4 MR. MULLIGAN: I see. You know,  
5 it's interesting, we do get neighborhood groups  
6 who are in opposition who have the resources to  
7 hire an attorney.

8 CHAIRPERSON BREWER: Right.

9 MR. MULLIGAN: And- -

10 CHAIRPERSON BREWER: (Interposing)  
11 In my neighborhood they do, but not everywhere.

12 MR. MULLIGAN: I know which case  
13 you're talking about.

14 CHAIRPERSON BREWER: You know my  
15 neighborhood.

16 MR. MULLIGAN: Yes. But there's  
17 been a number of instances where it's just been a  
18 neighbor next door who has come in opposition and  
19 provided expert testimony, or they have the  
20 insight because they're the next-door neighbor,  
21 and that has been convincing to the Board. It  
22 really runs the gamut, I think quite often if the  
23 opposition has the resources, they'll spend it,  
24 because they want to fight it no matter what. But  
25 that doesn't mean that that neighbor who has the



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2 resources ... it doesn't mean that they're  
3 necessarily swaying the Board's decision, the  
4 Board may ultimately side with the opposition  
5 whether or not they've expended those resources.

6 CHAIRPERSON BREWER: Okay.

7 MR. MULLIGAN: Again, if there are  
8 rigorous hearings and the Board has a lot of  
9 questions- -

10 CHAIRPERSON BREWER: (Interposing)  
11 No, I understand, I'm just saying that is an  
12 ongoing concern that you hear about when you talk  
13 to the civic groups, and certainly it is something  
14 that I have experienced.

15 MR. MULLIGAN: I understand.

16 CHAIRPERSON BREWER: I do think  
17 that needs more discussion, I don't know the  
18 answer.

19 MR. MULLIGAN: Okay.

20 CHAIRPERSON BREWER: I know that my  
21 colleague has questions, I can't imagine, Council  
22 Member Halloran, and then Council Member Crowley.

23 COUNCIL MEMBER HALLORAN III: Thank  
24 you, Madam Chair.

25 CHAIRPERSON BREWER: And we're all

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going to keep this very nice and civil.

COUNCIL MEMBER HALLORAN III:

Civil.

CHAIRPERSON BREWER: Even though we feel very strongly about the issue, right?

COUNCIL MEMBER HALLORAN III: Of course, Madam Chair.

CHAIRPERSON BREWER: Okay.

COUNCIL MEMBER HALLORAN III: Mr. Director, how many variances over the last five years have been granted as opposed to the number of total applications?

MR. MULLIGAN: Again, I'll have to get back to you.

COUNCIL MEMBER HALLORAN III: All right, so I'd like a specific answer over the last five years, and how it breaks out in percentages I can do myself. How many lawsuits have been filed in each of the last five years seeking to overturn a decision of the BSA? And I assume how many you've won, I know you cited statistics for last year, saying that you won more than you lost, what does that mean? How many more than you lost?

MR. MULLIGAN: I think what I said

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2 was that the vast majority of lawsuits  
3 historically that have been brought against the  
4 Board.

5 COUNCIL MEMBER HALLORAN III:

6 Historically, how about recently?

7 MR. MULLIGAN: We can get back to  
8 you on that.

9 MS. KELLY: I'm Becca Kelly, the  
10 General Counsel. I don't have the specific  
11 numbers, but I would say- -

12 COUNCIL MEMBER HALLORAN III:

13 (Interposing) Can you ballpark it?

14 MS. KELLY: Maybe we lose 1%, 1% or  
15 2%.

16 COUNCIL MEMBER HALLORAN III: And  
17 how many variances over the past five years, I  
18 know you cited 20% as last year's, over the last  
19 five years have been done over the recommendations  
20 of the community board or the borough president?  
21 And in that percentage over the last five years,  
22 how many were granted to persons who appeared  
23 before the Board who are former members of the  
24 Board, in private practice now, as opposed to  
25 people who are not members of the Board, who are

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2 in private practice? And I will relate that to a  
3 question in a few minutes.

4 CHAIRPERSON BREWER: The first  
5 question is the number over the recommendations of  
6 the community board.

7 COUNCIL MEMBER HALLORAN III:  
8 Right.

9 CHAIRPERSON BREWER: Let's just  
10 start with that question.

11 COUNCIL MEMBER HALLORAN III: Yes.  
12 Do you have any idea?

13 MR. MULLIGAN: The last five years?

14 COUNCIL MEMBER HALLORAN III: Yes.

15 MR. MULLIGAN: I would expect it to  
16 be about the same as it was last year.

17 COUNCIL MEMBER HALLORAN III: About  
18 the same?

19 MR. MULLIGAN: But I can get you  
20 the exact number, yes.

21 COUNCIL MEMBER HALLORAN III: And  
22 then I'm sure you don't have this information  
23 immediately, but I happen to know of an instance  
24 in particular which doesn't meet criteria four,  
25 but was granted by the Board, and the person

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2 interested in presenting it was a former member of  
3 the Commission (sic), and I find that deeply  
4 disturbing, and I will ask you questions about  
5 that in a moment. With regards to your comments  
6 regarding expiring variances, what inspection  
7 would be required if the variance has expired for  
8 you to think that there's anything that needs to  
9 be done? If a variance is expired, it's out of  
10 use, what inspection would be required for us to  
11 obtain any more information, other than to know  
12 that the inspection is expired (sic) and the  
13 business is still operating?

14 MR. MULLIGAN: Well, I think my  
15 point was that we don't have the authority to do  
16 the enforcement, so we alert DOB to go out and  
17 issue the violation.

18 COUNCIL MEMBER HALLORAN III: So it  
19 wouldn't be a problem for you if we were granting  
20 the Buildings Department authority, based on BSA  
21 information, to fine businesses that are out of  
22 variance and have not renewed, that's not  
23 something that you're saying we wouldn't have the  
24 power to do, is it?

25 MR. MULLIGAN: Well, I think DOB

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already has the authority to go out to- -

COUNCIL MEMBER HALLORAN III:

(Interposing) Right, but what I'm trying to do is set a fine schedule based on the delay in the filing. I have a business in my district that has waited 12 years to refile its variance application, I think that might be a little excessive, what do you think?

MR. MULLIGAN: Well, we do have a new fee that was imposed last year by the Council.

COUNCIL MEMBER HALLORAN III:

That's for filing again, not a fee in and of itself for not having filed.

MR. MULLIGAN: That's continuing to operate contrary to the grant.

COUNCIL MEMBER HALLORAN III: Yes.

In other words, if I do something with my building, and I'm not in compliance with the building code, right, inspectors can show up every six minutes and issue you fines, but they can't for variances that have been expired for 12 years. You don't think that maybe there's a disconnect there?

MR. MULLIGAN: Right, I think- -

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COUNCIL MEMBER HALLORAN III:

(Interposing) We have to hear your answer in order for us to- -

CHAIRPERSON BREWER: (Interposing)

Let him finish, let him finish.

COUNCIL MEMBER HALLORAN III: Sure.

CHAIRPERSON BREWER: Go ahead.

MR. MULLIGAN: Sure, but again, I

think that that's an issue for the Buildings Department, not for the Board.

COUNCIL MEMBER HALLORAN III: All

right, but you wouldn't have a problem with ... let me ask another question. Does the BSA's variances, when you created them based on your granting these, immediately get put into a database that the Department of Buildings has access to?

MR. MULLIGAN: The current ones do,

and it's- -

COUNCIL MEMBER HALLORAN III:

(Interposing) Half point.

MR. MULLIGAN: ... the past ones are

reflected on the C of O, but we're trying to perfect the reporting of old BSA grants at the

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DOB.

COUNCIL MEMBER HALLORAN III: So as long you question that the DOB has the authority to do that, but they don't have the information, it's not much they can do about it, is there?

MR. MULLIGAN: Well, they do have the information on the C of O, but we're trying to improve that information.

CHAIRPERSON BREWER: What's the timing on that technology project?

MR. MULLIGAN: I can get back to you on the timing.

COUNCIL MEMBER HALLORAN III: So with regards to the first four resos, intros, you didn't express a curtailment issue, so while you may disagree with whether or not it's necessary, you don't see an inherent conflict in the authority of this body to pass those pieces of legislation, you just oppose them. The last one I believe you indicated in your testimony that you believed there might be a curtailment problem, a separation of powers issue, for those of us who don't know what curtailment is, would that be fair to say?



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2 MR. MULLIGAN: I'm sorry, could you  
3 restate that?

4 COUNCIL MEMBER HALLORAN III: Sure.  
5 The first ... there are several intros in front of  
6 you right now, 78, 650, 678 and 680. I believe  
7 your testimony about curtailment only pertained to  
8 section 680, and not to the other sections, is  
9 that accurate?

10 MR. MULLIGAN: That is correct, my  
11 testimony only mentioned curtailment in the last  
12 one, you know, I don't think we have a Law  
13 Department representative here, so in the issues  
14 of curtailment, I would defer to them.

15 COUNCIL MEMBER HALLORAN III: I  
16 understand that. But you specifically brought up  
17 680, and you did not with the others, so I take  
18 that to mean that as you sit here now, absent  
19 counsel telling you differently, you don't believe  
20 there's a curtailment issue, so in other words,  
21 you do believe that this Council has the authority  
22 legislatively to make that call.

23 CHAIRPERSON BREWER: Ms. Kelly, do  
24 you want to respond?

25 MS. KELLY: Yes, that's fair.

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2 COUNCIL MEMBER HALLORAN III: Okay,  
3 that would be fair to say, all right. So with the  
4 exception of 680, let's talk about the other  
5 pieces of legislation in relation to a specific  
6 situation. Are you familiar with the piece of  
7 property in Bayside Hills which was the subject of  
8 several BSA hearings? Senator Avella and myself  
9 showed up with busloads of people from our  
10 community. I would like you to explain to me how  
11 a person buying a parcel of land, that person then  
12 going and having it subdivided, is not a self-  
13 imposed hardship under the law. Please explain to  
14 this body how it is that someone cannot be in  
15 violation of section four, when they're the person  
16 that purchased the property, they're the person  
17 that subdivided the property, and they're the  
18 person seeking the variance exception from your  
19 body. And that also, interestingly, is the person  
20 who came to you as a former commissioner of the  
21 Board of Standards and Appeals as their lobbying  
22 agent for the process.

23 MR. MULLIGAN: Right. I'm not  
24 prepared to speak on all the details of that  
25 project, but to the extent that I do recall it and

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2 it was just last year, so I recall some of the  
3 details, I believe that the zoning lot was not  
4 subdivided, two tax lots were created on one  
5 zoning lot. So the self-created hardship goes to  
6 the creation of the zoning lot, not to a tax lot.  
7 So in that lot you can build two homes on that  
8 lot, but for I believe it was the side yard and  
9 the distance between the two buildings. So the  
10 Board had, as you know, a couple of public  
11 hearings on that project, the Board required the  
12 applicant to provide quite a bit of evidence and I  
13 would say a fairly rigorous analysis of uniqueness  
14 identifying the size of lots in the neighborhood,  
15 the existing FAR, the existing square footage, and  
16 also to do a financial analysis, which often is  
17 not required for a single family home, but in this  
18 case actually the community board, the community  
19 folks, raised that and the Board told the  
20 applicant that they needed to prepare a financial  
21 analysis. And after all that evidence was put  
22 forward, in analyzing the size of the proposed  
23 home, the size of the yards, the size of the  
24 resulting two tax lots, they felt that it met the  
25 neighborhood character finding. I know that the

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2 community did not agree, and I know that you did  
3 not agree, Council Member, but the Board felt  
4 confident that the applicant had met those  
5 findings.

6 COUNCIL MEMBER HALLORAN III: So  
7 let me understand this then. It's your contention  
8 that because it was a tax lot that was subdivided  
9 and not the zoning lot itself, that it does not  
10 require under the analysis enumerated in the  
11 charter for self-created hardships to apply. So  
12 if I take any zoning lot and simply do a tax  
13 creation, tax lot creation, as opposed to a zoning  
14 one, then those criteria are totally inapplicable.  
15 Is that your testimony? I just want to be very  
16 clear that that's what you're saying to this body.

17 MR. MULLIGAN: The language of 72-  
18 21 is specific to a zoning lot, so if they had  
19 subdivided the zoning lot into two, then the  
20 variance would be based on that smaller zoning  
21 lot, and I think the Board ... I think they would  
22 have difficulty in making the finding of self-  
23 created hardship.

24 COUNCIL MEMBER HALLORAN III: Okay,  
25 and those five criteria then would become

1  
2 inapplicable to issues related to a tax lot  
3 creation, as opposed to a zoning lot creation, the  
4 five other criteria.

5 MR. MULLIGAN: The five findings  
6 are still ... the five findings are applied to that  
7 existing zoning lot.

8 CHAIRPERSON BREWER: Because we can  
9 talk ... we can have some general discussion, but I  
10 don't want to talk too many specifics.

11 COUNCIL MEMBER HALLORAN III: Sure.  
12 Sure, absolutely. Okay, so then would it be your  
13 ... would it be your belief that a modification to  
14 include tax lot and zoning lot in that piece of  
15 text would, for my purposes, remedy the condition  
16 for which I am showing you the inconsistency in  
17 application?

18 MR. MULLIGAN: I don't know if I'm  
19 prepared to answer that right now.

20 COUNCIL MEMBER HALLORAN III: Okay.  
21 Thank you. Madam Chair, I'll give it back to you  
22 right now.

23 CHAIRPERSON BREWER: Thank you very  
24 much. Council Member Crowley.

25 COUNCIL MEMBER CROWLEY: How often

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does the BSA grant a variance over the objection of the community board?

MR. MULLIGAN: As I mentioned, last year 20 ... okay, sorry, here I am. 20% of the instances and variance in special permits we did not agree with the community board.

COUNCIL MEMBER CROWLEY: And how many variances were ... sorry, how many projects were denied a variance, that proposals were submitted and how many were denied last year?

MR. MULLIGAN: Yeah, I don't have that answer for you, there were probably only a handful, but again, I would just put the caveat out that projects are modified during the process, so that what may be likely a negative vote at the beginning becomes a positive when it's modified, or an applicant is discouraged from filing during the pre-application process.

MS. KELLY: Where they've often withdrawn if they see the application not going in a favorable direction.

MR. MULLIGAN: Correct, yes.

COUNCIL MEMBER CROWLEY: And that's probably why your website shows that there are

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none, or little to none that were disapproved?

MR. MULLIGAN: I don't know if- -

MS. KELLY: (Interposing) There are, there certainly are a handful.

COUNCIL MEMBER CROWLEY: And what effort does your administration do to educate community boards about the relevant standards to which you base your decisions on?

MR. MULLIGAN: Well, we try to keep our website updated in terms of frequently-asked questions and an explanation of the agency, and we have gone out to community boards at their requests, the Chair goes out, I go out, Becca goes out, and we're more than happy to go out to any community board that would like us, or civic group.

COUNCIL MEMBER CROWLEY: And when you make your decision- -

MR. MULLIGAN: (Interposing) Or folks to come in and meet with us as well.

COUNCIL MEMBER CROWLEY: Does the ability to raise revenue for the city through property tax come into the equation when you make your decisions?

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MR. MULLIGAN: No.

COUNCIL MEMBER CROWLEY: There are people who believe that if you give the variance to divide up a particular, that those lots could then be- -

MR. MULLIGAN: (Interposing) No.

COUNCIL MEMBER CROWLEY: No, never?

MR. MULLIGAN: No.

COUNCIL MEMBER CROWLEY: Can you give some examples on how you've disapproved applications?

MR. MULLIGAN: Examples of ... sure, I can think of a variance application that we disapproved for a commercial use in a residential district because we didn't believe that the property -- this was in Queens, I believe it was on Guy Brewer Blvd., and we didn't feel that the applicant met the uniqueness.

COUNCIL MEMBER CROWLEY: Do you have the resources within your agency to fully investigate each application?

MR. MULLIGAN: We have five full-time commissioners, and their responsibility is to review every application. And again, we have



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staff that supports the commissioners.

COUNCIL MEMBER CROWLEY: And your staff is made up of architects, engineers, planners?

MR. MULLIGAN: Our staff is made up of attorneys, planners, plan examiners, the commissioners are made up of ... by charter there's one engineer, one architect, one planner, and we also have an attorney and a financial expert.

COUNCIL MEMBER CROWLEY: And you feel that you do have sufficient resources to make your decisions?

MR. MULLIGAN: I feel we have sufficient resources to make our decisions, I would say we would welcome more resources, but- -

COUNCIL MEMBER CROWLEY:  
(Interposing) And in comparison, do you feel that the community boards ... as a Council Member I know I do, I hear from the times that projects get approved and the community is upset about the projects, and they feel that the community board and the community, that they do not have the resources to help fight the project, and that whatever variances are given, that the project

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2 will over-develop and therefore take away from the  
3 quality and the continuity of the community and  
4 hurt the entire community by this project going  
5 forward, but you know, it's one advocate or a few  
6 advocates and its underfunded community board  
7 against somebody with the ability to hire an  
8 expensive attorney to advocate for their project.  
9 So do you feel, because I feel that the community  
10 board is under-represented here, and that you as a  
11 city agency should be able to make sure that you  
12 work with the community to exhaust all avenues to  
13 make sure that any project that is approved could  
14 be approved with the community feeling that it's  
15 not being burdened, that it would be a project  
16 that would benefit the overall City of New York  
17 and not hurt us.

18 MR. MULLIGAN: Right. I would say  
19 that we try to work with the communities in terms  
20 of giving the communities sufficient time to  
21 review projects. Again, they get the 60 days,  
22 often community boards ask for more time, and in  
23 most instances we do agree to that. And to your  
24 question of the resources needed for opposition,  
25 again, there are folks who have been able to, just

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2 neighbors have been able to testify at the hearing  
3 and provide convincing testimony, so it's ... I hear  
4 what you're saying about the community boards  
5 maybe not having sufficient resources, I ... we do  
6 try to work with that to make sure that they have  
7 sufficient time, and the staff is very accessible  
8 to answer questions.

9 COUNCIL MEMBER CROWLEY: Okay. No  
10 further questions.

11 CHAIRPERSON BREWER: Before I go to  
12 my colleague, the question of the Mayor's  
13 management report, do you submit information from  
14 the MMR?

15 MR. MULLIGAN: We do not.

16 CHAIRPERSON BREWER: And is that  
17 your choice or nobody from the Mayor's Office of  
18 Operations has asked you to participate?

19 MR. MULLIGAN: I don't know if  
20 we've been asked, I don't believe so.

21 CHAIRPERSON BREWER: And if you  
22 were asked, which we will try to make sure that  
23 you are asked.

24 MR. MULLIGAN: We will absolutely-

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CHAIRPERSON BREWER: (Interposing)

You would comply.

MR. MULLIGAN: We will ... working with City Hall, we will certainly do.

CHAIRPERSON BREWER: Okay, because I think one of the issues is, some of the questions that have been asked today in terms of numbers, would be something that the MMR would include, and then you wouldn't even have to ask them, you could just refer us to the MMR.

MR. MULLIGAN: Okay, sure.

CHAIRPERSON BREWER: Okay. I have more questions, but Council Member Halloran.

COUNCIL MEMBER HALLORAN III: I just want to follow up on one question that Council Member Crowley asked with regard to ... actually, let me frame it this way. Are you familiar with the decision of Romero v. the City of New York rendered in 2010?

MR. MULLIGAN: Yes.

COUNCIL MEMBER HALLORAN III: Counsel? That's one where the court of appeals unanimously found that you abused your discretion in granting a variance tearing down a home and

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2 building a commercial building, it found that the  
3 Board did not follow its own rules in the five  
4 criteria, and in fact in a very unusual situation,  
5 all of the justices of the court of appeals signed  
6 on to that decision. After that decision, were  
7 any measures taken by the Board to evaluate their  
8 inability to comply with the laws outlined by the  
9 justices of the court of appeals, which found that  
10 you abused your discretion, and in fact did not  
11 follow the requirements that were laid out for you  
12 in the five criteria set forth in the charter?  
13 Have you implemented anything, training,  
14 memoranda, guidelines, further legal opinion,  
15 counseling, with regard ... to insure that from that  
16 point forward you were going to actually comply  
17 with the laws that the court found that you didn't  
18 bother to?

19 MR. MULLIGAN: Well, I would say  
20 that, as Becca pointed out, 98%, 99% of the time  
21 the courts agree with us. A court may not agree  
22 with us, and I don't know if ... in answer to your  
23 question, I think that the Board continues to  
24 consistently apply the five findings of 72-21.

25 COUNCIL MEMBER HALLORAN III: So it

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2 would be fair to say that after that 2010  
3 decision, where a unanimous court of appeals found  
4 you didn't follow it, there was no subsequent  
5 training, discussion, evaluation of the decision,  
6 implementation of the Board, would that be fair to  
7 say?

8 MR. MULLIGAN: There's ... no, I  
9 don't think so, there's absolutely discussion on  
10 all decisions affecting Board cases.

11 COUNCIL MEMBER HALLORAN III: Do  
12 you know the number of times the court of appeals  
13 has unanimously issued a reversal of a  
14 deliberative body's legislation or enactment in  
15 regards to a zoning resolution throughout the  
16 State of New York in the last ten years?

17 MR. MULLIGAN: I don't know.

18 COUNCIL MEMBER HALLORAN III: Would  
19 it surprise you to learn it's about five times in  
20 ten years, and yours is one of them? It's not a  
21 category I would want to be in.

22 CHAIRPERSON BREWER: Thank you. In  
23 your conclusion, when you were speaking, you said  
24 that you're delighted that the BSA is updating  
25 your rules of practice and procedure to insure

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2 even greater transparency, efficiency and  
3 predictability, and you were going to talk about  
4 clarifying the rules of application, and so on.  
5 I'm just wondering what specifically do you mean  
6 by that, and what is your time frame? So what is  
7 all of that translate to in reality?

8 MR. MULLIGAN: Right. The Board  
9 has its agency rules of practice and procedure  
10 that a lot of folks in the applicant community,  
11 community boards are very familiar with, because  
12 that's where there are the specifics on what an  
13 applicant needs to do in terms of reaching out to  
14 the community, the hearing notice, forwarding  
15 applications.

16 CHAIRPERSON BREWER: I know, we get  
17 them.

18 MR. MULLIGAN: Right, right. And  
19 some people have found the rules to be confusing,  
20 and I agree, and so we have, working with the Law  
21 Department, the Mayor's Office of Operations, in  
22 terms of their review, have drafted a revision  
23 that make it much more clear. I think there's a  
24 number of practices that have been adopted over  
25 the years in terms of referring certain types of

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2 applications to community boards and elected  
3 officials that is not included in the rules today,  
4 so we want to codify that. So I think, from the  
5 community standpoint the proposed rules, a  
6 community review standpoint, the proposed rules  
7 have a lot in them that folks will be happy about.  
8 We ... our timeframe is we are planning on releasing  
9 them any day now as a draft document, it's subject  
10 to CAPA, and so we will have a public hearing 30  
11 days after the release of the rules.

12 CHAIRPERSON BREWER: Okay. Back to  
13 this issue of the Department of Buildings that my  
14 colleague asked about, one of the issues I think  
15 is, you know, as agencies, folks do tend to be a  
16 bit siloed, so when you say you refer it to DOB,  
17 do you ever find out the outcome? Do you have  
18 constant meetings? Because, you know, when  
19 government, from the perspective of the  
20 neighborhood, sees that something is wrong and  
21 nothing is being done about it, it is incredibly  
22 frustrating, and this is a topic that people live  
23 with.

24 MR. MULLIGAN: Understood.

25 CHAIRPERSON BREWER: So my question



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2 is, what is your follow-up with DOB, and what is  
3 the communication with DOB on these particular  
4 cases?

5 MR. MULLIGAN: We have one person  
6 on our staff who is devoted to contacting DOB, and  
7 they speak with one person at DOB. They get back  
8 to ... this person gets back to us with the status  
9 and copies of whether it be the violation or the  
10 inspection report, and then the staff person at  
11 BSA then writes to the community board or whoever  
12 contacted us, so that they know what the status  
13 is.

14 CHAIRPERSON BREWER: All right, so  
15 presumably the community board is in the loop, is  
16 this something that's tracked in terms of the  
17 website, or is this ... obviously it's on the DOB  
18 website, because they have really extensive  
19 information and content. But do you have some  
20 sense of how many communications or how many cases  
21 are current, or have been, between you and the  
22 DOB?

23 MR. MULLIGAN: Not off the top of  
24 my head, but we do have an internal database and I  
25 can get that for you.

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2 CHAIRPERSON BREWER: You can share  
3 that with us?

4 MR. MULLIGAN: Yes, absolutely.

5 CHAIRPERSON BREWER: Okay.

6 COUNCIL MEMBER HALLORAN III: I  
7 have pulled up section 72-12, and I'm going to  
8 read you section D, "That the practical  
9 difficulties are a necessary hardship claimed as a  
10 grounds for variance have not been created by the  
11 owner or by a predecessor in title, however, all  
12 other requirements remain the purchase of a zoning  
13 lot subject to the restrictions sought to be  
14 varied shall not themselves constitute a self-  
15 created hardship". With regards to the questions  
16 that I asked you about a tax lot, if language were  
17 created that indicated that the subdivision of the  
18 zoning in and of itself into subject tax lots  
19 would be by definition a self-created hardship,  
20 would that clarify the language in a way that I  
21 suggested? Because I'm reading it as a lawyer,  
22 and as a plain-speaking lawyer, there is nothing  
23 in that example we were talking about that is  
24 wrong with the zoning lot. There is no hardship  
25 in the zoning lot, the zoning lot itself had a

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2 one-family home on it, which was perfectly  
3 acceptable. The fact that it was broken into a  
4 second tax lot, at least to this plain-speak  
5 lawyer side of me, says there's no issue, the  
6 zoning lot itself was perfectly conformed to fit  
7 the requirements to build a building before it was  
8 subdivided as a tax lot. So how can you say on  
9 the one hand that it only applies to the zoning  
10 lot, and your inference being that the subdivision  
11 of a tax lot is not the issue, when the statute  
12 speaks to the zoning lot itself and not a tax lot?  
13 Well, there is nothing wrong with the zoning lot  
14 if you only build one building on it, as it was  
15 originally set up. So how do you get around that?  
16 I'm a little confused.

17 MR. MULLIGAN: Right, so in terms  
18 of ... it is one zoning lot, and there was analysis  
19 by the applicant that looked at the size of that  
20 existing zoning lot versus the zoning lots in the  
21 neighborhood, and it was a much larger zoning lot  
22 than others in the neighborhood. And so it had a  
23 home that had a certain square footage, say 2,000  
24 square feet, most of the other homes in the  
25 neighborhood were also at 2,000 square feet, but

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2 were on lots that were much smaller than this very  
3 large lot. So financial analysis was done that  
4 showed that in terms of the comparables and the  
5 amount of floor area that could be developed,  
6 there was enough floor area on that lot to develop  
7 a second home, because it was a very large lot, it  
8 just didn't satisfy that side yard requirement.

9 And- -

10 COUNCIL MEMBER HALLORAN III:

11 (Interposing) And the distance between buildings.

12 MR. MULLIGAN: And the distance  
13 between buildings, correct. Because of the shape  
14 of the lot- -

15 COUNCIL MEMBER HALLORAN III:

16 (Interposing) An L-shape.

17 MR. MULLIGAN: ... he actually did an  
18 analysis that ... if it were a regular shape, you  
19 could put the two homes, but because of the  
20 irregularity, so the Board found that the  
21 uniqueness of that lot met the threshold for  
22 uniqueness for a variance.

23 COUNCIL MEMBER HALLORAN III: Thank  
24 you. I appreciate it, Madam Chair.

25 CHAIRPERSON BREWER: I think we're

1  
2 just back to this issue of how do you respond to  
3 the concerns, you know, that in certain  
4 neighborhoods the BSA's granting a variance has  
5 over time led to de facto rezoning? I'm sure you  
6 talk about that internally.

7 MR. MULLIGAN: Sure.

8 CHAIRPERSON BREWER: But are there  
9 some ways that you could address that issue,  
10 perhaps not if you don't feel strongly ... I know  
11 you feel strongly about these four bills, but that  
12 is the essence of what we're trying to get at in  
13 the neighborhoods. And how do you address that?

14 MR. MULLIGAN: I believe you're  
15 citing the MAS report, which is, I think, from ...  
16 the MAS report, which I think is from 2003. I  
17 mean, I would like to say that since ... I'm not  
18 saying that that was the case before 2003, but  
19 certainly under this Board, they're very mindful  
20 of making sure that that is not the case.

21 CHAIRPERSON BREWER: Okay. And  
22 then the second issue that I think we mentioned  
23 earlier about the issue of cost, which I know  
24 isn't necessarily your problem, but do you think  
25 in terms of what you're trying to do to streamline

1  
2 some of these processes and to have more  
3 education, do you think that might enable more  
4 articulate and persuasive information coming from  
5 the neighborhood? Because most neighborhoods  
6 cannot afford \$120,000 to \$200,000 to meet those  
7 five criteria or to present that kind of a case.

8 MR. MULLIGAN: Right. Absolutely,  
9 I think that meeting with community groups, and  
10 we're happy to do it, to talk about the five  
11 findings and what the Board looks for in terms of  
12 uniqueness, to the extent that community groups  
13 can speak directly to those findings, that's when  
14 they're most successful in convincing the Board.

15 CHAIRPERSON BREWER: We're waiting  
16 for another Council Member.

17 MR. MULLIGAN: Okay.

18 CHAIRPERSON BREWER: And I don't  
19 think he's going to get here in time, so I want to  
20 thank you very much for your efforts, I hope  
21 somebody will stay from BSA, because we have a  
22 huge number of people who want to speak, as you  
23 can imagine, and I want to be sure that the BSA  
24 hears what they have to say.

25 MR. MULLIGAN: Sure.

1  
2 CHAIRPERSON BREWER: Thank you very  
3 much.

4 MR. MULLIGAN: Okay, thank you.

5 CHAIRPERSON BREWER: Okay, the next  
6 is Susan Seinfeld from Queens Community Board #11,  
7 Eve Baron from Pratt Center, Alex Camarda from  
8 Citizens Union, Rhea O'Gorman from the Station  
9 Road Civic Association, and Richard Hellenbrecht,  
10 from Queens Civic Congress, and we'll find enough  
11 chairs for everyone, and everyone will get a  
12 chance to speak. Whoever would like to begin.

13 MS. SEINFELD: I guess you called  
14 my name, so I'll start.

15 CHAIRPERSON BREWER: Whoever would  
16 like to begin, go ahead. You need to pull the  
17 microphone closer to you, because it's all, you're  
18 all on camera.

19 MS. SEINFELD: Okay.

20 CHAIRPERSON BREWER: You can watch  
21 yourself later on when you get home. Just what  
22 you want.

23 MS. SEINFELD: My name is Susan  
24 Seinfeld, I'm the District Manager for Community  
25 Board #11, and I want to speak today- -

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CHAIRPERSON BREWER: (Interposing)  
You have to pull, pull it right up.

MS. SEINFELD: All right. ... in support of Intro 650, introduced by Council Member Halloran, its prime sponsor, and Vacca, Lander, Rivera, Nelson and Oddo, and I want to thank Council Member Halloran, he's the Council Member that covers most of Community Board #11, for listening to our concerns. The other legislation has to deal with reviewing input, but I wanted to ... I know others will speak to that, so I want to speak about what I consider a simple request, and that's to pass the legislation that would require BSA to notify persons or businesses holding variance, once that variance is set to expire, and to add penalties to that. Businesses operating in zones not designated for that business have the right to apply for a variance. Through this process, community boards have the charge or mandate function to review the application and make recommendations and ask that there be conditions imposed to operate the business, and in Community Board #11 these businesses most often abut private residences, and therefore have a



1  
2 profound impact on the neighborhood. And that's  
3 why board members have been disturbed when they  
4 find that a business has not reviewed its variance  
5 for special permit, not only does the variance  
6 expire, but the certificate of occupancy expires  
7 with the variance. I was told by Mr. Mulligan  
8 that "unfortunately if a term expires, there's  
9 little we can do besides alerting the Department  
10 of Buildings to inspect and issue appropriate  
11 violations. We cannot schedule a compliance  
12 hearing at the Board because with an expired term  
13 the property is no longer under the Board's  
14 jurisdiction." Because the business is no longer  
15 under this jurisdiction of BSA, there can be no  
16 enforcement of the conditions placed on the  
17 business in the variance resolution, as it stands  
18 now, if a variance expires the owner can re-apply  
19 late, pay an additional fee, or after an  
20 inordinate amount of time, can file a new  
21 application with all the cost that entails, or  
22 they can do what some have done, totally ignore  
23 the variance process, and continue to operate, and  
24 only when complaints are made to DOB are  
25 violations issued and fines imposed by the

1  
2 Environmental Control Board. Zoning laws which  
3 have been painstakingly created by the Department  
4 of Planning, voted for by community boards and the  
5 borough president and the City Council, should be  
6 complied with. Intro 650 will establish a series  
7 of fines based on the length of non-compliance and  
8 formalize the process. Two years ago my staff and  
9 I painstakingly made a spreadsheet of all our  
10 variance cases, reviewed every BSA resolution,  
11 including the variance dates. We sent out letters  
12 to businesses with expired variances and special  
13 permits. Over the past two years, 11 letters went  
14 out, four locations responded and filed, four made  
15 contact with me, and they are working on the  
16 process, even though they are expired, and there  
17 are three that totally ignored my letters and have  
18 received fines. Two of the business owners who  
19 contacted me tell me that they were unaware that  
20 the variance had expired, considering that many of  
21 them are ten years in length, it can be  
22 understood. One lessee had leased a business he  
23 did not know had a variance, the owner had never  
24 told them. Three of the businesses who have  
25 ignored the law have been referred for padlock by

1  
2 the Department of Buildings, they include a car  
3 dealer that opened in an R-12 zone despite my  
4 calls prior to their opening, to advise them of  
5 their obligation, it continues to operate and has  
6 fines amounting to \$4,700 with another violation  
7 pending, and they keep postponing the hearing.  
8 There's a gas station that operates with \$18,000  
9 worth of fines, despite letters and calls to the  
10 owner, and another with fines amounting to \$6,000  
11 due the city. The community boards are not the  
12 agency charged with the responsibility, and it  
13 should be done by the Board of Standards and  
14 Appeals, who should be provided with the authority  
15 to impose increased penalties as proposed in this  
16 legislation. We believe this legislation is a  
17 step in the right direction, and it will help  
18 enforce our zoning laws by encouraging compliance  
19 by those who take advantage of the variance  
20 process, and we urge you ... the community board  
21 urges you to pass this legislation.

22 CHAIRPERSON BREWER: Thank you,  
23 next. We've been joined by Council Member Jimmy  
24 Van Bramer, who is the sponsor of a couple of  
25 pieces, we'll ask him to speak in a few minutes,

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but go ahead.

MS. BARON: Good afternoon, my name is Eve Baron, I'm with the Pratt Center for Community Development and I'd like to thank you for the opportunity to support the Council's efforts to reform the Board of Standards and Appeals. I think we all know the BSA provides a critical function for owners of private property, and to communities at large, yet its processes if misused have the potential to undermine and erode important planning determinations. Over the past ten years we've seen many improvements, the BSA in general has become more professional and more responsive, but there's still much room for improvements. We need additional safeguards to staunch poorly-planned and destabilizing uses that have a tendency to alter neighborhood character. We also need greater transparency and checks and balances in the Board's decision-making processes. The most frequent type of variance over the past 30 years being requested has shifted bulk to use, yet the rules have not changed to keep up with this trend. Use changes are particularly important to the public, because they are often

1 highly-visible, and taken cumulatively can play a  
2 role in gentrifying a neighborhood and leading to  
3 displacement, yet it's not clear how the BSA  
4 processes and incorporates public input into  
5 decision-making. The legislation proposed can  
6 begin to address that disconnection, we're  
7 supportive of that effort. Intro 78 is an  
8 important start, these reports will be a tool for  
9 tracking trends and potential tipping points. We  
10 believe that the community boards themselves, as  
11 well as borough presidents, can benefit from these  
12 reports and would suggest adding language to that  
13 effect. We also support Intro 678, the rules once  
14 drafted should be brought to the public for input,  
15 we suggest adding language also to that effect.  
16 Intro 680, establishing a community advisory  
17 review panel is a needed step toward connecting  
18 public input to BSA decisions. This is an  
19 important oversight function that needs to be  
20 played, various requests need to be screened for  
21 consistency with public policy, including but not  
22 limited to industrial business zones and ombudsman  
23 areas, 197A plans and district needs statements.  
24 Accordingly, there may be roles for borough  
25

1  
2 presidents who have land use expertise and a role  
3 in the public review process as well as  
4 manufacturing experts. Just a couple of points  
5 that are a little bit off the chart in this  
6 discussion, but important. In regard to Intro 78,  
7 community boards need planning expertise to  
8 effectively evaluate various applications, and to  
9 make full use of reports. Additionally, even with  
10 new reporting requirements in place, there are  
11 requests that warrant further scrutiny but won't  
12 receive it because boards haven't elected to weigh  
13 in on them, or because they're not tracking  
14 variances. But there aren't any dedicated  
15 resources for planning for community boards,  
16 giving them additional responsibilities for  
17 planning without additional resources presents a  
18 quandary. Additionally, not all boards are  
19 adequately reflective of the populations they  
20 serve, and we need to work on this challenge in  
21 general, but in regard to this particular process,  
22 we need to make sure that broader public input is  
23 also given sufficient weight in land use  
24 decisions. So one final note, despite these  
25 promising reforms, we remain concerned at the

1  
2 Pratt Center that the BSA is not applying the  
3 criteria spelled out in the existing laws, five  
4 findings for the grant of a variance. We've seen  
5 time and again how applications that conflict with  
6 city policy in an area but have financial  
7 hardships only because of inflated purchasing  
8 prices that have no unique land use features and  
9 are clearly out of character with the surrounding  
10 areas are nevertheless granted. While we hope  
11 that the above additional process changes will  
12 have a substantive impact through more additional  
13 scrutiny, we remain concerned about the lack of  
14 rigor in the application of these criteria. Thank  
15 you.

16 CHAIRPERSON BREWER: Thank you,  
17 next.

18 MS. O'GORMAN: My name is Rhea  
19 O'Gorman and I'm here on behalf of Station Road  
20 Civic Association, which exists within Council  
21 Member Halloran's district. Communities such as  
22 ours throughout the city are being reshaped,  
23 overrun and drowned by overdevelopment without  
24 sufficient and codified community input. The BSA  
25 is the primary vehicle for foisting oversized,

1  
2 out-of-character businesses, community facilities  
3 and residences upon traditional residential  
4 communities. Although the BSA's powers are  
5 granted by the charter and refined by judicial  
6 review, there is ample public commentary that over  
7 the last few years the BSA has exceeded its powers  
8 and has begun to establish their own economic  
9 thresholds, which are much more liberal than the  
10 traditional five findings, and that they're making  
11 it even easier for variances to be obtained that  
12 continue to overburden their host communities. It  
13 is way past time that this agency is brought under  
14 more public scrutiny, and has more public input  
15 into the process of how and when variances are  
16 granted. As such I support all four pieces of  
17 legislation, although 78 on its own is nice but  
18 it's fluffy, it doesn't really give the  
19 communities much except that there is going to be  
20 reports. 650 is much nicer, except that from my  
21 community's standpoint at least, the people that  
22 we deal with, that we go against on these  
23 variances are not mom-and-pop businesses or  
24 entities, they tend to be very large well-moneyed  
25 corporations with contacts and resources that I



1  
2 would die for. In and around my area we deal with  
3 Taco Bell, Enterprise Rent-a-Car, Star Toyota,  
4 which is in Community Board #11, but it's part of  
5 a multi-million dollar auto conglomerate, which  
6 has an expired variance, and we have an Exxon-  
7 Mobil facility as well, who have let their  
8 variance expire for nine years and only renewed it  
9 when it suited their interests in possibly getting  
10 out of the gas station business. There is ... even  
11 the laws that are proposed now give no end date as  
12 to when someone should have to face the  
13 alternative of you either comply or you get  
14 padlocked. They need to know that this is a  
15 possibility, and to just let them keep paying  
16 fines when you have businesses of this magnitude,  
17 it's hardly even a cost of doing business, it's  
18 more petty cash to pay and just to continue to  
19 operate the way they do. And from a community  
20 standpoint, to let DOB enforce things, the  
21 mechanism is fairly broken in terms of how long it  
22 takes you to get a second violation that it will  
23 give these entities years and years to continue.  
24 Obviously from a community standpoint 680 is my  
25 favorite piece of legislation, it goes the

1  
2 furthest toward giving a community more say,  
3 however, the little paragraph two, which I guess  
4 I'll call the kill-the-lawyer provision, which is  
5 probably required by some sort of statute that  
6 allows the very agency you're trying to control to  
7 basically ignore the legislation and not let it be  
8 enacted, makes the legislation probably worthless,  
9 although it probably gives us the most hope at  
10 relief, but all four would of course have to be  
11 passed in tandem to give us any real change, and I  
12 certainly hope that the Council passes all four.

13 CHAIRPERSON BREWER: Thank you very  
14 much, and thank you for all your work. Next,  
15 Alex.

16 MR. CAMARDA: Good morning, Chair  
17 Brewer and members of the Governmental Operations  
18 Committee, my name is Alex Camarda, I'm the  
19 Director of Public Policy and Advocacy at Citizens  
20 Union, thank you for the opportunity to testify  
21 today on the package of bills related to the Board  
22 of Standards and Appeals. Citizens Union is an  
23 independent non-partisan civic organization of New  
24 Yorkers who promote good government and advance  
25 political reform in our city and state. In 2010

1 we released our report on charter revision  
2 entitled "Increasing Avenues for Participation and  
3 Governing in Elections in New York City". In that  
4 report we supported a strong mayoralty that we  
5 believe has improved the effectiveness of city  
6 governance over the last two decades. However, we  
7 also noted the need for more meaningful  
8 opportunities for community input in a diverse  
9 city, particularly at the levels of government  
10 closest to the people, community boards. This is  
11 especially true for land use, and for that reason  
12 Citizens Union recommended at that time that the  
13 Board of Standards and Appeals be expanded to  
14 include members not only appointed by the Mayor,  
15 but also by the public advocate and borough  
16 presidents to better insure community concerns are  
17 adequately heard. While this proposal has yet to  
18 be introduced as legislation by the Council, we  
19 believe it is an appropriate way in which to  
20 address the concerns voiced at this hearing today.  
21 The bills under consideration today are similar in  
22 intent to Citizens Union's proposal, they seek to  
23 strengthen the voice of New York's diverse  
24 communities and neighborhoods with respect to BSA  
25

1  
2 determinations on variances and special permits,  
3 amplifying voices of the community in BSA  
4 decisions is needed, as shown by Citizens Union's  
5 review of BSA decisions in the last year on  
6 variances, which we prepared in advance of today's  
7 hearing, and most of that is in the back of the  
8 testimony. But our research shows the following:  
9 the BSA in the last year granted 97%, 102 of 105,  
10 of applications related to variances, and we did  
11 exempt some of those which are detailed in the  
12 back of the testimony. While the BSA approved 97%  
13 of applications related to variances, community  
14 boards only recommended approval of 79% of  
15 applications community boards took action on. I  
16 should note that there was one instance in which a  
17 community board approved an application and the  
18 BSA denied it, and that's what accounts for the  
19 discrepancy between our numbers and the BSA's. If  
20 you're just looking at for discordance between the  
21 two, it is about 20%. Community boards on Staten  
22 Island and Queens had the greatest number of  
23 differing opinions from BSA determinations on  
24 applications related to variances. Staten Island  
25 disagreed with BSA determinations in nine of 23

1 instances, or 39% of the time, while Queens  
2 disagreed with BSA rulings in nine of 28  
3 instances, or 32% of the time. Informed by this  
4 review and our charter report recommendations,  
5 Citizens Union's positions on the individual bills  
6 under consideration today are as follows. Intro  
7 #78, we support this contingent upon a couple of  
8 amendments. We believe the report required by the  
9 legislation to provide the instances in which the  
10 recommendation of the community board deviated  
11 from the determination of the BSA related to  
12 variances and special permits should not only be  
13 made available to the Council, but also to the  
14 public. This could be done by BSA itself on its  
15 website, as the BSA, to its credit, already  
16 provides online detailed determinations for  
17 individual variances and special permits that are  
18 sought by property owners. 2. The BSA should also  
19 make basic elements of the data available  
20 periodically, if not in real time, in a  
21 spreadsheet format that is downloadable and allows  
22 for the user to reconfigure the data to facilitate  
23 independent analysis. This would enable not only  
24 the Council, but also give community boards, land  
25

1  
2 use experts, advocates and interested members of  
3 the public the opportunity to get a broader  
4 picture of how BSA determinations impact  
5 particular areas of the city, which types of  
6 variances are most often approved or disapproved,  
7 and reasons why particular requests are or are not  
8 granted, and so on. And on a technical note, I  
9 just need the effective data, the bill needs to be  
10 updated. On this bill I just wanted to make a  
11 couple of remarks not in my testimony related to  
12 the testimony of the BSA. I did this yesterday,  
13 it took about three hours, in terms of the level  
14 of burdensomeness, and also I think if the  
15 community boards' opinions that are on the  
16 individual resolutions that the BSA makes  
17 available online, if those don't reflect their  
18 ultimate opinion, I think that should be conveyed  
19 in some manner. I don't think that's a reason not  
20 to do the analysis. With regard to Council Member  
21 Halloran's bill, we support Intro 650, which would  
22 require BSA notification of property owners when a  
23 variance is about to expire, and the assessment of  
24 \$500 fines increasing each six month period by  
25 that multiple when the fines are unpaid. I will

1  
2 say from the 108 that I went through, I think in  
3 virtually every instance where there was a renewal  
4 sought for a variance, it was past the time that  
5 it had expired, sometimes weeks, sometimes months,  
6 sometimes years. I did not see any that were  
7 prior to the deadline of the variance expiring.  
8 On Intro #678, which would require the BSA to  
9 promulgate rules to establish a formal procedure  
10 to more directly address arguments and evidence  
11 provided by the parties that appear before the  
12 Board, in reviewing these 108 applications online,  
13 I will say that we thought that BSA deserved  
14 praise for extensively laying out its decisions  
15 involving zoning and other matters. They did  
16 provide pretty detailed pointed reasons for its  
17 determination in the resolutions it takes, these  
18 are often five to ten pages. They almost always  
19 note the positions of the community boards,  
20 elected officials or others who have weighed in on  
21 such decisions. I will say in some instances they  
22 summarize point-by-point the views of the  
23 opposition, in other resolutions they just  
24 reference them. So I mean, I think for the  
25 purposes of a resolution in keeping it consistent

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2 with the summary, we think that if there's a need  
3 for greater information, that it should probably  
4 come outside of the resolution, maybe in the form  
5 of a letter to the community board, or to the  
6 elected official. But we think accompanying  
7 documents that the opposition provides should be  
8 on the website alongside the BSA's ultimate  
9 resolution. And then finally on Intro #680, which  
10 establishes a separate community advisory review  
11 panel to provide another layer of review upon  
12 request, after a variance to a zoning resolution  
13 or an application for a special permit is filed,  
14 the panel that is envisioned would include  
15 representatives of the City Planning Commission,  
16 the affected community board, and a Council member  
17 of the affected district, and while we think that  
18 might give the BSA further pause in making a  
19 decision diverging from the wishes of the  
20 community, the panel seemed to us redundant of the  
21 community board which plays a similar advisory  
22 role, and even consists of the same members or  
23 appointees of those members. The one exception  
24 would be the City Planning Commission, we think  
25 what would be preferable was for the community



1  
2 boards to have more land use expertise provided to  
3 them, rather than creating another advisory panel.  
4 So with it I'm willing to answer any questions you  
5 have.

6 CHAIRPERSON BREWER: Thank you, is  
7 there anybody else for this panel to speak? Yes,  
8 I think this gentleman right here.

9 MR. HELLENBRECHT: Good afternoon,  
10 Madam Chair and members of the New York City  
11 Council, my name is Rich Hellenbrecht, I'm  
12 President of Queens Civic Congress. The Congress  
13 is an umbrella organization that represents over  
14 100 civic associations throughout the borough.  
15 The Queens Civic Congress was formed in the 1990's  
16 primarily to unite civic groups, to improve the  
17 quality of life, and to preserve and protect the  
18 residential areas of our borough, and to help  
19 members fight overdevelopment and inappropriate  
20 development in their communities. This sounds  
21 easy, but because of the ineffective and counter-  
22 productive Board of Standards and Appeals, our  
23 fighting for appropriate contextual development is  
24 anything but easy. The BSA is an administrative  
25 board given very unusual legislative powers, with

1  
2 a single decision the Board can revise zoning  
3 regulations that have gone through extensive  
4 community review and environmental study. Their  
5 decisions often become precedents for similar  
6 cases throughout the city. Too frequently,  
7 decisions are made despite contrary findings at  
8 the local and borough levels. The BSA is not  
9 elected, but appointed by one person. There's a  
10 serious danger with so much power vested in an  
11 appointed board and neighborhoods have been  
12 drastically changed due to a single action. Our  
13 civic members deal with several issues related to  
14 the BSA, and we are pleased and very supportive of  
15 the introductions before you today. While this is  
16 a good start, there is much more to do beyond  
17 these, and let's get started. We also strongly  
18 support the additional recognition, if not powers,  
19 given to the hard work of community boards. One  
20 issue civics face is the lack of follow-through  
21 and enforcement on variances and their  
22 requirements. Variances, once granted, seem  
23 forgotten and never tracked or followed up. They  
24 often expire for long periods before coming back  
25 to the Board, usually they reappear only when the

1 applicant wishes to change the structure.

2  
3 Community boards that have the responsibility to  
4 review and recommend variances and renewals do not  
5 have the tools to track expirations. The  
6 Buildings Department seems apprehensive to verify  
7 compliance with BSA requirements. Intro #650  
8 begins to address the enforcement and tracking  
9 issues. We would suggest you require the copies  
10 of the six-month notice be sent also to respective  
11 community boards and the Council members for their  
12 tracking and follow-up. The penalties for non-  
13 compliance and for failure to submit renewal  
14 applications make sense, but we are concerned that  
15 the fines and fees never seem to be collected.  
16 They often sit on the books, even past the sale of  
17 the property sometimes. It has often been  
18 documented that the BSA will issue a decision  
19 contrary to the recommendations of affected  
20 community boards and the determinations of the  
21 borough president or Council member. Intro #78  
22 addresses this by requiring the BSA to report on  
23 its caseload by community district, particularly  
24 highlighting the cases that were determined  
25 contrary to the community's recommendation. Our

1  
2 civic association members have noticed that the  
3 minutes of the Board of Standards and Appeals  
4 barely mention the contrary recommendations or  
5 comments by community members. We support Intro  
6 #678's efforts to require the Board to reference  
7 to arguments and evidence presented and their  
8 effect on the community board's determination.  
9 The prior speaker said that in fact I guess lately  
10 maybe that's not the truth any more, and they are  
11 referencing, if that's true, I retract that, but I  
12 still support the application. The subject of  
13 appeals to decisions by the BSA has been raised  
14 constantly, but introductions calling for City  
15 Council review of decisions have failed to pass.  
16 Intro #680 seems to provide an alternative of  
17 requesting a review by an advisory panel for a  
18 limited period of time. We support this, as long  
19 as a. it falls under the reporting requirements of  
20 Intro #78, and b. this action not precludes  
21 further efforts to establish a formal review and a  
22 peer process by the City Council, enlarge the  
23 Board or seek advice and consent for appointment  
24 to the Board. We suggest, in addition to "people  
25 residing", you add businesses located within the

1  
2 district in that section. In general the Queens  
3 Civic Congress members who voted on these items  
4 suggested that these items scheduled to take  
5 effect in 90 days be implemented instead in 60  
6 days. Again, thanks to the members, the authors  
7 and sponsors of these bills, please keep trying to  
8 find ways to install more fairness and  
9 impartiality in the process. Thank you.

10 CHAIRPERSON BREWER: Thank you very  
11 much. Council Member Van Bramer, do you want to  
12 make some comments? I really apologize that you-  
13 -

14 COUNCIL MEMBER VAN BRAMER:  
15 (Interposing) I do, actually, and thank you.  
16 First of all, thank you for allowing me to speak  
17 and visit your Committee, and I am very proud to  
18 be the author of Intro 678 and 680, and I want to  
19 congratulate and thank my colleague, Dan Halloran,  
20 for his work on this issue, and thank Richard  
21 Hellenbrecht, who is an amazing civic leader in  
22 the great borough of Queens. And I can just  
23 certainly say that my experience, my community's  
24 experience, with BSA has been painful, and it is  
25 riddled with numerous instances of an entire

1  
2 community being disregarded while it approves  
3 development that flies in the face of what is best  
4 for our communities, and in many cases hurts  
5 individual property owners who are nearby, and it  
6 is an absolute and utter disgrace with respect to  
7 community input, community involvement, and  
8 explanation of their decisions, and quite frankly,  
9 I'm a little surprised about Citizens Union coming  
10 and testifying and saying what they said today.  
11 Intro 680, Citizens Union is construing that it  
12 would give BSA further pause in making decisions  
13 divergent from the wishes of the community, and  
14 fearful that there's redundancies. We need to  
15 give the BSA further pause, when it is making  
16 decisions that are destroying neighborhoods, that  
17 are ruining people's properties and that are  
18 flying in the face of every single community  
19 board, every single civic leader, every single  
20 elected official. Time and time again you own  
21 studies, Citizens Union, indicates that the  
22 problem is worse in Queens than it is in other  
23 boroughs. What we are saying is we have had  
24 enough, and that we need to have more community  
25 input, more oversight, we have to empower the very

1  
2 people whose lives, whose communities are affected  
3 by the decisions that this body is making, a body  
4 that is not accountable, not accountable, to the  
5 people who it is supposed to serve. And going  
6 through, you know, ten pages on the internet,  
7 while you may think that that's appropriate,  
8 doesn't cut it with the members of Community Board  
9 #2 in Queens, it doesn't cut it with the members  
10 of Community Board #1 in Queens, the community  
11 boards that I have either served on or have the  
12 privilege of representing today. This is a  
13 serious problem in Queens, a serious problem in  
14 Woodside, in Sunnyside, in Dutch Kills, where  
15 we're having people's lives destroyed by decisions  
16 that the BSA is making, and we have now attempted  
17 with these four pieces of legislation to try and  
18 correct something that is a very serious problem  
19 in the City of New York, a very serious problem,  
20 and I agree with Rich and some of the other  
21 speakers, it doesn't go far enough, it doesn't go  
22 far enough. This is a good step, but it's not  
23 enough. We have got to do something, this is a  
24 desperate situation, and I would hope that all  
25 organizations who care about the well-being of the

1 City of New York would support these pieces of  
2 legislation, even further I'm less concerned with  
3 redundancy than I am with people being shut out of  
4 the process, not understanding the process, being  
5 disregarded, and there are time and time again so  
6 many instances we can talk about in Woodside,  
7 where every single person, every single entity,  
8 weighed in and said no, do not do this, it is  
9 wrong for our community, it is wrong, and the BSA  
10 disregards everything, and allows variances, and I  
11 know Council Member Halloran, because I was  
12 getting live-tweeted about his questions, talked  
13 about hardships and the supposed hardships and the  
14 self-created hardships, but these are real issues,  
15 real issues that affect everyday people in the  
16 City of New York, and that's why I've introduced  
17 these pieces of legislation, because I care deeply  
18 about the people of Woodside and Sunnyside and  
19 Dutch Kills and Long Island City, and the BSA has  
20 not demonstrated in so many instances, so many  
21 instances, that they have that same concern for  
22 the people of my district and the people of Dan's  
23 district, and the people that Rich Hellenbrecht  
24 represents with those over-100 civic associations  
25



1  
2 in Queens, that's why we have to do this, and I'm  
3 so sorry that I spent two hours on the Van Wyck  
4 today to get here and couldn't ask the BSA  
5 questions, but it's a good day for the cultural  
6 community because we welcomed the space shuttle to  
7 JFK, and it was important that I be a part of that  
8 too. But I feel pretty passionate about this, as  
9 you might guess, Chair Brewer, and I just want to  
10 thank you for allowing me to speak, obviously I  
11 have a lot more to say, but I'll leave it at that.

12 CHAIRPERSON BREWER: Thank you very  
13 much.

14 MR. CAMARDA: If I could just  
15 respond.

16 CHAIRPERSON BREWER: Yes, go ahead,  
17 Alex.

18 MR. CAMARDA: I just want to point  
19 out that Citizens Union obviously shares many of  
20 the same concerns that ... and the intent of these  
21 bills, what it's trying to cure, we share the same  
22 concerns that many of the members here have. I  
23 mean, I think where we differ is on some of the  
24 means, with respect to the advisory board, I think  
25 we would just prefer to take the approach of

1  
2 strengthening the community boards, bolster their  
3 ability to provide advice, rather than creating  
4 another entity.

5 COUNCIL MEMBER VAN BRAMER: Can I  
6 just say, I don't think we need to strengthen  
7 community boards in their ability to give advice.  
8 The community board that I sat on, when we made a  
9 recommendation, we knew exactly what it was  
10 talking about, we knew exactly what the  
11 consequences were, we knew exactly what was right  
12 for that block in Woodside.

13 CHAIRPERSON BREWER: Council  
14 Member, we need to keep moving, so- -

15 COUNCIL MEMBER VAN BRAMER:  
16 (Interposing) So I just want to say I don't think  
17 that's the issue. I think community boards ...  
18 communities know what's good, and if you've been  
19 around a community board, they know what's good,  
20 they know what's right, they say, this is what we  
21 need to make our neighborhood good. That's not  
22 the issue, the issue is that the BSA doesn't ever  
23 listen to them.

24 CHAIRPERSON BREWER: Okay. We got  
25 it. I just have one question, and then we'll go

1  
2 to Council Member Halloran. I am interested in  
3 this issue of the relationship between the BSA and  
4 the Department of Buildings. I know it's really  
5 frustrating to have to go back and forth between  
6 the two, some of you have articulated that. So  
7 I'm just wondering what kind of time you have to  
8 put in, in order to get some of the questions  
9 answered when you're trying to deal with these two  
10 siloed agencies? And I'm just wondering, you're  
11 not responsible for monitoring, but it does seem  
12 like, and I know this wonderful woman from Board  
13 #11 indicated that all the work that goes on. I'm  
14 just wondering in terms of monitoring, do you do  
15 that, or do you think that the agencies do that,  
16 or what do you suggest would be a solution to that  
17 problem? Because they are very ... come sit over  
18 here again, you shouldn't disappear. You can pull  
19 up a chair, I don't want anybody to disappear, you  
20 all have a lot to say.

21 MS. SEINFELD: I'd like to say

22 that- -

23 CHAIRPERSON BREWER: (Interposing)

24 I do want to thank you and Citizens Union for your  
25 extensive amount of work, in terms of putting the

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charts together, thank you.

MS. SEINFELD: I'd like to speak to that, because as a district manager I'm the one that has to do that, and the board sends appeals and the person that does answer to us is very responsive. I'm not going to say they're not, but when it comes to the Department of Buildings, we first learn that something is expired and then we have to put in a 311 complaint. We then go to our liaison at Buildings in Queens, tell him we put in a complaint to try to move up the inspection process, because an expiration of a variance and its CofO, which goes with it, as I said, is not a high priority inspection at the Department of Buildings, so it can take, you know, we can go months without it then being inspected. It gets inspected, and as you know they'll get the violation immediately. Then we go to ... then it goes to ECB to have the violation imposed. One of these that I spoke of that has violations that has been open for about three years now keeps postponing the hearing, so they had two hearings, got violations, we had to then call ... every time the time period ends and there's been a hearing,

1  
2 you can make another complaint, so we make another  
3 complaint, there's another DOB inspection, there's  
4 another ECB hearing, but they keep postponing the  
5 hearing. So this is why we're going on three  
6 years now. So it's very time consuming, and again  
7 it's only complaint-driven. Just because the  
8 variance expires, there's not an automatic ...  
9 someone wakes up and says, oh, okay, you know,  
10 this is expired, let's go call, put in a 311 to  
11 DOB, it's someone has to know it expired, and  
12 that's where it seems is the problem.

13 CHAIRPERSON BREWER: I really  
14 appreciate all your hard work, you have a very  
15 good district manager, Mr. Halloran.

16 COUNCIL MEMBER HALLORAN III: I  
17 know I do.

18 CHAIRPERSON BREWER: Council  
19 Member, go ahead.

20 COUNCIL MEMBER HALLORAN III: First  
21 let me thank you all for testifying and I was  
22 about to say, Chair Brewer, that I am very  
23 fortunate, both Community Board #7 and #11 do good  
24 work. But when I took office, and Susan, I'm sure  
25 you'll be able to verify this with me, one of the

1  
2 things I was amazed at was there was no chart to  
3 tell us when these things expired, that there was  
4 no automatic notifications, and I'm so grateful  
5 that you did compile that list for me, and we put  
6 that together and we sit here today with some  
7 facilities nine years of non-renewal. You know,  
8 and theoretically those businesses have been out  
9 of their CofO every day since that variance  
10 expired with almost no consequence. It troubles  
11 me as a Council Member to think that you have to  
12 file a 311 complaint in order to start the  
13 process, and this is, Gale, what I was talking  
14 about when I said that there's no communication  
15 between the agencies.

16 CHAIRPERSON BREWER: I got that.

17 COUNCIL MEMBER HALLORAN III: So,  
18 Chair, you've been wonderful on DOITT and all of  
19 the other electronic sharing of data, and this is  
20 another place where it falls through. But I would  
21 like to just ask Citizens Union another question.

22 CHAIRPERSON BREWER: Questions are  
23 good.

24 COUNCIL MEMBER HALLORAN III: This  
25 is ... I looked at your charts, I'm amazed that you

1  
2 were able to do in three hours what the BSA has  
3 not done, which is compile the very information  
4 we're talking about, and it's horrifying to me to  
5 look at your chart, from May, 2011 to April, 2012,  
6 that in Queens and Staten Island the numbers that  
7 you have cited are far and away above, the Bronx,  
8 high but not horrible, one in four, 25%; Brooklyn,  
9 one in 35, 3%; Manhattan, one in 18, 6%; Queens,  
10 nine in 28, 32%; Staten Island, nine in 23, 39%.

11 These numbers represent the BSA disregarding  
12 community boards and borough presidents 40% of the  
13 time in Staten Island, a third of the time in  
14 Queens. Where does it stop in terms of your, the  
15 three hours of research that you did, would these  
16 numbers pan, as you look backwards in time two  
17 years, three years ago, did you do anything like  
18 that, or is that something that, I don't know  
19 where you got this from, so I'm trying to figure  
20 out we can reconstruct.

21 CHAIRPERSON BREWER: We've got the  
22 question.

23 MR. CAMARDA: On the BSA's website  
24 there's actually a fairly good search engine which  
25 you can search by different types of

1  
2 determinations and particular time periods, and  
3 just because I had limited time to do this  
4 testimony, unfortunately I chose to do a year. I  
5 mean, you can certainly search for more  
6 applications than that. I also have this broken  
7 down by community board, but I felt like the  
8 sample sizes started to get so small that I didn't  
9 feel like it would be responsible to make  
10 judgments based on that and put forth information  
11 based on that. But certainly one could go back  
12 further than one year.

13 COUNCIL MEMBER HALLORAN III: I  
14 appreciate it, thank you very much, Madam Chair.

15 CHAIRPERSON BREWER: Thank you all  
16 very much, I appreciate it. I want to ... the next  
17 panel, the next panel is Sheldon Lobel, Robert  
18 Altman, Mark Diller, and then Susan Clapp, Marc  
19 Fleisher, Francine Oak, sorry. While you're  
20 coming up and sitting down, pull up some chairs, I  
21 just want to read, or summarize, Brooklyn  
22 Community Board #15, this is Council Member  
23 Domenic M. Recchia, Jr.'s community board, and  
24 what they state is, "Many older homes are  
25 purchased and remodeled to accommodate the new



1  
2 homeowner. We believe these new residents in our  
3 community add to the vitality and energy in a  
4 vibrant district. The City Council has pending  
5 legislative hearings on issues we believe must be  
6 addressed, they will affect our community. Intro  
7 #678", and this is from Brooklyn Community Board  
8 #15, "We oppose this bill because it will only  
9 serve to further complicate an already complex  
10 process. Most arguments presented to our board  
11 are based on the character of the neighborhood,  
12 light and air and scenic views. The concepts by  
13 definition are subjective and not easily  
14 quantifiable. Light and air are granted to any  
15 property owner, but to what degree? Having a view  
16 from one's window is not guaranteed in a deed.  
17 The determination should continue in the hands of  
18 the BSA, the commissioners clearly have the  
19 expertise and experience to render appropriate  
20 professional decisions. Regarding Intro #680, we  
21 oppose this bill", this is Community Board #15 in  
22 Brooklyn, "because it will add another layer of  
23 undue red tape. Members of the community board  
24 are appointed by the local City Council members  
25 and the Brooklyn borough president. Each member

1  
2 of the board has an interest in our district, and  
3 has every opportunity to review pending  
4 applications before the board. This surely  
5 represents both the community and the elected  
6 officials. This bill would also add more expense  
7 to the process and extend the timeframe from  
8 purchasing a home to renovation. Also, this bill  
9 would dilute the influence of the community board  
10 whose input is of critical importance.

11 Furthermore, who will appoint the members of the  
12 proposed advisory panel? How will we insure they  
13 have the expertise and experience? Where and how  
14 often will the panel meet? Will this end up being  
15 another expense? Intro #78: we oppose this bill  
16 because it will require unnecessary reporting and  
17 paperwork. The Mayor has tried repeatedly to  
18 streamline the process for so many applications  
19 citywide and here we are going backward with more  
20 unnecessary paperwork. Intro #650", again, I'm  
21 reading Brooklyn Board #15, so don't think it's  
22 me. "We support this bill, it will afford all  
23 variance holders whose variances might be expiring  
24 the opportunity to receive a six-month warning  
25 prior to the expiration. It will afford the help

1  
2 to insure all unpaid fines are paid prior to the  
3 extension of any variance." And then it talks  
4 about the wonderful members of Community Board  
5 #15, and I believe all community boards are great.  
6 So whoever would like to start, I just wanted to  
7 read that, because I promised my colleague.

8 MR. LOBEL: My name is Sheldon  
9 Lobel, good afternoon, thank you for the  
10 opportunity of appearing before the Committee. In  
11 addition to being a zoning and land use attorney  
12 who has practiced for over 40 years, I am also  
13 president of the Zoning Advisory Council, and I  
14 stand before you in that capacity. I would also  
15 say that I stand before you, and I don't have  
16 individual authorization from thousands of  
17 property owners, business owners, manufacturers,  
18 who have to deal every day with the zoning  
19 resolution. I was going to bring a copy of the  
20 zoning resolution, but I was afraid to carry it,  
21 because of my health. But this is a copy of the  
22 1916 resolution, probably about 18 pages. Today's  
23 resolution is over 1,000, with special districts,  
24 with requirements that every health club that  
25 opens up secure a special permit from the Board,

1  
2 with thousands of thousands of regulations that  
3 the business community and the homeowner community  
4 have to face. I might say that I've been to a lot  
5 of community board meetings, and last week I went  
6 to one for a supermarket up in Harlem, and the  
7 community board said, "We don't want it, we want a  
8 library." They weren't looking at anything else,  
9 and they voted unanimously against a supermarket  
10 on 155<sup>th</sup> Street in Harlem, for no reason. Now,  
11 someone might say, well, if that goes to the  
12 Board, the Board's not going to be listening to  
13 that community board, but we have to make certain  
14 findings under 72-21, and all the other sections,  
15 and we're finding it more difficult than ever to  
16 make those findings. In 1961, 72-21 was put into  
17 the zoning resolution, because someone at that  
18 time thought it would be more difficult for the  
19 Board to make variances, or grant variances, and  
20 now we have to deal with this, we have to hire  
21 economic consultants, environmental consultants,  
22 we have to deal with the Landmarks law. Christine  
23 Quinn and the Council, there was a public  
24 relations something a few months ago, where the  
25 city was going to make it easier for businesses to

1 do business in the city and deal with the  
2 regulations. Something like this, we think, is  
3 not in keeping with that standard and that  
4 requirement. New York State at one time, and I  
5 remember, had 48 Congressmen in this state, now we  
6 have 27 or 26, we're losing power. One of the  
7 reasons we think we're losing power, because of  
8 the overlapping regulations and the cost to do  
9 business in this city. Certain elected officials  
10 have publicly stated that they feel that the BSA  
11 ignores the desires of local citizens and has  
12 exceeded its statutory authority. These opinions  
13 are not based on facts. A cursory review of the  
14 numbers tells a very different story. In 2009,  
15 there were 334 applications for variances and  
16 special permits at the BSA. In 2010 the number  
17 went down to 235, and for 2011 the number of  
18 applications was down to 197. That means that in  
19 only three years time the number of variance and  
20 special permit applications had been reduced by  
21 40%. The numbers bear out that the number of  
22 variances granted by BSA has been reduced  
23 dramatically, the numbers bear out that the  
24 perception that BSA is handing out variances left  
25

1  
2 and right could not be further from the truth. We  
3 know, we file those applications.

4 CHAIRPERSON BREWER: Can you start  
5 to wrap up, sir?

6 MR. LOBEL: Yeah. We know that  
7 before we file an application, we must go to the  
8 Board for a pre-application meeting to determine  
9 whether we should even file a case. The local  
10 laws which are discussed today do nothing to  
11 improve the BSA as an administrative agency. New  
12 York courts have expressly stated that zoning  
13 regulations are a derogation of the common law,  
14 meaning that they are natural rights but instead  
15 should be a reasonable exercise of the city's  
16 power. The BSA serves as a safety valve, the  
17 continuous effort to clog up the safety valve  
18 denies property owners, businessmen,  
19 manufacturers, people who want to stay here- -

20 CHAIRPERSON BREWER: (Interposing)  
21 You need to wrap up, thank you.

22 MR. LOBEL: Wrapping up.

23 CHAIRPERSON BREWER: Yes.

24 MR. LOBEL: We think ... the Council  
25 a day or two ago approved a humongous sign on a

1  
2 building in Long Island City, I believe the  
3 community planning board was 100% -- and I may be  
4 wrong -- against that.

5 COUNCIL MEMBER VAN BRAMER: You are  
6 wrong, you are wrong.

7 MR. LOBEL: I'm sorry, that's the  
8 way the Times wrote the story.

9 COUNCIL MEMBER VAN BRAMER: No,  
10 that's not ... no- -

11 MR. LOBEL: (Interposing) Many  
12 applications that the City Council approves  
13 against the wishes of community boards, why pick  
14 out the BSA, which doesn't usually hear cases from  
15 major businesses, but from small property owners.

16 CHAIRPERSON BREWER: Okay.

17 MR. LOBEL: Small businesses, and  
18 small manufacturers. Thank you.

19 CHAIRPERSON BREWER: Thank you very  
20 much.

21 MR. LOBEL: Thank you.

22 CHAIRPERSON BREWER: Next.

23 MR. DILLER: Good afternoon, my  
24 name is Mark Diller, I'm the Chair of Community  
25 Board #7 in Manhattan, and I thank Chair Brewer

1 and the members of the Council for this  
2 opportunity to be heard. We are very much in  
3 favor of the spirit of the intros that have been  
4 offered, and for the opportunity for meaningful  
5 and more complete community input on these  
6 important matters. In that regard, we are in  
7 favor of intros 78, 650 and 678, and take issue  
8 only with Intro 680. And I know parenthetically  
9 that the work done by Citizens Union in their  
10 presentation before you today in just three hours  
11 rather defeats the argument that this is a  
12 burdensome application and that the reports that  
13 are called for in the other intros are not capable  
14 of being produced in a timely and meaningful way.  
15 We think that's good policy and that it adds to  
16 transparency in government and we support that.  
17 The issue that I want to bring before you is 680  
18 and the creation of another layer of review. We  
19 have concerns about that as a community board,  
20 because as it stands now, the community board is  
21 the place where that review should and does take  
22 place, and we are concerned that the introduction,  
23 excuse me, of another layer of review and another  
24 hearing will dilute that voice. We are concerned,



1  
2 for example, that having two hearings in quick  
3 succession will split, rather than enhance, the  
4 amount of information available to either  
5 decision-maker, and when the complete picture on  
6 an application is presented in neither instance,  
7 it creates the palpable reality that there is  
8 going to be inconsistent results. We don't think  
9 that enhances the community voice. It also adds  
10 delay, I know somewhat parenthetically that there  
11 is, I imagine, soon to be an infamous decision  
12 from the BSA on an application in my district  
13 where the application itself is a moving target.  
14 These intros don't address that, but I would love  
15 for this Committee to someday take up the issue of  
16 what happens when the applicant continues after  
17 the community board has spoken, to change the  
18 basis on which it seeks its variance, and then  
19 effectively excludes us from, right now the  
20 argument is that the condition that has to be  
21 remedied is bedrock, and I'm very proprietary of  
22 our Manhattan schist. The ... and that also leads ...  
23 the building that is trying to oppose that  
24 application had to refinance its mortgage in order  
25 to be able to be able to continue to oppose it.

1  
2 This war of attrition is ... we're already  
3 outgunned, we shouldn't add more delay to the  
4 process, which will actually further tax the  
5 building, and there's no more equity to refinance.  
6 I think that the goals of these four introductions  
7 can actually be met by the three of them. What I  
8 would commend to you is that you expand 678 and 78  
9 to include the obligation to report on and to  
10 specifically and meaningfully address the  
11 oppositions offered at testimony before the  
12 community board and/or before BSA itself to  
13 include Council members and City Planning  
14 officials, should they choose to come. Council  
15 members, we have ... I guess we're the luckiest in  
16 the world with all possible apologies to the rest  
17 of the Council.

18 CHAIRPERSON BREWER: Be careful.

19 MR. DILLER: Council members do  
20 appear before us, they do give us their learning  
21 and their expertise, and we're grateful for that  
22 and we try to reflect that in our resolutions. We  
23 would like to see that same consideration given at  
24 BSA, but we think the way to do that is to  
25 concentrate rather than dilute, and to make sure

1  
2 that that is then expressed. So with that we are  
3 proud to support three of the four resolutions and  
4 think that you can accomplish your goals in those  
5 three. Thank you very much.

6 CHAIRPERSON BREWER: Thank you very  
7 much. Mr. Altman?

8 MR. ALTMAN: Is this working? Yes,  
9 okay. Good afternoon, my name is Robert Altman,  
10 I'm the legislative consultant for the Building  
11 Industry Association of New York City and the  
12 Queens and Bronx Building Association. The  
13 testimony today that I'm giving is technically a  
14 draft, it has to be formally approved by both  
15 associations, it has not yet been, but I have  
16 gotten some comments back. In the most expensive  
17 and bureaucratic city in the nation to do  
18 construction, our associations will oppose  
19 legislation if it does any of the following:  
20 politicizes a non-political process; lengthens the  
21 amount of time needed to get work done; increases  
22 the cost of construction; increases bureaucracy;  
23 and adds a workload to an already-burdened agency  
24 without providing additional resources to such  
25 agency. To some extent each of these bills fails

1  
2 some part of that test. Let's start with the most  
3 problematic, Intro 680. Most certainly it  
4 increases the processing time, from a three-day  
5 petition period, which despite what the law says  
6 can be abused. Of course, I can imagine disputes  
7 if the petition is not granted, and the potential  
8 lawsuits that may come from that, plus the fact  
9 that those lawsuits may delay something for years.  
10 So there's not only the processing time within the  
11 bills, there's the processing time from without  
12 the bill. And the 30-day period that gets added  
13 on, which I am sure probably will get extended  
14 because people have to coordinate calendars, and  
15 there will be some other things that just pop up,  
16 and it will get delayed past the 30 days. There  
17 also will apply as a new body, which does have a  
18 political element to it, it adds to the expense of  
19 hiring professionals, which would have to appear  
20 before that panel, and the additional time  
21 increases the carrying costs on the property for  
22 one, possibly two months, if we're fortunate. And  
23 just to show you how expensive that is on a  
24 \$500,000 loan, if that's the loan we're carrying  
25 on a small piece of property, at 6% that's \$2,500

1  
2 a month. It adds additional work load and  
3 bureaucracy onto the agency, even though some of  
4 it might be considered slight, all added to an  
5 agency which is designed to deal with professional  
6 issues in a professional way. Moreover, pardon  
7 me, variance by law are safety valves inserted  
8 into zoning resolutions to insure against  
9 unconstitutional takings. The BSA by design is  
10 independent of the political entities, although  
11 its members are appointed by the Mayor, with the  
12 consent of the Council. Also, the City Planning  
13 Commission, the community board and the local  
14 Council members are by law allowed to participate  
15 in the BSA process and offer their  
16 recommendations, therefore they may now attend BSA  
17 hearings and play an active part in the  
18 proceedings if they so choose. That information,  
19 by the way, is not from myself, that is from a  
20 former deputy general counsel to BSA. Next, there  
21 is Intro 678, we have no formal objection to  
22 formal proceedings for some matters that is  
23 already required by law. We do have an objection  
24 with requiring BSA to actually be forced to state  
25 whether such objections were considered. The

1  
2 reason for that is, often you'll have irrelevant  
3 objections being made, to give you an example, I  
4 could say, Council Member Brewer, you drink grape  
5 juice, and this is why this law should not be  
6 passed. Well, that should not be considered as  
7 part of the- -

8 CHAIRPERSON BREWER: (Interposing)

9 Are you going to sum up soon?

10 MR. ALTMAN: So that ... so anyway, I  
11 think that a lot of that does happen throughout  
12 this process. Next there's Intro 650, this bill  
13 is the least objectionable, if certain changes are  
14 made. First, the notice methodology is too  
15 unreliable and needs to be made more formal.  
16 Second, resources needed to be given to the agency  
17 to perform this task. Third, six months might be  
18 insufficient. The bureaucracy is generally slow  
19 to address certain areas, and additional time  
20 might be needed. Fourth, to the extent that  
21 businesses are impacted by this legislation and  
22 might be shut down for mere bureaucratic  
23 consideration, we recommend that fines not be  
24 imposed if the applicant has in fact submitted a  
25 renewal application.

1  
2 CHAIRPERSON BREWER: Sir, you need  
3 to sum up.

4 MR. ALTMAN: I'm about to sum up.  
5 Finally I come to Intro 78, which I sort of found  
6 to be the most interesting of the bills, because  
7 it places a burden on the agency, requiring it to  
8 file a report that the Council ... and it winds up  
9 Citizens Union has compiled on its own. All the  
10 information you are seeking is basically public  
11 information, obtainable by the Council, which can  
12 compile the report. My best guess is you could  
13 probably even hire a college inter for credit have  
14 them do it for you. I don't know why you just  
15 don't do it yourself.

16 CHAIRPERSON BREWER: Sum up, sir.

17 MR. ALTMAN: And so therefore  
18 putting in the legislative requirement will do  
19 nothing. So we would prefer that just be left  
20 out, so it doesn't have to be done time and time  
21 and time again, even if there's no reason for  
22 doing it. And for all the foregoing reasons, we  
23 oppose the bills. Obviously, some of them can be  
24 amended to make them actually work, but I think  
25 680 is the most problematic and the one that

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probably cannot be cured.

CHAIRPERSON BREWER: Thank you very much. Next. You don't all have to leave unless you want to. Okay. We've been joined by Council Member Inez Dickens.

MR. FLEISHER: Madam Chairman, Council members, ladies and gentlemen, good afternoon, my name is Marc Fleisher and I am speaking on behalf of Ira Zalzman, President of the Manhattan Beach Community Group. In drafting the legislation before you, which was meant to correct the problems within the BSA, the Council proposal only adds another layer of discretionary action as it relates to special permits and these proposals, unfortunately, ignore the root cause of public dissatisfaction with the BSA. Excuse me. Under the current law, BSA is entitled with permission to do whatever it wants to do, there are no limits in the current legislation, and the only legislation the City Council should enact to remedy this is to clarify the law by placing limits on the BSA. As a result of BSA's special permit resolutions, the zoning designated to the communities where special permits are allowed have



1  
2 been unalterably changed. This, without City  
3 Council, the Department of City Planning, zoning  
4 changes, not community board zoning action, is  
5 certainly without community and neighbor approval.  
6 There are no parameters given in the special  
7 permit legislation stating that they'll remove the  
8 FAR, the FAR, the (inaudible), along with great  
9 reductions in open space, respect the character  
10 and neighborhood, yet the BSA makes its  
11 determination at will. By doing so, the BSA  
12 changes the look and the feel of the community,  
13 reduces open space, changes the environment, and  
14 leaves sound, open green space that the people of  
15 the city need and desire, and is what zoning calls  
16 for in our communities. Since neighborhood  
17 character is not defined, and since the BSA gives  
18 itself unbelievable latitude in its determination  
19 of what the character of a neighborhood is, and  
20 since this is not necessarily in keeping with the  
21 perception of the character of the neighborhood by  
22 its residents, or the zoning designated by the  
23 Committee, by the Department of City Planning,  
24 then City Council must put a cap on the percentage  
25 of volume and space added to any individual

1 alteration of a home by way of special permit.

2 With regard to procedure of the BSA, we note that

3 testimony both written and orally presented by

4 applicants to the BSA is accepted almost without

5 question. Since testimony and assertions by an

6 applicant is not always correct and is often in

7 experience easily disputed, the BSA almost always

8 tends to side with the applicant. It is in our

9 opinion imperative for the City Council to require

10 the testimony given and/or submitted to the BSA be

11 under oath and all written submissions sworn to.

12 It seems thus that the City Council should

13 recognize the fact that the original intent of the

14 special permit legislation approved by only three

15 community boards was to keep people living in the

16 city, to provide additional living space for those

17 with larger families, and to allow our children to

18 care for their elderly parents instead of

19 institutionalizing them. A community involved

20 foresaw one or two extra rooms added for grandma

21 and grandpa or for additional children. Indeed in

22 Manhattan Beach, for example, that is exactly what

23 happened during the first several years after the

24 law was enacted. This was the premise that the

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1  
2 legislation encompassed. Today we see BSA  
3 approvals for McMansions erected with double FAR  
4 allowable under current zoning with great  
5 intrusions to the rear and side yards, with fewer  
6 bedrooms, with indoor pools, and other amenities  
7 that in no way are akin to the original intent of  
8 the law. Further on this point note should be  
9 taken of the fact that there have been special  
10 permits granted in our communities to speculators  
11 who gain a special permit, build an out-of-  
12 character home and then proceed to sell it. Where  
13 is the intent of the law in these cases? The  
14 special permit legislation only applies to  
15 renovations of existing homes. Due to creative  
16 thinking by architects, engineers and attorneys,  
17 the system is being gamed, the creative thinkers  
18 with clients who have enough money to go through  
19 the process have found that they can get double  
20 what zoning permits. For example, the zoning  
21 allowance of new homes could be built with 3,000  
22 square feet by acquisition of a special permit,  
23 where the BSA weakly agrees with the creative  
24 thinkers. The BSA proposed 6,000 square feet,  
25 this is against the intent of the law. It is

1  
2 undemocratic to those who cannot bankroll a  
3 building that is twice what zoning allows, and  
4 it's socially indefensible, aside from the fact  
5 that it completely changes the character of the  
6 neighborhood and infringes upon the quality of  
7 life for those already living in that community.  
8 Thank you.

9 CHAIRPERSON BREWER: Thank you very  
10 much, thank you very much. Next.

11 MS. CLAPP: Good afternoon, I'm  
12 Susan Clapp from the Manhattan Beach Community  
13 Group. One of the requirements of special permit  
14 73-622 is that the essential character of the  
15 neighborhood not be altered, and that the BSA  
16 prescribe appropriate conditions and safeguards to  
17 minimize adverse effects on the character of the  
18 surrounding area. Well people, it's not working.  
19 The streets of Manhattan Beach are being tipped,  
20 we are no longer an R-31 zone, the BSA is  
21 responsible for this. Where are our safeguards?  
22 We are no longer low-density, gone is the light,  
23 air and space that the borough presidents wanted  
24 to preserve, to no air, no light, no grass. Where  
25 is the character that made Manhattan Beach so

1  
2 special? Humongous overgrown houses practically  
3 touch each other, side yards have been cemented  
4 and pools with cemented decks take up the rear  
5 yards. Yards text amendment is not sufficient for  
6 Manhattan Beach, remember, we are in a flood zone,  
7 one of the first neighborhoods to be evacuated  
8 during hurricanes Gloria and Irene. Irene had a  
9 greater impact because there was no place for the  
10 water to recede. Basements were flooded and  
11 caused extensive damage to homes where previous  
12 storms had caused none. This was not water from  
13 the bay or ocean, our water tables have been  
14 disturbed, underground streams have been rerouted.  
15 These massive homes are going down below the  
16 waterline, I repeat there is no place for the  
17 water to recede, and it will get worse with no  
18 building restrictions. One house on my block  
19 granted a special permit decided to lower their  
20 basement and loaded up six huge dumpsters with  
21 soil and then sand they were pulling out from  
22 below the existing basement floor, which means  
23 that the pre-existing cellar floor was removed.  
24 The color of the sand got darker with each loaded  
25 dumpster after dumpster after dumpster. Neighbors

1  
2 could not see into the property because they had a  
3 guard standing at the small opening in the fence  
4 blocking us from looking. Why? Because they were  
5 below the water table, they had removed the cellar  
6 floor. Where was the safeguard for the neighbors  
7 during the next rainstorm? We have other homes  
8 that were below the water table and had to put in  
9 sump pumps that work 24/7 and the neighbors have  
10 to listen to them. Many special permit houses  
11 decided the houses were not good enough and  
12 changed them without the approval from BSA. The  
13 final house does not look like the house they  
14 originally asked for, the one stamped "approved"  
15 by BSA. Calls to the DOB by neighbors fell on  
16 deaf ears. We've had two-family homes with five  
17 bedrooms converted to single-family homes twice  
18 the size of the original house, but now with three  
19 bedrooms. Bigger is not always better, BSA  
20 doesn't care. Just give them what they ask for,  
21 it could have been smaller, who cares if the  
22 neighbors don't have any light or air? One other  
23 requirement of the special permit is that the  
24 house must be an alteration. Buildings require  
25 that 50% of the original foundation, 50% of the

1  
2 walls and 50% of the floors must be retained. If  
3 they knew how many walls have fallen down, how  
4 many foundations crumbled and had to be removed,  
5 and we've even had first floors raised to  
6 accommodate previously non-existing cellars. The  
7 new house, and I really mean new house, looks  
8 nothing like the original. It has a huge attic  
9 with dormers that create a third floor. I thought  
10 our neighborhood character was supposed to- -

11 CHAIRPERSON BREWER: (Interposing)

12 Can you start to wrap up?

13 MS. CLAPP: By offering, one can  
14 only have cellars, two stories and a prescribed-  
15 size attic. Did I mention that BSA has changed  
16 our zoning? New houses should have been built as  
17 of right into code, these are all new houses.  
18 Most of the time nothing or very little is left of  
19 the original. Where are our safeguards? I have  
20 been to BSA too many times, we have argued about  
21 foundations, the side, the attic with living space  
22 and even with the attorney who expected us to  
23 believe that land could be given away without a  
24 legal deed. Neighbors have to sign affidavits to  
25 say they don't want a house to be as large, but

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2 attorneys and contractors can submit plans that  
3 are incorrect and say, "Oh, I'm sorry, we'll  
4 correct it". The neighbors don't count, the  
5 community is wrong, our local community board  
6 doesn't care either. BSA was given the  
7 responsibility to safeguard us, but all they have  
8 done is change our zoning, nothing will be changed  
9 by the new proposals you offer for us. It's the  
10 people who live within the neighborhood who should  
11 have been given a greater say as to what happens.

12 CHAIRPERSON BREWER: Thank you very  
13 much. Next.

14 MS. OAK: I will be very brief.

15 CHAIRPERSON BREWER: Thank you, I  
16 appreciate all of you coming here, so I really do.

17 MS. OAK: Well, we have to come  
18 here because we are from Community Board #15's  
19 area, and we have very little representation in  
20 Manhattan Beach. I am the Zoning Committee Chair,  
21 and basically I no longer go to BSA because after  
22 the last encounter with them, where petitions to  
23 build a religious edifice was fortunately  
24 presented, and all of the 500 names that were  
25 there to designate that they required this were



1 not questioned whatsoever. When I questioned  
2 them, they told me, no, no, this is true, and none  
3 of it was true. And then they make their  
4 decisions based on truth. The only one who has  
5 told the truth is me. The architects, the  
6 attorneys and the land owners ... the applicants,  
7 don't have to tell the truth. I believe BSA has  
8 lost its way, and the special permit that we're  
9 concerned with, not the variances, the special  
10 permits have given a rubber stamp for these people  
11 to build whatever it is they want. Renovations  
12 become demolitions and new structures appear, they  
13 have taken our waterfront, we have no access to  
14 the beach; they have built these massive homes  
15 that have not only disturbed the water table, but  
16 they have changed the entire nature of the  
17 landscape. We don't have gardens, we have cement  
18 upon which they have placed vehicles, I can't even  
19 identify half of them. Some of the homes in  
20 Manhattan you can see from ... oh, maybe you can see  
21 them from satellite, they're just  
22 disproportionate, it is no longer the neighborhood  
23 it once was. It is not being ... the zoning is not  
24 being adhered to, and BSA has changed zoning and  
25

1 legislated changes without the right to do so.  
2 They're supposed to be the watchdog and I'm afraid  
3 they became the pit bull.  
4

5 CHAIRPERSON BREWER: First of all,  
6 thank you all very much. I think Council Member  
7 Dickens, did you have questions?

8 COUNCIL MEMBER DICKENS: Thank you,  
9 Madam Chair, no, I want to make a statement, I  
10 want to address the statement made, I'm sorry the  
11 gentleman left that spoke about the supermarket in  
12 my district. First, there is a major supermarket  
13 at 155<sup>th</sup> Street and 8<sup>th</sup> Avenue, and the site that he  
14 was referring to is diagonally across the street  
15 from an existing supermarket. There is a second  
16 large major supermarket three blocks away, and  
17 having said that, the community has been promised  
18 a library, to wit there has been an extremely  
19 small library right now existing in the Harlem  
20 River Houses in an efficiency apartment that would  
21 better be used for affordable housing, and instead  
22 it's being used as a library. Therefore, the  
23 community wants to address the issue of the youth,  
24 the youth needs, number one, in order to stem  
25 youth violence, provide safe haven for reading,

1  
2 and most importantly, the issue of economic self-  
3 empowerment. This part of my district with high  
4 unemployment, the lack of home computers, the  
5 inability to do school work research, would better  
6 be served by having a fully-staffed, computer  
7 access library to serve the community rather than  
8 another big-box supermarket, and I want to state  
9 one other thing. A few days ago Annie Fryar was  
10 murdered in her bed and she was a 13-year-old, in  
11 the same development exactly one block from the  
12 site we're referring to. Thank you.

13 CHAIRPERSON BREWER: Thank you very  
14 much for your comment, and I'd like to call the  
15 next panel, Henry Euler from Auburndale  
16 Improvement Association, Michael Feiner from  
17 Bayside Hills Civic Association, David Goldstein  
18 from Bayside Hills, Enid Braun from Fort Greene  
19 Association, Andrew Hosking from all four  
20 boroughs, it looks like, and Linda Eskenas from  
21 the North Shore Waterfront Greenway in Staten  
22 Island, and I really appreciate everyone's  
23 participation. Hi, go ahead, whoever, once you  
24 get seated, anyone who would like to start.

25 MR. EULER: Okay.

1  
2 CHAIRPERSON BREWER: I really thank  
3 you, because I do know how much work and how  
4 strongly you feel about this issue, and I also  
5 want to thank BSA for staying.

6 MR. EULER: Thank you, my name is  
7 Henry Euler, I'm First Vice President of the  
8 Auburndale Improvement Association, we represent  
9 over 600 members in Auburndale-Flushing and  
10 western Bayside, also I'm a member of Community  
11 Board #11, but I'm here representing my civic  
12 association today. I've been actively involved  
13 with civic work for the past ten years, I've gone  
14 to BSA many, many times at various hearings with  
15 regards to variances and special applications, and  
16 I just feel that BSA is not responsive enough to  
17 the needs of the community, that they really need  
18 to be more responsive to the way we want things to  
19 be in our communities. The recent Bayside Hills  
20 case that Council Member Halloran mentioned is one  
21 example where a community board unanimously turned  
22 down this application, the borough president did  
23 as well, and the Board of Standards and Appeals  
24 approved it. And they did not listen to the  
25 community at all. My organization is in favor of

1  
2 all four pieces of legislation, but we feel that  
3 they really don't go far enough. For example,  
4 Intro 78 requires that the City Council be given a  
5 report of such cases, as mentioned above, that I  
6 mentioned before, on a regular basis, but what  
7 would then happen with the report? We need to  
8 have an appeals process in place, where we can go  
9 without a costly lawsuit, and appeal a decision of  
10 the BSA if we think it's incorrect. We support  
11 the bills where we would have more community  
12 input, that would be bills 680 and 678, and  
13 finally, I just want to say that we support Intro  
14 650 that would require renewal notices be sent out  
15 to those with expiring variances or special  
16 permits, and we believe that needs to be stronger  
17 too, with higher penalties and after two warnings,  
18 they should be padlocked, the business should be  
19 padlocked if they don't comply. After all, it's  
20 the communities that should matter most and the  
21 people that live in the communities. And I think  
22 also that the Board of Standards and Appeals  
23 should not have all members on it that are  
24 appointed by the Mayor, that we should have an  
25 appointee from each borough on that Board, and it

1  
2 would be more responsive to the community. And I  
3 look forward to these being passed, and BSA needs  
4 to be reformed, as does the Department of  
5 Buildings. Thank you very much.

6 CHAIRPERSON BREWER: Thank you very  
7 much. Next, thank you.

8 MR. FEINER: Good afternoon, my  
9 name is Michael Feiner and I am the President of  
10 the Bayside Hills Civic Association. Bayside  
11 Hills is a little municipality in eastern Queens,  
12 and I would like to first say that I really  
13 appreciate the effort of the City Council to  
14 partake in an exercise which is this, and the only  
15 question I would have is what happened years ago,  
16 it should have been done a long, long time ago.  
17 It's almost meant to be that the starship (sic)  
18 Enterprise landed in New York City this afternoon.  
19 If you recall Star Trek, the Enterprise used to  
20 land on these very, very strange-looking planets,  
21 and this is what's been happening over the years  
22 as the BSA has permitted our beautiful  
23 neighborhoods to get a little destroyed-looking  
24 and start to look like some of the planets that  
25 you might see in Star Trek. The house in the

1 garden, 5022 16<sup>th</sup> Street, that the Councilman has  
2 spoken of, the Bayside Association has been in  
3 existence since 1936, this probably was the most  
4 arduous endeavor we've ever undertaken in the  
5 history of Bayside Hills, dating back to 1936.  
6 Could you imagine what it took to take a look at  
7 this piece of property, and with our own eyes see  
8 that this variance should never, ever have been  
9 granted, it did not belong over there, and was,  
10 whatever, to go to the community board and they're  
11 a bunch of tough hombres, Community Board #11, and  
12 yet they voted unanimously against the variance,  
13 and we went, as you all know, we went to the  
14 borough president, and we went to the BSA with as  
15 impressive an army of people as you will ever,  
16 ever imagine. The gentleman to my right was  
17 there, Council Member Halloran was there, we had  
18 Senator Avella representing us, we had every  
19 elected official representing us. We had some of  
20 the most amazing people in the community, Bayside  
21 Hills, in buses going down there, and arguing most  
22 articulately those five spots, those five points,  
23 and very effectively, and we thought it was a no-  
24 brainer. To our own eyes it was a no-brainer.  
25

1  
2 And yet we were unanimously defeated by the BSA.  
3 It was so disappointing, and I'm glad that Mr.  
4 Mulligan is here, representatives of the Bayside  
5 Hills Civic Association did go, and we were  
6 invited by BSA to sit down and we went eyeball to  
7 eyeball, explaining how important it is for civic  
8 associations, for community boards, for residents  
9 of communities, to protect our neighborhoods, to  
10 make our neighborhoods look as best we can, all  
11 things considered, and they listened for over an  
12 hour, and we looked eyeball to eyeball and they  
13 conveyed understanding, and yet we're still having  
14 meetings such as this. It's just so difficult to  
15 see that this is continuing. So without any  
16 difficulty we support all four propositions, and I  
17 just hope that you people are effective in what  
18 you are going to be trying to do next as we move  
19 forward, thank you.

20 CHAIRPERSON BREWER: Thank you very  
21 much, I really appreciate it. Next.

22 MR. GOLDSTEIN: My name is David  
23 Goldstein, I'm the Zoning Chairman of the Bayside  
24 Hills Civic Association, an association I joined  
25 after seeing what had happened in the house and



1  
2 the garden, an outrageous case of literally  
3 building an entire building in somebody's flower  
4 garden. One of the big questions here, and we  
5 certainly appreciate the help of this Committee,  
6 we support the four resolutions, any help we can  
7 get is great. But let's look at the real problem  
8 here. Because of the nature of the power of BSA,  
9 it is absolutely essential that BSA be truly  
10 impartial. How impartial is BSA? Let's take a  
11 look at what really goes on. In fact, they are an  
12 arm of the city bureaucracy, which in turn is an  
13 arm of the construction industry. So it's no  
14 surprise that everything gets approved. Why would  
15 they be impartial? How are they appointed? The  
16 Mayor appoints them. Does anyone know that, the  
17 appointments? Does anyone contest an appointment?  
18 These appointments have been made in total  
19 darkness. So if you go to BSA's website and say,  
20 well, who are these people that are appointed,  
21 there's nothing on the website about them, no bios  
22 or anything like that, zero. So I decided I'd  
23 take a look for myself, and I started to simply  
24 Google the names of the people on BSA. Well, the  
25 first one came up with a big Google presence, is

1  
2 Dara Ottley-Brown. Her appearance on the radar  
3 screen is due largely to her affair with her boss  
4 who was then New York City Finance Commissioner  
5 Martha Stark, who was forced to resign. When she  
6 first joined the Finance Department, Dara Ottley-  
7 Brown was earning \$65,000 a year as a mid-level  
8 manager, but shortly later she was named assistant  
9 commissioner in 2004 with a salary of \$120,900 and  
10 in two years her pay had risen to \$138,013, all  
11 right? It's pretty clear that her promotion to  
12 assistant commissioner was questionable, to say  
13 the least.

14 CHAIRPERSON BREWER: I know you  
15 want to talk about this, but it is questionable to  
16 bring in the personnel, but maybe you could start  
17 to (crosstalk) ... okay.

18 MR. GOLDSTEIN: ... how impartial  
19 the- -

20 CHAIRPERSON BREWER: (Interposing)  
21 I understand that, but- -

22 MR. GOLDSTEIN: (Interposing) Well,  
23 we'll- -

24 CHAIRPERSON BREWER: (Interposing)  
25 Your point is a good one, which is that BSA should

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have advice and consent.

MR. GOLDSTEIN: Yes, so right, let's just go on to another issue. So at the Finance Department, Dara Ottley-Brown becomes involved in the building of Yankee Stadium. Her activities are so notorious there that the State Assembly practically publishes a book about it.

CHAIRPERSON BREWER: Okay.

MR. GOLDSTEIN: Called "The House that You Built", okay, everyone can look at this. All right, let's leave Dara Ottley-Brown, so anyway, my point is simply, here's a person that's very notorious and magically is appointed to the BSA. If this is a board that's supposed to have people above reproach, why would anyone appoint a notorious- -

CHAIRPERSON BREWER: (Interposing) I think what you're saying is we'd like to have City Council advice and consent, which we have on other commissions.

MR. GOLDSTEIN: Actually, you do have advice and consent.

CHAIRPERSON BREWER: No.

MR. GOLDSTEIN: Here's the document

1  
2 showing that the City Council approved her  
3 appointment, and in fact everyone voted  
4 unanimously to approve her appointment.

5 CHAIRPERSON BREWER: Okay.

6 MR. GOLDSTEIN: You do have advice  
7 and consent.

8 CHAIRPERSON BREWER: Okay.

9 MR. GOLDSTEIN: Okay? Now, let's  
10 take a look at another member, Susan M. Hinkson,  
11 all right. when the American Council of  
12 Engineering Companies of New York had their self-  
13 congratulatory event in 2008, Commissioner Hinkson  
14 was one of the judges for the awards, she is  
15 listed right on the program as "Susan M. Hinkson,  
16 Commissioner, New York City Board of Standards and  
17 Appeals". Now I don't think that sounds very  
18 independent to me, okay? Next we find out that  
19 Eileen Montanez was Deputy Director of Engineer  
20 Orders for the New York City Department of  
21 Environmental Protection. Nothing bad about that  
22 in itself, but on a board that is supposed to be  
23 independent, do you really want it to be filled  
24 with people from New York City's bureaucracy?

25 CHAIRPERSON BREWER: So let me just

1  
2 say, we do not have advice and consent, just so  
3 you know what the difference is.

4 MR. GOLDSTEIN: Okay.

5 CHAIRPERSON BREWER: Advice and  
6 consent would be that we would actually ... we can't  
7 say no unless there's some kind of criminal  
8 activity. Let me give you an example, there are  
9 some instances where we can actually nominate  
10 somebody and it's a whole different process, so we  
11 don't have advice and consent. There's a bill to  
12 give us advice and consent for BSA, but it hasn't  
13 passed. And also I just want to be clear on that,  
14 okay?

15 MR. GOLDSTEIN: Okay.

16 CHAIRPERSON BREWER: So- -

17 MR. GOLDSTEIN: (Interposing) That  
18 sounds like a pretty serious problem.

19 CHAIRPERSON BREWER: No, I  
20 understand, you're not ... this is not the only  
21 commission, Rent Guidelines Board, I don't know if  
22 you're familiar with that board, it sets rents for  
23 the City of New York for regulated apartments, we  
24 do not have advice and consent there either. The  
25 same ... these are similar kinds of issues.

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MR. GOLDSTEIN: Okay.

CHAIRPERSON BREWER: So if you could just summarize, I'd really appreciate it.

MR. GOLDSTEIN: Sure, I'm just going to summarize now. And the fact of the matter is, there are certain powers that City Council does have. One of the powers that the City Council does have is the ability to name streets. What I would like the City Council to do is every time the local community board and the borough president is ignored by BSA, that street where the building is should be renamed to reflect that condition. Specifically, the west side of 216<sup>th</sup> Street, from ... the segment from 15-20 216<sup>th</sup> Street to 15-24 216<sup>th</sup> Street shall be Srinivasan-Hobble Street, and the buildings there should be named #1 Srinivasan-Hobble Street, and the other building #2 Srinivasan-Hobble Street. That may sound silly or like a joke, but I would suggest that a good joke is allowing BSA to go on operating the way they do, thank you.

CHAIRPERSON BREWER: Okay, thank you very much. Next.

MS. ESKENAS: Linda Eskenas of the

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2 North Shore Waterfront and Greenbelt on Staten  
3 Island. We have seen the Board of Standards and  
4 Appeals ... oh, excuse me, and Four Borough  
5 Neighborhood Preservation Alliance, thank you. We  
6 have seen the Board of Standards and Appeals  
7 ignoring our citizens and our community boards,  
8 who know what is good for these neighborhoods.  
9 It's undemocratic and it not only ignores laws,  
10 but seems to simply make up laws. There is an  
11 instance of a builder who came before the  
12 community board, and they wanted to force  
13 something on the neighborhood that did not want  
14 it, and the people came and testified very  
15 articulately about why it was bad. And the  
16 architect actually said to us that it didn't  
17 really matter what we voted on, because they could  
18 always ... they would go to the Board of Standards  
19 and Appeals and get what they wanted. Also on  
20 Staten Island we have the Hillside District, hard-  
21 fought-for. Well, now it practically doesn't  
22 exist, because almost every month a builder comes  
23 to gouge out the Hillside District more, and  
24 they're always ... if they're not approved at the  
25 community board, they will always get it approved

1 at the Board of Standards and Appeals. This ...  
2 perhaps the most heinous example, and these are  
3 only three things, but there are neighborhoods in  
4 Staten Island, the historic waterfront  
5 neighborhoods, they're just historic  
6 neighborhoods, that have been desecrated.  
7 Perhaps, you know, in the 20's or the 30's it was  
8 someplace was a stable, these are historic  
9 residential streets. And there are now these  
10 variances given, or have been given, for these  
11 noxious uses, polluters, spray painting cars and  
12 so forth, and every other house seems to have one  
13 of these in very close proximity, which is  
14 extremely destructive. Of course it destroys the  
15 health and well-being of these people, of  
16 residents, and an American's greatest asset used  
17 to be his home, and it also affects children, the  
18 elderly, it affects everything, and destroys of  
19 course the communities on which New York is  
20 founded. The BSA must have people on the board  
21 that represent the citizens of New York and our  
22 neighborhoods, because that's what New York is,  
23 and the well-being of our citizens, as a permanent  
24 part of the board, with voting rights equal to  
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2 other BSA members, and in fact they must be BSA  
3 members, from each borough, on ... it just ... this  
4 behavior in which they are accountable to nobody  
5 obviously must be stopped.

6 CHAIRPERSON BREWER: If you could  
7 wrap up.

8 MS. ESKENAS: Sure. Yes. In the  
9 1960's small owners really saved New York, because  
10 they went everywhere, every place is a bad  
11 neighborhood almost, and they bought these  
12 buildings and with their own hands they  
13 transformed them, till now these have been very  
14 beautiful neighborhoods in New York. Small owners  
15 built this city and its foundation and its hope,  
16 that's small businesses.

17 CHAIRPERSON BREWER: You need to  
18 wrap up.

19 MS. ESKENAS: BSA must not be  
20 allowed to destroy them, destroy New York, and our  
21 future, our historic neighborhoods, and our  
22 citizens. Thank you.

23 CHAIRPERSON BREWER: Thank you very  
24 much. Next.

25 MS. BRAUN: Hi, I'm Enid Braun, I'm

1  
2 from the Fort Greene Association and some of what  
3 I'm going to say I'll run through quickly, because  
4 it echoes what others have said. I basically  
5 support the bills, although I'm not sure they get  
6 at the core problems, and we support it but would  
7 like them to go farther. And I would like to just  
8 say that not all community boards are equipped,  
9 so, you know, what the solution is there, whether  
10 it's this panel or equipping the boards adequately  
11 is a matter of debate. I'm going to just describe  
12 one example of the kind of citizen experience,  
13 I've gone to the BSA frequently, I live in a two-  
14 and-a-half story pre-1850's frame house on a block  
15 that with mostly the same kind of structures. We  
16 now have an 11-story building because no city  
17 agency, DOB, nobody did their job, to respond to  
18 evidence that the developer was shady and  
19 irresponsible. He first obtained approval in  
20 2004, did a partial excavation, left the hole  
21 untouched for three years, when the zoning ...  
22 rezoning became imminent, though he was given  
23 numerous violations for no shoring to protect the  
24 adjacent buildings and for collapsing plywood  
25 fencing. So then he got to work, managed to get

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2 the foundation completed on the Saturday before  
3 the Monday that the contextual rezoning went into  
4 effect. So he was vested, then he did no work for  
5 eight months, and during that time, I did research  
6 and found evidence that he had falsified  
7 information on his air rights agreement, and I  
8 brought that through Tish James to the DOB. They  
9 stopped work, audited, slapped him on the wrist by  
10 reducing the overall height by 732 square feet.  
11 So then he didn't do anything, no work, until the  
12 two-year vesting permit was expiring, so he  
13 managed to get four stories of framing up, and I  
14 went with neighbors to the BSA at that time with  
15 all the evidence, to say, you know, this was  
16 already now 2009, the neighborhood had been  
17 putting up with this since 2004, you give him two  
18 years, he'll take, continue to take time. And my  
19 one neighbor went with me as an architect, he gave  
20 testimony about what it would take to actually  
21 finish the building within this allotted time,  
22 which this guy wasn't ... anyway, they ignored  
23 everything we said, and that building is now been  
24 granted its second two-year extension, so we're  
25 now in 2012, eight years later the building is up,

1 still no CofO, he also has \$3,100 in unpaid fines,  
2 and, you know, there is no enforcement of this.

3 So I just want to sum up with this, as I see the  
4 core problems in terms of the community  
5 experience, number one, developers pay no monetary  
6 or legal penalties for false statements or  
7 misrepresentations, this is a common kind of thing  
8 and it should be made to stop. Testimony made to  
9 the BSA by community members is treated as an  
10 annoyance, and not integrated or acknowledged in  
11 BSA rulings. The BSA is a pro-developer body and  
12 it puts the onus of disputing evidence on the  
13 community, when it's illogical to me. The  
14 developer-applicant ought to be held to a higher  
15 bar of evidence because he's arguing for a non-  
16 complying project, and while the developer has  
17 something to gain by spending money on lawyers to  
18 gain approvals, we as the community are unpaid  
19 volunteers, and we bear tremendous burdens to try  
20 to argue against something that's already been  
21 denied by DOB. The few times it's denied by DOB.  
22 A developer is a plaintiff, in essence, and a  
23 certain burden of proof should be on the plaintiff  
24 rather than the community as the defendant. And  
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1  
2 finally, the legal standard of hardship for  
3 variances and other BSA actions trumps all  
4 evidence, and a developer can submit false  
5 invoices and receipts and claim hardship for  
6 having overpaid for the property. The BSA does  
7 not weigh neighborhood character, physical  
8 context, past proof evidence of bad character of  
9 the developer, and so the property rights, in  
10 terms of the BSA, seemingly includes a God-given  
11 right to maximize one property owner's development  
12 rights at the expense of the property rights of  
13 all neighbors for quiet, peace and enjoyment,  
14 including sunlight.

15 CHAIRPERSON BREWER: I want to  
16 thank all of you, because your commitment is  
17 phenomenal, and a lot of work was involved.  
18 Council Member, you had a question? Okay.  
19 Anyway, thank you very much, and we'll have one  
20 more speaker. But thank you to this panel. We  
21 have one more speaker for this panel. All right,  
22 so I guess if somebody could just switch chairs,  
23 sorry.

24 MR. JAWORSKI: All right, Ed  
25 Jaworski, I am co-founder of the Brooklyn

1  
2 Neighborhood Congress, President of Madison-  
3 Marine-Homecrest Civic Association, which is in  
4 Community Board #15 in Brooklyn, and a director of  
5 the Four Borough Neighborhood Preservation  
6 Alliance. I have some redline copies of some  
7 suggested edits to the bills which you have.  
8 Also, there's a copy of a story that was in the  
9 Daily News. You had asked earlier about the  
10 expense involved for anyone opposing something.  
11 One of the projects that was opposed by the ... at  
12 the BSA amounted to this kind of report. This  
13 cost thousands of dollars to put together and hire  
14 architects and engineers and attorneys to do this.  
15 Talk about stress, I mean, there's something else  
16 besides cost here, there's stress. And this was  
17 quoted in the New York Times story. The owner of  
18 this property here didn't know it, but there was a  
19 Times photographer right there, and he was quoted  
20 in the bottom of the Times article, "We know where  
21 you live, we know how to deal with people like  
22 you." There's another story there in the Daily  
23 News, the woman was hoping to be here,  
24 unfortunately it's getting close to preparing for  
25 her for Shabbat and she has a family so she

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2 couldn't make it. Her husband is very sick right  
3 now. They have spent tens of thousands of dollars  
4 on an article 78 that has been in court now since  
5 about this time last year, she's still waiting for  
6 a decision against the BSA and DOB on this. So  
7 you can't just look at the amount of cost here,  
8 and there is a significant amount of cost.

9 There's also the amount of stress here. We found  
10 out that there is something like 5,200 stop-work  
11 order properties in Brooklyn alone right now, and  
12 there are hundreds of millions of dollars in  
13 outstanding DOB, ECB fines out there that no one  
14 is collecting. So, you know, someone falls down  
15 and there's a tragedy, or whatever, someone gets  
16 killed, DOB says a fine, you know, these fines are  
17 never collected. I'm telling you, there's  
18 probably a half billion dollars in outstanding DOB  
19 fines out right there, right now, and some of  
20 these permits and variances that the DOB takes the  
21 heat from emanate at the BSA, we know this.

22 Talking about Community Board #15, you got a  
23 letter from Domenic Recchia about this.

24 CHAIRPERSON BREWER: From the  
25 community board?

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2 MR. JAWORSKI: From the community  
3 board, I'll tell you what happened at the  
4 community board this past Tuesday. The Chair of  
5 the Land Use Committee said, "I've got four bills  
6 here that are going to be heard on Friday", this  
7 was on a Tuesday, "They're too long and too  
8 detailed to read right now and discuss, suppose we  
9 ask Council Member Recchia to send a letter to the  
10 BSA, to this committee, opposing this thing".  
11 Everybody says, yeah, yeah, yeah, that's what they  
12 know about these bills. That's a matter of good  
13 faith, there's no good faith involved in anything  
14 that our community board does and anything that  
15 happens at the BSA. I was at the BSA this past  
16 Tuesday also, and I spoke about the fact, you  
17 know, you've heard talk from the folks at  
18 Manhattan Beach and the character of a block. I  
19 asked the Chair, at what point do you consider the  
20 character of a block changed, is it giving these  
21 special permits 73-622, is it 5%, is it 10%, is it  
22 20%? You know, what is it? Because there are  
23 already 25% of this block has a special permit,  
24 they're going to hear two more houses tonight, and  
25 that's going to drive it up to 30%, and I asked



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2 the direct question to the Chair, and she said,  
3 "This is not an appropriate forum to ask a  
4 question." There are a lot of suggestions,  
5 questions that you've had, that things have come  
6 up, I mentioned some of these things at the  
7 charter review hearing. There are things that the  
8 BSA can already do, according to the charter. It  
9 can take sworn testimony, we know that a lot of  
10 the statements that are made at the BSA and at the  
11 community board are not correct statements. The  
12 charter, section 622 chapter 27 says that oaths  
13 may be administered, they aren't, but they should  
14 be, because people just lie there. Section 666 of  
15 chapter 27 says the BSA has the authority to make,  
16 amend and repeal rules, but it doesn't. We've  
17 heard the BSA attorneys tell commissioners not to  
18 take a very reasonable step that we thought,  
19 because it would be arbitrary or capricious.  
20 We've heard a development agent stand up and  
21 demand a permit, because "you've given it to me  
22 before". The BSA does not represent the public,  
23 it represents developers. This representative  
24 that was here from Mr. Lobel today, you know,  
25 Lobel, Plotnick, Beckwith's firm, these people are

1  
2 making millions of dollars from their appearances  
3 at BSA.

4 CHAIRPERSON BREWER: And sum up if  
5 you can.

6 MR. JAWORSKI: Okay. One of the  
7 things about, you know, all these are decent bills  
8 here, you know, some of them need some tweaking  
9 and you see it in my redline suggestions there.

10 CHAIRPERSON BREWER: And I  
11 appreciate very much your taking the time to do  
12 that.

13 MR. JAWORSKI: Okay, now just on  
14 680, you know, it is adding another layer and the  
15 problem that we have with that is based on the  
16 fact of our community board is so pro-development  
17 and doesn't listen to us, and the fact that they  
18 send letters like this here without getting  
19 significant input. These panels are just going to  
20 be more politicized. What we really need is a  
21 preservation, a citizen-type person like the  
22 Department of Education has, it has a parent  
23 representative, we need someone like that on BSA.  
24 You need a financial analyst on BSA, because  
25 people come in there with ideas for projects and

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2 they don't have a penny, that's why some of these  
3 projects go on, supposedly a renovation goes on  
4 for four or five or six years. It took a year and  
5 a half to build the Empire State Building.

6 CHAIRPERSON BREWER: So you're  
7 talking about the Board itself, and that's  
8 helpful.

9 MR. JAWORSKI: Right. So anyway,  
10 you see these things in my redline comments. I  
11 really appreciate the fact that you had this  
12 hearing, it's long overdue, as Council Member Van  
13 Bramer mentioned, and we hope that there will be  
14 other hearings like this, something has got to be  
15 done, not only with the BSA, but you've got to  
16 look at City Planning and DOB. Supposedly they  
17 talk to each other, but we don't know.

18 CHAIRPERSON BREWER: No, I made it  
19 really clear that the silo has to stop.

20 MR. JAWORSKI: Right. And you  
21 know, even at the community board level, Mr.  
22 Mulligan said that reports are sent to the  
23 community boards. We don't know anything about  
24 these reports, we're never told anything about  
25 modifications or anything else. We know that

1  
2 things go on at the DOB that totally makes  
3 anything that happens at the BSA look like  
4 nothing, because the DOB allows people to pass  
5 post-approval amendments. They made something  
6 that you all are willing to find out about at a  
7 state supreme court hearing. The DOB has  
8 something called an administrative correction, so  
9 whatever a community board or the BSA passes has  
10 no resemblance at all to what they have passed,  
11 and if they do send a report back to the community  
12 board, we hear nothing about this. Anyway, thank  
13 you very much, I really appreciate it.

14 CHAIRPERSON BREWER: Thank you for  
15 all your work, I know how much is involved and I  
16 appreciate it. Okay, so I want to close this  
17 hearing, but I want to thank everyone who  
18 participated, I do want to thank the Executive  
19 Director of the BSA for staying the whole time,  
20 that in my book is very impressive, and I also  
21 want to thank all of the people who came from all  
22 five boroughs to talk about these issues, and that  
23 just shows the depth of everyone's concern, and we  
24 will take all testimony into consideration, and we  
25 really will try to focus on some solutions. Thank

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you very much. This hearing is adjourned. I want to thank Will Caldwell from our office, and again wish this wonderful Tim the best wishes on his birthday, thank you.

C E R T I F I C A T E

I, Richard A. Ziats, certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.



Signature \_\_\_\_\_

Date \_\_\_\_\_ May 15, 2012 \_\_\_\_\_