

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON GOVERNMENTAL OPERATIONS

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December 14, 2016
Start: 1:11 p.m.
Recess: 4:53 p.m.

HELD AT: 250 Broadway - Committee Rm,
14th Fl.

B E F O R E:
BEN KALLOS
Chairperson

COUNCIL MEMBERS:
David G. Greenfield
Mark Levine
Carlos Menchaca
Antonio Reynoso
Ritchie J. Torres
Joseph C. Borelli
James G. Van Bramer
Jumaane D. Williams
Donovan J. Richards

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

Ryan Singer
Executive Director
Board of Standards and Appeals

Loreal Monroe
General Counsel
Board of Standards and Appeals

Alison McCabe
Deputy Counsel
NYC Department of City Planning

Thomas Devaney
Senior Director
Land Use and Planning
Municipal Art Society

Marcel Negret
Project Manager
Preservation and Planning
Municipal Art Society

Ethan Geringer-Sameth
Public Policy & Program Manager
Citizens Union

Sheldon Lobel
President
Zoning Advisory Council

Kevin Forrestal
President
Queens Civic Congress

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

Henry Euler
First Vice President
Auburndale Improvement Association

Sean Khorsandi
Representative
Landmark West

Harry Bubbins
Representative
Greenwich Village Society for
Historic Preservation

Lisa Paule
Co-Founder
Serene Green

Alan Sugarman
Attorney

2 **TRANSCRIPTION NOTE:** Chair Kallos speaks
3 foreign language at the following time stamps in the
4 document: 00:14:23; 01:30:52; and 03:43:35.

5 [sound check]

6 [pause]

7 [gavel]

8 CHAIRPERSON KALLOS: Good afternoon and
9 welcome to this hearing of the Committee on
10 Governmental Operations. I am Council Member Ben
11 Kallos, Chair of the Committee. As always, you can
12 Tweet me @BenKallos.

13 We'll be holding a vote today on eight
14 campaign finance bills heard by this Committee last
15 May, as well as holding a first hearing for ten bills
16 related to the Board of Standards and Appeals. We
17 will begin with the hearing and when we reach quorum
18 we'll pause to take a vote and then resume.

19 I would like to acknowledge the members
20 of the Committee who are currently present: Council
21 Member Carlos Menchaca, who gets the gold star for
22 being here ahead of the opening.

23 The Board of Standards and Appeals was
24 created to grant relief to property owners who allege
25 hardships under the current Zoning Code. The Board

1 contains five full-time commissioners appointed by
2 the Mayor and may grant use or bulk variances if the
3 property owner is able to demonstrate undue burden
4 based on the following five criteria: (a) the unique
5 physical conditions of the zoning lot create
6 practical difficulties or unnecessary hardship;
7 (b) that because of such physical condition there is
8 no reasonable possibility that the development of the
9 zoning lot will bring a reasonable rate of the
10 return; (c) that the variance, if granted, will not
11 alter the essential character of the neighborhood;
12 (d) that the practical difficulties or unnecessary
13 hardship claimed as a grounds for a variance have not
14 been created by the owner; and (e) that the variance,
15 if granted, is the minimum variance necessary to
16 afford relief.

18 For decades, the BSA has been subject to
19 criticism that it favors developers over the
20 community and that high levels of variances granted,
21 97%, despite community boards' only supporting 79%
22 have altered the character of neighborhoods and
23 resulted in de facto rezoning. That figure was
24 actually provided by Citizens Union in 2012.

1 The concern here is that BSA is allowing
2 developers to circumvent City zoning laws which
3 restrict building forms, use, height, density, and
4 more. We will also ensure that the BSA is the
5 "relief valve" it was intended to be and not a rubber
6 stamp for real estate.
7

8 Following the adoptions of the Mayor's
9 Mandatory Inclusionary Housing Plan, developers are
10 able to seek a waiver to avoid building the required
11 affordable housing in neighborhoods that have been
12 rezoned. This provision of the plan greatly expands
13 the Board's scope, and without additional oversight,
14 may threaten to undermine the City's ability to
15 ensure affordable housing is built in exchange for
16 taller buildings.

17 I've wanted to have a hearing like this
18 one since I was a member of Manhattan's Community
19 Board 8 in 2006. As a Board Member I was
20 disappointed when the BSA granted variances over the
21 objections of the Community Board. As a Council
22 Member, I have been concerned by drawings and
23 applications for variances in my district I have
24 reviewed that I felt were misleading or inaccurate.
25 Addressing the BSA was something I talked about in my

1
2 inauguration three years ago and was the major reason
3 why I wanted to Chair the Committee on Governmental
4 Operations.

5 This hearing includes five of my bills as
6 well as one bill from each of five of my colleagues
7 that speak to the impact that BSA has on communities
8 across the city.

9 Int. 282, sponsored by Majority Leader
10 Van Bramer, creates formal rules for the BAS to
11 consider arguments and evidence submitted by elected
12 officials and community members.

13 Int. 418, sponsored by Council Member
14 Koslowitz, requires written decisions with
15 explanation of findings when the BSA decisions
16 contravene in the community board.

17 Int. 515, sponsored by Council Member
18 Matteo, Minority Leader, requires notifications to
19 building owners when variances are set to expire,
20 with penalties for continued use after expiration
21 date.

22 Int. 691, sponsored by Council Member
23 Mendez, extends the time to appeal a variance from 30
24 days to four months, as is the standard for Article
25 78.

2 Int. 1200, sponsored by Council Member
3 Richards, requires notification to the Council Member
4 when an application to vary the Zoning Resolution or
5 an application for special permit is received by the
6 Board.

7 The following introductions are
8 legislation which I sponsor.

9 Int. 1390 requires the City Planning
10 Commission to appoint a BSA coordinator who will have
11 to attend BSA meetings and post their testimony
12 online.

13 Int. 1391 requires BSA to have a state-
14 certified general appraiser and member of the
15 Appraisal Institute who can review and analyze real
16 estate financials provided by developers.

17 Int. 1392 imposes rigorous requirements
18 on developers to prove why the zoning law should not
19 apply in particular cases and impose severe penalty
20 on professionals for falsifications in applications.

21 Int. 1393 requires reporting on hearings,
22 approvals, denials, and time for applications and
23 appeals.

24

25

1
2 And Int. 1394 requires the BSA to create
3 an online and searchable map of all approved
4 variances.

5 Many of the bills that I submitted were
6 inspired by a 2004 report of the Municipal Art
7 Society, which was also based in turn by their 1976
8 report.

9 I'd like to recognize that we've been
10 joined by Council Member David Greenfield, who also
11 happens to serve as the Land Use Chair, for whom BSA
12 is important, as well as Council Member Joe Borelli.

13 I'd like to now invite bill sponsors to
14 make opening statements, beginning with Council
15 Member and Majority Leader Jimmy Van Bramer.

16 COUNCIL MEMBER VAN BRAMER: Thank you
17 very much Mr. Chair for finally helping to bring us
18 to this day where these bills could be heard, and I
19 am grateful to you for your support and applaud your
20 taking this on.

21 We in Queens, and certainly in my
22 district, just like all over the city, have been
23 really plagued by BSA rulings that have gone against
24 the wishes of the civic organizations in the
25 neighborhood, the community boards; all the elected

1 officials. And just as you were inspired, Mr. Chair,
2 by a situation, I was inspired by a building on
3 Woodside Avenue in Woodside, Queens where we knew
4 that the project was out of scale, out of character,
5 inappropriate for Woodside; every single elected
6 official wrote the BAS, every single elected official
7 attended a press conference, every civic leader, the
8 community board unanimous, all of us saying in one
9 voice this would be wrong for our community and yet
10 the BSA ruled that that would be appropriate and that
11 building moved forward and was built.

12
13 And my bill, Int. 282, would create a
14 structure for communities to have more input in the
15 decisions of the BSA and allowing all of us to speak
16 on these issues and present our evidence requiring
17 that the BSA take those arguments into consideration,
18 and when a final decision is made, putting in writing
19 how it took those arguments and evidence into
20 account. We need to make sure that the BSA is more
21 open and responsive, transparent and require it to
22 respond to community feedback, which is incredibly
23 important. Right now it's too undemocratic and it is
24 not always serving in the best interest of the
25 community, so I'm hopeful that Int. 282 and all these

2 other great bills will be able to be passed and we
3 can reform the BSA once and for all and make it more
4 responsive to the communities that it serves.

5 Thank you very much, Mr. Chair.

6 CHAIRPERSON KALLOS: Thank you Council
7 Member and Majority Leader Van Bramer, and we excuse
8 you to go chair your committee hearing that is
9 happening at the same time.

10 As mentioned in the opening, we have
11 additional bills that will be voted out once we reach
12 quorum, however, we've been joined by Council Member
13 Williams, whose bill is subject to be voted and we'd
14 like him to give an opening statement on his bill.

15 COUNCIL MEMBER WILLIAMS: Thank you
16 Mr. Chair and thank the Speaker and all the people
17 who were involved in this package of legislation.

18 My two bills in particular; one is just a
19 -- I call it a cleanup of streamlining some of the
20 activities -- basically now it makes the Conflict of
21 Interest Board maintain a record of compliance with
22 the annual conflicts of interest law for candidates
23 who participate in the City's public matching
24 campaign finance program. Currently, candidates are
25 responsible to get the receipt and give it to

1 Campaign Finance -- a complicated step for no good
2 reason.
3

4 My other bill, 1001-A -- thank you --
5 basically adds the names of entities with a 10% or
6 greater ownership stake in entities that conduct
7 business with the City to the "doing business
8 database" maintained by the City. Individuals with a
9 10% of greater stake in entities that conduct
10 business with the City are already included in the
11 database. I believe this just to be a cleanup in
12 making sure that we can really track who's doing
13 business with the City and make sure they're held
14 accountable.

15 Also, I believe this is a very good
16 package of legislation. I know there's been some
17 consternation and conversation about whether we
18 should be doing this; my pushback -- I mean there may
19 be valid questions about the quickness or maybe some
20 processes, things of that nature that can always be
21 better, but I firmly believe that the people who
22 participate in any campaign finance probably know the
23 best what's going on and I think it's not just the
24 elected officials and incumbents, it's candidates who
25 have ran races and not won; they too have similar

1 complaints of the process they had to go through to
2 get through the campaign finance; it's not probably
3 activity that the general public will understand, as
4 well as the people who are going through it, so we
5 should absolutely make sure that there is a public
6 voice in this discussion, but I believe we have a
7 unique expertise here, as having run, as well as
8 people who are not on the City Council and were not
9 elected officials but are going through this process
10 and found it as difficult as we have. The process at
11 times has been arbitrary; the responses you get back
12 change from month to month; there are a lot of
13 different issues that I think we're helping to clean
14 up, to clarify and make the process a little more
15 streamlined. So thank you very much for the time.

17 CHAIRPERSON KALLOS: Thank you Council
18 Member Williams. We are also joined by Zoning Chair,
19 Council Member Donovan Richards to speak on
20 Int. 1200.

21 COUNCIL MEMBER RICHARDS: Thank you,
22 Chair and thank you to my colleagues for a great
23 package of bills for. And I'm sure many people have
24 said this today, or anybody who's had to deal with
25 the BSA -- and I've certainly had my battles in the

1
2 past, even before my Council life -- transparency,
3 accountability is something that we need to continue
4 to move towards, with all agencies, but in the BSA,
5 definitely making sure more transparency is
6 happening.

7 My particular bill requires the Board of
8 Standards and Appeals to notify the Council Member
9 for the relevant council district when an application
10 to vary the Zoning Resolution or an application for
11 special permit is received by the Board. And we've
12 certainly heard, even in my capacity as the Zoning
13 Chair, have heard complaints from Council Members and
14 community boards about the need to make sure that the
15 timing is more efficient, that they actually know
16 what's happening -- and I'm not saying BSA does not
17 send applications to my office, but there have been
18 some discrepancies that I've heard from other members
19 and community boards on applications not being
20 received, although we hear that it's rare, so I'm
21 definitely interested in hearing a little bit more
22 from the BSA on this process today and how we can
23 tighten it up.

24 So thank you, Chairman and my colleagues
25 for a great package of bills.

[pause]

CHAIRPERSON KALLOS: Okay. I also want to take one moment to thank Brad Reid; he's come on as our counsel and since Brad joined in September, this Committee has met seven times, it has passed 14 pieces, or soon to be passing 14 pieces of legislation that expanded and improved on how the City collects demographic information to improve the distribution of services, expanding voting access for incarcerated persons, approved language access when interacting with the City, created a layer of protection for buildings with deed restrictions from being sold off for luxury developments, and strengthened our campaign finance system. As the Committee has been short-staffed, he's also done all of this without the help of a policy analyst. Brad, thank you and as this is our final meeting of the year, I hope you enjoy some well-earned rest and relaxation.

And to make matters worse, we also must bid adieu to James Subudhi, who came on as our finance analyst and he continues to be promoted and promoted and promoted within the Council and together we worked on really taking a close look at the PMMR, the

1
2 Mayor's Management Report; we got the budget to be
3 placed online with the Speaker and the Finance
4 Division, Finance Chair Julissa Ferreras, and we even
5 reduced plan spending on judgment and claims by
6 hundreds of millions of dollars which can now go to
7 helping so many New Yorkers. James, you've done
8 great work [00:14:23] **speaking foreign language** and
9 we will miss you as you move to the Policy Division
10 and now Brad will become an expert on finance and
11 policy as well, so thank you.

12 I'd now like to call up the Executive
13 Director and General Counsel for the Board of
14 Standards and Appeals, Ryan Singer and Loreal Monroe,
15 [background comment] and we also have, from
16 Department of City Planning, Alison McCabe. My
17 general counsel will swear you in. And actually,
18 before you testify, we've just achieve quorum with
19 Council Member Antonio Reynoso joining us and now
20 we'll direct Committee Clerk William Martin to please
21 call the roll.

22 COMMITTEE CLERK: William Martin,
23 Committee Clerk, roll call vote Committee on
24 Governmental Operations. Chair Kallos.

1 COMMITTEE ON GOVERNMENTAL OPERATIONS 17

2 CHAIRPERSON KALLOS: Proudly vote aye on
3 all.

4 COMMITTEE CLERK: Greenfield.

5 COUNCIL MEMBER GREENFIELD: Aye.

6 COMMITTEE CLERK: Menchaca.

7 COUNCIL MEMBER MENCHACA: Aye.

8 COMMITTEE CLERK: Reynoso.

9 COUNCIL MEMBER REYNOSO: I vote aye.

10 COMMITTEE CLERK: Borelli.

11 COUNCIL MEMBER BORELLI: Aye on all
12 except Int. 990.

13 COMMITTEE CLERK: By a vote of 5 in the
14 affirmative, 0 in the negative and no abstentions,
15 all items on the voting agenda for Governmental
16 Operations have been adopted, with Introduction 990
17 being adopted by a vote of 4 in the affirmative, 1 in
18 the negative and no abstentions.

19 CHAIRPERSON KALLOS: As is committee
20 practice, we will hold the roll open until such time
21 as all members have voted or the other hearing that
22 we are doing on the Board of Standards and Appeals
23 concludes.

24 The committee counsel will swear you in
25 and we will begin hearing testimony.

2 COMMITTEE COUNSEL: Raise your right
3 hand. Do you affirm to tell the truth, the whole
4 truth and nothing but the truth in your testimony
5 before this committee and to respond honestly to
6 council member questions?

7 RYAN SINGER: I do.

8 ALISON MCCABE: I do.

9 LOREAL MONROE: I do.

10 RYAN SINGER: Good afternoon. I am Ryan
11 Singer; I'm the Executive Director of the New York
12 City Board of Standards and Appeals. I want to
13 assure the Council that my job is exactly as
14 glamorous as it sounds; I've been quoted in the *New*
15 *York Times* before; they refer to me as "some city
16 bureaucrat."

17 I'm here to offer testimony on ten bills
18 before the Committee today. With me is Loreal
19 Monroe... [interpose]

20 COUNCIL MEMBER GREENFIELD: Ryan, I'm
21 sorry; point of clarification. When they quoted you,
22 they didn't refer to you as Ryan Singer; they quoted
23 you as "some city bureaucrat"?

24 RYAN SINGER: I have actually been quoted
25 as "some city bureaucrat" in... in... [crosstalk]

COUNCIL MEMBER GREENFIELD: Some city bureaucrat. Alright.

RYAN SINGER: in a newspaper before, yes.

COUNCIL MEMBER GREENFIELD: That's good to know.

RYAN SINGER: Yeah. [background comment]

COUNCIL MEMBER GREENFIELD: You're sort of the most fashionable executive director that we have... [crosstalk]

RYAN SINGER: [laugh] Thank you. Thank you, Councilman.

COUNCIL MEMBER GREENFIELD: in any New York City agency; just let the record reflect that.

RYAN SINGER: With me is Loreal Monroe, our General Counsel at the BSA, and Alison McCabe, Assistant Counsel at the Department of City Planning.

First, I would like to provide a little background on the BSA. The BSA is the zoning variance board for the City of New York; it is an independent board appointed by the Mayor. We like to say that the BSA has been keeping zoning constitutional since 1916. It was created in 1916 and acts as the relief valve for land use regulations. It's intended to prevent regulatory

1 takings claims against the City and its zoning
2 regulations.
3

4 Over the course of the last century, we
5 have been assigned additional responsibilities,
6 including general city law waivers, multiple dwelling
7 law waivers and special permits under zoning. We are
8 a small agency, only 21 people in total work at the
9 BSA. There are five board members, two attorneys, an
10 executive director, a deputy direction and 12 staff
11 members. We have grown a little bit recently and now
12 that we have 12 staff members, we're thinking about
13 following in the footsteps of the Fire Department and
14 putting out an agency calendar. That's a joke. We
15 have approximately 300-500 filed applications a year,
16 so we're very busy too.

17 We certainly recognize people's
18 perception that they have of the BSA, including the
19 idea that we approve too many of the applications
20 that we review. Denials by the Board are like my
21 hair; conspicuous in their absence, but I would add
22 the result of a deliberate process that I think that
23 benefits everybody. The Board engages in an
24 extensive pre-application review.
25

1
2 Last year, in 2005 [sic], the Board staff
3 and Chair had 96 pre-application meetings regarding
4 potential variances. Of those, only 27 were ever
5 filed. So essentially, we dissuaded 69 potential
6 variance requests in 2015. In contrast, we had 60
7 filed variance applications in 2015. So we turned
8 away more variance applications in pre-app than were
9 ever filed last year. We have a rigorous standard
10 for granting variances, but we don't want to waste
11 time reviewing those things that are not viable.

12 The prior Chair and Executive Director
13 had worked to develop standards and increase the
14 rigor review at the Board and introduced application
15 standards and guides that are available on our
16 website. Chair Perlmutter and I have been on the
17 Board for a little over two years now and we have
18 continued that trend, with a focus on neighborhood
19 character and rigorous environmental review.

20 First, I want to speak to Int. 282. And
21 just note that the BSA takes seriously all testimony
22 received during its public hearings. For each of its
23 decisions, the Board issues written resolutions that
24 itemize the relevant testimony received and how it
25 weighed in the decision made. I think we would like

1
2 to further understand the intent from the sponsor,
3 but we have some concerns as it is drafted.

4 The bill would potentially require the
5 BSA to refer to every comment received during a
6 hearing and describe how the Board considered that in
7 how it reached its determination.

8 Like community boards or the City Council
9 in reviewing legislation or land use matters, we have
10 open meetings and we receive testimony from any who
11 wish to appear, and we consider all it responsibly
12 and carefully, but ultimately we have to incorporate
13 what we believe is the most pertinent testimony to
14 the findings. Some comments we receive are not
15 always relevant to the findings or even related to
16 the project at hand; we have received comments that
17 invoke various deities, complaints about the weather,
18 failure, in one case, for a neighbor to properly
19 greet a citizen's dog. Because of the volume of
20 comments we receive, we believe the result would be a
21 resolution that is unwieldy and less straightforward
22 and would require significant resources to draft.

23 Our hearings, as you can tell, can be
24 colorful, but the resolutions have to stay on point
25 to the relevant findings and testimony; to do

1
2 otherwise would dilute our efforts to make the Board
3 rigorous and ineffective when we're challenged in
4 court, which we often are.

5 Int. 418, this bill requires written
6 explanation by the BSA in response to community board
7 recommendations.

8 The BSA addresses community board
9 recommendations in its resolutions already, so we
10 don't oppose the bill; however, we do offer a
11 friendly amendment that would direct the Board to
12 address the community board recommendations
13 regardless of whether we concur or not -- I think
14 this has importance.

15 Int. 514, this bill would require the BSA
16 to notify individuals upon expiration of variances
17 and then create the penalty for failure for an
18 individual if they continue to use the variance.

19 We agree with the intent to greater
20 transparency and to that end, we are actively working
21 with DOB to incorporate BSA decisions into the next
22 generation of BIDs [sic]. The intent is to have a
23 one-stop portal for all land use and property
24 information.

1
2 And while we agree with the intent of the
3 bill, as it's worded it would require prohibitive
4 resources to cull through a century's worth of
5 variance approvals and determine which variances have
6 terms, because not all of them do, and then have a
7 staff of possibly dozens that would research
8 Department of Finance data for ownership and contact
9 information.

10 Int. 691, this bill would extend the
11 statute of limitations for appealing a BSA decision
12 from 30 days to four months.

13 While this bill would not necessarily
14 impact the BSA directly, we do have concerns about
15 the potential unintended consequences for small
16 applicants, including individual homeowners, schools,
17 hospitals, and religious institutions who avail
18 themselves relief at the Board.

19 These applicants would have to wait 120
20 days after receiving their approval to start
21 construction or risk further expense should they lose
22 at court.

23 Int. 1200, this bill would require the
24 BSA to furnish the appropriate councilperson with
25 copies of applications.

1
2 Currently the Board's rules require that
3 applicants furnish copies and all the revisions to
4 the application to the relevant City Council Member,
5 community board and borough president. Proof of
6 service is required to be sent to the BSA.

7 Access to our applications is important
8 to us and we do check whether applicants have sent
9 the applications as required. Recently an applicant
10 failed to forward the revisions to the appropriate
11 entities and I took them off the calendar, which our
12 applicants really hate when that happens.

13 We are concerned that this legislation
14 would require that the Board staff take on a task
15 that is currently being done by the applicant. With
16 between 300-500 applications a year, we would need to
17 dedicate at least one staff person to the task and
18 that's not counting the postage.

19 We would like to better understand the
20 issues though that are being raised the sponsor has
21 experienced and discuss wither there's other ways to
22 address this beyond legislation.

23 Int. 1393. The BSA has no issue with
24 this proposal. I do have some clarifications and
25

1 suggestions. This bill calls for disaggregation of
2 variances by type.
3

4 While we do have many different kinds of
5 special permits, and we distinguish between them in
6 our database, we really only have one type of
7 variance; it's a variance.

8 Additionally, we hold multiple hearings
9 on a single application, so a count of the number of
10 applications for which a hearing is held would double
11 and triple count these applications. I believe that
12 a more helpful metric is the number of initial
13 hearings held.

14 I've prepared a sample report based on my
15 assumptions and suggestions, using data current as of
16 December 8, 2016, and I have it here with me today; I
17 can share it with you guys.

18 Int. 1394, this bill would require the
19 BSA to publish an online map of all variance and
20 special permits.

21 We are committed to increasing the
22 transparency of the Board and we have been working to
23 improve how we provide information to the public.
24 Our goal is to make information about our decisions
25 easily researchable. However, we are a small agency

1
2 and concerned that this proposal for an interactive
3 map would be expensive to launch and challenging to
4 maintain; therefore, we don't support the bill, but
5 we'd be happy to discuss how we can better address
6 this issue with the Council. It was suggested that
7 we make subsets of our data available on the Open
8 Data Portal, which I've discussed internally with
9 staff and we think that we could do that pretty
10 easily.

11 Int. 1392. There's a lot to unpack here.
12 I'll start with the effort to ensure that materials
13 submitted to the Board are true and accurate. We
14 welcome these efforts; I'd like to further explore
15 how enforcement would work before the bill is
16 enacted. But I want to note, just because I have to
17 talk to these people every day, that the applicant
18 community at the BSA is by and large honest and
19 careful, but we do think that having additional tools
20 would be good.

21 Next I will address the portion of the
22 bill dealing with the substance of the application
23 and financial analysis.

24 We currently have standards and
25 directions for various applications on our website.

1 We can update and modify these as needed and are
2 actually currently launching an effort to revise all
3 of them; we want to bring them all up to current
4 standards.
5

6 So we oppose putting them into law, the
7 standards for the applications; the BSA staff and
8 board members need the flexibility to change the
9 standards for applications and financial analysis
10 based on site and other consideration. For example,
11 in Tottenville, where minimum lot widths are 35 feet
12 and up, a 400-foot radius doesn't show much in the
13 way of context; it's less than 11 lots, in some
14 cases. On the Upper East Side, where 18-foot minimum
15 lot widths are permitted, a 400-foot radius might be
16 fine, and in fact, going beyond that might not be
17 relevant to neighborhood character. So there's no
18 one-size-fits-all when it comes to land use analysis.

19 What is relevant also shifts over time;
20 for example, we now regularly ask for flood zone
21 information and no longer inquire about urban renewal
22 plans. Real estate finance norms change very quickly
23 in New York City and we have to maintain the
24 flexibility to account for changes in industry
25 standards. Codifying these would make it challenging

1 to update them as times change. While these
2 standards are in line with what we propose now, in
3 ten years we may look back at them as hopelessly out
4 of date.

5
6 Finally, I will address the direction to
7 post on the BSA website each application and all
8 written testimony and submissions.

9 While we do want to increase transparency
10 in our process, the BSA opposes this portion of the
11 bill. Applications include detailed written
12 descriptions and plans for each of the projects
13 considered; among them are many schools, religious
14 institutions, residential buildings, private homes,
15 and office buildings. For security reasons, these
16 documents should not be on a public website. And
17 additionally, the size of the files would prevent a
18 significant technical issue.

19 Int. 1391. The BSA supports this bill in
20 principle; however, I don't believe that we have
21 enough applications requiring financial analysis to
22 keep a full-time staff person occupied. Not all
23 variances require it -- small homes and nonprofits,
24 like schools and religious institutions have
25 different criteria for evaluation. A part-time staff

1
2 person or a contract with a real estate appraisal
3 firm might be a better option.

4 Int. 1390, this bill would require the
5 Department of City Planning to designate a Board of
6 Standards and Appeals coordinator who would attend
7 all of our meetings and post on DCP's website records
8 of the Board's hearings, where they testified, along
9 with copies of any written testimony in a searchable
10 format.

11 We discussed this bill with City Planning
12 and they agree that it is important to be aware of
13 and involved in BSA matters; however, DCP opposes the
14 bill, 'cause they feel that their current practice
15 actually accomplishes this goal and that a single BSA
16 coordinator would not be effective. They further
17 oppose the requirement to post BSA materials on DCP's
18 website; such material should be available through
19 the BSA and its record of proceedings.

20 BSA applications are currently received
21 by the relevant borough offices, which have staff
22 dedicated to and familiar with specific neighborhoods
23 and they're in the best position to review and assess
24 whether a BSA application poses any potential issues.

2 In addition, City Planning's counsel's
3 office and zoning division review BSA applications
4 and monitor BSA appeals cases that deal with zoning,
5 at least. They also monitor closely projects that
6 require both ULURP or other City Planning action and
7 BSA action which typically required a coordinated
8 environmental review.

9 I want to thank you for interest in my
10 agency and I'm happy to take any questions.

11 CHAIRPERSON KALLOS: Thank you for your
12 testimony; I wish you had included some of your
13 really great jokes in [laugh, background comment] the
14 written testimony.

15 I'd like to recognize that we've been
16 joined by Council Member Mark Levine and ask
17 Committee Clerk William Martin to open the roll.

18 COMMITTEE CLERK: Continuation roll call
19 vote, Committee on Government Operations. Council
20 Member Levine.

21 COUNCIL MEMBER LEVINE: I vote aye.

22 [pause]

23 CHAIRPERSON KALLOS: Does DCP have its
24 own testimony or will you rely on testimony already
25 provided?

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COMMITTEE ON GOVERNMENTAL OPERATIONS

ALISON MCCABE: We're relying on the testimony provided. Thank you.

CHAIRPERSON KALLOS: Perfect.

ALISON MCCABE: But I'm here for any questions you have.

CHAIRPERSON KALLOS: So I just want to thank you for your attention to this matter and for supporting perhaps more legislation than we expected; I perhaps would've preferred to see more support than we ultimately got.

Are you familiar with the 2004 report by the Municipal Art Society on the Board of Standards and Appeals that was referenced in my opening and was the inspiration for some of this legislation?

RYAN SINGER: Yes, I read it myself and actually our... we have a former general counsel who used to work at the Municipal Art Society, so **[inaudible]**... [crosstalk]

CHAIRPERSON KALLOS: Did you work on that research?

RYAN SINGER: No, it wasn't here; it was... [crosstalk]

LOREAL MONROE: No, wasn't me; it was the prior.

2 RYAN SINGER: it was the prior one, but...

3 CHAIRPERSON KALLOS: Okay.

4 RYAN SINGER: he's still around.

5 CHAIRPERSON KALLOS: And have you
6 reviewed the 1976 report as well?

7 RYAN SINGER: No, I have not; I will add
8 that that is the year I was born, so just...
9 [crosstalk]

10 CHAIRPERSON KALLOS: I wasn't even born
11 yet.

12 RYAN SINGER: I mean, is it still
13 available online? I **[inaudible]**... [crosstalk]

14 CHAIRPERSON KALLOS: It is now available
15 online, thanks to... [crosstalk]

16 RYAN SINGER: Oh.

17 CHAIRPERSON KALLOS: yours truly; I'm big
18 about getting big files on the internet for folks to.
19 And how have these recommendations in that report
20 been addressed in the intervening years; it's been
21 your entire lifetime and then some [sic]... [crosstalk]

22 RYAN SINGER: Oh, well I can't speak to
23 the 1976 report, but the 2004 report, one of the
24 things I do want to just sort of highlight is that
25 the two... I believe both years that they analyzed in

2 that report were years that where the BSA was headed
3 by an appointment of Mayor Giuliani and that our
4 predecessor, Chair Srinivasan, and her Executive
5 Director actually did make a lot of changes and
6 increased the standards and rigors at the Board, and
7 as I said before, we are sort of committed to
8 continuing that, so I know that previously there were
9 no guides and standards available to the public, in
10 terms of what should be included in a BSA application
11 and those are now available on our website and I
12 believe those are directly sort of related to the
13 2004 MAS report.

14 CHAIRPERSON KALLOS: You mentioned you
15 brought a sample report; could I direct... [crosstalk]

16 RYAN SINGER: Sure.

17 CHAIRPERSON KALLOS: our Sergeant at Arms
18 to take possession and could that be entered into the
19 public record?

20 RYAN SINGER: Sure; I can... [crosstalk]

21 CHAIRPERSON KALLOS: Great. And I just
22 want to thank you for... [background comments] not
23 only, I think you are the first agency who's ever
24 looked a reporting bill and actually generated a
25 sample report ahead of being required to do so under

1 law, and I think that will hopefully help with any
2 concerns about whether or not you are a relief valve
3 while [sic] rubber-stamping, able to see how many are
4 actually turned away before they get through the
5 process.

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7 RYAN SINGER: Right. I would add; this
8 report doesn't include the pre-application meetings,
9 but if you wanted things like that, we could..

10 [interpose]

11 CHAIRPERSON KALLOS: I think if you are..
12 Under your testimony you're saying most of the work
13 is actually happening at the pre-application phase..

14 RYAN SINGER: Okay.

15 CHAIRPERSON KALLOS: so to the extent
16 that that is part of the process, I think it would be
17 good for us to reflect that in our legislation..

18 [interpose]

19 RYAN SINGER: Sure.

20 CHAIRPERSON KALLOS: as well as reflect
21 it in your report.

22 RYAN SINGER: I guess the sort of one
23 caution I would have; we keep a record of how many
24 meetings a year that we hold, in terms of pre-
25 application meetings, and I would say that applicants

2 are free to ignore our advice at those meetings, so
3 we may say, we don't think that you have a hardship
4 in this case, and sometimes they do go ahead and file
5 and that is their right. And so essentially what I'm
6 reporting when I say that they haven't filed is that
7 we think that they went away after a year, so we
8 don't actually record -- we told them, you know, to
9 go away; it's not a denial; it's not an official sort
10 of thing that I can sort of track and say you know we
11 turned away four of these; I'm just saying they
12 didn't file after a year.

13 CHAIRPERSON KALLOS: With regard to
14 Int. 1390... [background comment] fair enough. Just
15 don't Tweet it out yet; we'll Tweet it out.
16 [background comment] You got it. So... you can pass
17 it around. Int. 1394, which was one of the
18 recommendations of the MAS report, is to just map the
19 variances so folks can actually see it. The City has
20 an Open Data Portal which has been created since
21 2004, which literally just means you create a
22 spreadsheet with the locations and if it is more than
23 a point but actually lots, you just identify the lot;
24 there's even Tax Map NYC and so all you would
25 actually need to do is just work with DoITT to say

2 hey, this is the list of the building, block and lot
3 numbers and here are the changes and that would
4 actually just be a spreadsheet that would link BBLs
5 to the variances granted. Is that a particular
6 challenge or expense or?

7 RYAN SINGER: If it is simply making,
8 like I said, a subset in terms... it's just a variance
9 request, **[inaudible]** the interest... [crosstalk]

10 CHAIRPERSON KALLOS: Uhm-hm.

11 RYAN SINGER: if it's just making that
12 available via the Open Data Portal; then that is
13 something that we're willing to do and can explore
14 doing that. But hosing an interactive map on our
15 site is more than... [crosstalk]

16 CHAIRPERSON KALLOS: If that is the
17 reading of the legislation; we can make sure we go
18 over it with you... [crosstalk]

19 RYAN SINGER: Sure.

20 CHAIRPERSON KALLOS: but simply, all it
21 is, is you take that dataset, you work with DoITT on
22 making sure it's on the open dataset and work with
23 DoITT to make sure that they take that open dataset
24 and display it on -- are you familiar with the
25 website called Zola?

2 RYAN SINGER: Yeah. Yeah, yeah, yeah...

3 [crosstalk]

4 CHAIRPERSON KALLOS: So it would just be
5 another...

6 RYAN SINGER: so then it would just be a
7 Zola layer. Yeah.

8 CHAIRPERSON KALLOS: Yes.

9 RYAN SINGER: We can explore doing that
10 **[inaudible]**... [crosstalk]

11 CHAIRPERSON KALLOS: And so if the
12 legislation was reflective of that, would that be
13 something you'd be supportive of?

14 RYAN SINGER: Yeah. [background comment]

15 CHAIRPERSON KALLOS: And embedding that
16 Zola map on your site to the extent DoITT supports
17 it?

18 RYAN SINGER: Sure, that is something we
19 can do.

20 CHAIRPERSON KALLOS: Okay. With regard
21 to 1392, which is perhaps the one I care most about...

22 RYAN SINGER: Uhm-hm.

23 CHAIRPERSON KALLOS: Hold on one second.
24 Is it... My Committee Counsel is going to just take a
25 look, but would you be friendly to setting certain

2 minimum standards? 'Cause I believe there are.. the
3 goal here is just to make sure that applicants are
4 required to provide the truth, the whole truth and
5 nothing but the truth..

6 RYAN SINGER: Uhm-hm.

7 CHAIRPERSON KALLOS: and not rely on the
8 community to have to come up with reasons why a site
9 might not be unique.. [interpose]

10 RYAN SINGER: Uhm-hm.

11 CHAIRPERSON KALLOS: or might not be in
12 character; that is something that should be
13 determined by their own application, and hopefully in
14 doing that application somebody might realize you
15 know what, this is going to be a really hard bar to
16 meet.

17 RYAN SINGER: Uhm-hm. In terms of the
18 truthfulness, like I said, we do support that aspect
19 of this. In terms of minimum standards, I think we
20 would want to see what is proposed in terms of
21 language, 'cause I think there.. it's fair to say.. to
22 have a floor somewhere; right, and I agree with that..
23 [crosstalk]

24 CHAIRPERSON KALLOS: So this legislation
25 just -- at Second 668 [sic] (b) (1)...

2 RYAN SINGER: Uhm-hm.

3 CHAIRPERSON KALLOS: it says: "An
4 analysis of such property is pursuant to guidelines
5 promulgated by the BSA," so you would still have that
6 power...

7 RYAN SINGER: Uhm-hm.

8 CHAIRPERSON KALLOS: this just provides a
9 minimum standard. And so with regards to your
10 concern about some of the transparency items, if a
11 person shows at BSA, can they inspect all the
12 applications for religious institutions, a person's
13 home, a person's bathroom; whatever they did, can a
14 person just go there and see it?

15 RYAN SINGER: Yes, they have to make a
16 FOIL request to do that.

17 CHAIRPERSON KALLOS: Okay, so this is
18 already available through the Freedom of Information
19 Law?

20 RYAN SINGER: Yes.

21 CHAIRPERSON KALLOS: And do you currently
22 deny Freedom of Information requests based on
23 security reasons; do you notify a school that might
24 be subject or a target of terrorism that this FOIL

2 request has been granted or do you deny FOIL requests
3 based on that?

4 RYAN SINGER: We don't, but we keep a
5 name. Someone has to tell us who they are when they
6 give a FOIL request and then we have their name.

7 CHAIRPERSON KALLOS: There's a lot of
8 information out there -- I think the Open Data Law
9 already requires you to put this online.

10 RYAN SINGER: Our applications?

11 CHAIRPERSON KALLOS: I think anything and
12 everything; I think Open Data... Listen, if I can't
13 make the tenant black list illegal; if a landlord
14 taking a tenant to court is public information; if
15 divorce proceedings are public information; if
16 criminal proceedings, even when the person is
17 acquitted, are public information; I think that an
18 application is public information.

19 RYAN SINGER: It's public information and
20 it's subject to FOIL requests, but we don't believe
21 that it is required to be posted on our website and
22 we're very, very uncom... [crosstalk]

23 CHAIRPERSON KALLOS: Well I think Open
24 Data covers it, but either way...

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2 RYAN SINGER: and we're very
3 uncomfortable with that.

4 CHAIRPERSON KALLOS: Okay. I think we
5 will disagree, but I hope that those watching at home
6 -- I think the good government advocates and anyone
7 who cares about transparency will agree with us on
8 that.

9 RYAN SINGER: We could discuss subsets of
10 our applications, [background comment] whether it's a
11 -- we have like a form, for example, that just lists
12 the applicant and their... [background comment] and the
13 application form, which has, you know, some basic
14 data, those types of things.

15 CHAIRPERSON KALLOS: I mean the good news
16 is we have DoITT; they have an infrastructure for
17 open data and you're not the one who has to host all
18 the files, but -- and I'm going to let my colleague,
19 Council Member Donovan Richards follow up on whether
20 or not people get things, but the fact that if
21 there's a BSA application, they have to send -- so a
22 BSA application is coming, it's coming to the
23 community board; the community board tells people
24 they have ten days to look at it and they can't look
25 at it online, they have to file a FOIL, which gives

1 them... they're not going to get the document in time;
2 they can try to go to the community board to inspect
3 it if the community board has it; they can try to go
4 to their council member, but god bless; I've gotten
5 like one or two in my entire time in office and most
6 of the time I don't get them, so they don't... and
7 that's why Donovan Richards' bill is so very
8 important, but the key thing here is just that it
9 needs to be somewhere so that somebody responding in
10 the community can get to it immediately.

12 RYAN SINGER: They should be available at
13 the community boards and I would say that we give the
14 community board 60 days to hold a hearing and review
15 these applications **[inaudible]**... [crosstalk]

16 CHAIRPERSON KALLOS: There's a problem
17 about being in the 21st century where I want
18 everything online and being told that the only time I
19 can see a BSA application is through a FOIL request
20 or showing up at a community board office between the
21 hours of 9:00 a.m. and 5:00 p.m., where most people
22 are working, and we're very lucky that folks too days
23 off to be there today, but... and honestly, the City
24 Council needs to do a better job about doing hearings
25 after hours for community. And one quick thing, for

1 anyone watching online, I'm sorry I didn't announce
2 this earlier, or watching on TV, if you're watching
3 this on December 14th, 15th, 16th, or 17th, we invite
4 you to submit testimony; you can email that testimony
5 to [background comment, laughter]
6 breid@council.nyc.gov; that's Brad Reid, our
7 Committee Counsel; please don't send him spam, but
8 please just send him testimony. [background
9 comments] I'm BKallos@BenKallos.com and you can
10 email me your testimony as well and the record is
11 kept open for 72 hours after a hearing.

12 I'm actually really, really curious about
13 the 400 feet; we were trying to work together with
14 our Land Use counsel and I want to thank Jeff
15 Campagna, Julie Lubin, Dylan Casey, and Raju Mann,
16 the whole Land Use team; we were working very hard on
17 this and we were trying to figure out what is the
18 right radius, because 400, like you said, might work
19 in some places; not others. How do we make sure that
20 there is a right sampling for uniqueness for
21 character? What is it; is it based on the block and
22 it's all the blocks surrounding the block in
23 question, and that way we're taking it away from a
24 specific distance measure? What would you suggest?
25

2 RYAN SINGER: I mean the issue with
3 establishing uniqueness is one that is very specific
4 to the request being made, in many cases. For
5 example, we have oftentimes lot, corner lots in
6 lower-density districts that are narrow and because
7 of the way the zoning works on corner lots, they're
8 required to have big front yards and so their home,
9 if they were to develop as-of-right, would be like 11
10 feet wide, which is not a viable **[inaudible]**...
11 [crosstalk]

12 CHAIRPERSON KALLOS: I believe they're
13 getting those on Staten Island now.

14 RYAN SINGER: They have them on Staten
15 Island; they have them in Queens, and sometimes in
16 Brooklyn; we've seen a few in Brooklyn... [interpose]

17 CHAIRPERSON KALLOS: I'm just going to
18 defer to Council Member Borelli, who has a quick
19 comment on that.

20 RYAN SINGER: Sure.

21 CHAIRPERSON KALLOS: Borelli... Council
22 Member; how wide was your first home, if you want to
23 say it on the record?

24 COUNCIL MEMBER BORELLI: [background
25 comment]... [crosstalk]

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2 CHAIRPERSON KALLOS: Your mic needs to be
3 on.

4 [background comments]

5 RYAN SINGER: Right. The standard for
6 variances for single-family homes is contemporary
7 living standard, so that they have to show that they
8 can't have a contemporary living standard. But in
9 terms of uniqueness, to get back to that
10 conversation, what we've often said is that you need
11 to show us that you are unique in the zone that you
12 are in and the neighborhood that you're in, so we'll
13 have them show us, like every corner lot in the R2
14 District in whatever neighborhood they're in, that
15 they're either one of three or four in a pretty large
16 zone, because if every corner lot is vacant in this
17 R2 district; then they're not unique; then that's the
18 character of the district.

19 CHAIRPERSON KALLOS: Okay. So I have a
20 question on Int. 1390; I have questions from Council
21 Member Gentile. [background comment] I'd like to
22 acknowledge we've been joined by Council Member
23 Torres and actually open it up for... reopen the roll.
24
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2 COMMITTEE CLERK: Continuation roll call,
3 Committee on Governmental Operations. Council Member
4 Torres.

5 COUNCIL MEMBER TORRES: I vote aye.

6 COMMITTEE CLERK: Final vote now on the
7 items voted on today's Governmental Operations
8 agenda, Intros. 980-A, 985-A, 986-A, 987-A, 988-A,
9 1001-A, and 1002-A are now adopted by 7 in the
10 affirmative, 0 in the negative and no abstentions,
11 and Int. 990-A is adopted by a vote of 6 in the
12 affirmative, 1 in the negative and no abstentions.
13 Thank you.

14 CHAIRPERSON KALLOS: Thank you Committee
15 Clerk William Martin. After I wrap up my questions
16 we'll be hearing from Council Members Richards,
17 Greenfield, Reynoso, and Borelli.

18 With regards to Int. 1390, you mentioned
19 that DCP is working with you on certain items. This
20 year, how many items has DCP submitted testimony on
21 before the BSA in 2016? [background comment] This
22 is directed for DCP, if you are willing to...

23 ALISON MCCABE: Just again for the
24 record, my name is Alison McCabe, Deputy Counsel at
25

2 City Planning. I don't have those statistics with
3 me... [crosstalk]

4 CHAIRPERSON KALLOS: Okay.

5 ALISON MCCABE: unfortunately...
6 [crosstalk]

7 CHAIRPERSON KALLOS: Do we have it... Ryan,
8 do we have it in the report that you gave us?

9 ALISON MCCABE: but we can certainly look
10 into **[inaudible]**... [crosstalk]

11 RYAN SINGER: I... No, not in terms of
12 [background comments] City Planning testimony.

13 CHAIRPERSON KALLOS: Do you happen to
14 know off the top of the head if DCP has **[inaudible]**...
15 [crosstalk]

16 RYAN SINGER: Oh yes. [background
17 comment] I do know of several... I can think of
18 several cases. Every interpretive appeal case for
19 the Zoning Resolution, I believe that City Planning
20 -- and there's been -- I would say at least four;
21 right... [background comments] four sign cases at
22 least, and they comment every time on a sign case,
23 'cause there's... yeah. And ... [crosstalk]

24 CHAIRPERSON KALLOS: What is a sign case?

25 [background comment]

2 RYAN SINGER: Oh, a sign -- interpretive
3 appeal for what is a sign, which is a common, or not
4 common really, a very popular appeal for people to
5 make. So DOB will deny an application for a sign --
6 you won't find it on your report there. Every..
7 [interpose]

8 CHAIRPERSON KALLOS: In terms of the 72-
9 21 variances... [crosstalk]

10 RYAN SINGER: Oh...

11 CHAIRPERSON KALLOS: that... I believe
12 that's the ones I see in my district... [interpose]

13 RYAN SINGER: I know of one that they
14 have commented on.

15 CHAIRPERSON KALLOS: So I guess... Do you
16 know why DCP hasn't commented on all 11 or... in favor
17 or against or?

18 ALISON MCCABE: I think we comment
19 infrequently, I mean we... as Ryan stated in the
20 testimony, we receive all BSA applications and
21 they're distributed among our borough offices and
22 then within the borough offices they go to the
23 planners that liaise with those specific community
24 districts that know those districts and that know the
25 neighborhoods. And so they are in the best position

2 to identify whether a BSA application poses a
3 potential problem or an issue and would flag
4 something and it would rise up and then we would
5 write to BSA if we thought warranted, but we... it
6 doesn't happen very often, because we don't have the
7 expertise that the BSA does in determining hardship
8 and their financial analyses that they do.

9 CHAIRPERSON KALLOS: But you do have
10 expertise in character, in zoning, in uniqueness and
11 items... Sorry. You would have expertise on character
12 and what the zoning intends and how much of a
13 deviation from the zoning we're looking at?

14 ALISON MCCABE: Right, exactly.

15 CHAIRPERSON KALLOS: So I guess one
16 question, just because as Council Members and
17 community boards, should we be bringing City Planning
18 into the process more? I guess the reason for this
19 legislation is, Council Members care about zoning,
20 the community boards tend to care about zoning,
21 residents tend to care about it, and I would imagine
22 the City Planning Commission cares about defending
23 the zoning that you've created, so I guess just
24 trying to make sure that you are defined and in the
25 process and that you are able to act as an ally on

1
2 our behalf and really being brought into the fights
3 that we are all having on a day to day basis.

4 ALISON MCCABE: Well I think we respect
5 and recognize the special role that the BSA plays and
6 we don't want to interfere in their role and their
7 process unless we feel it's necessary or warranted
8 and the times that I'm personally familiar with where
9 we have commented on, like a special permit
10 application, for instance, is where perhaps the BSA
11 is interpreting or applying the special permit
12 findings in a way that we disagree with based on the
13 legislative history that created that zoning
14 provision. And so I think while we are keeping tabs
15 on what they're doing, we really only intervene when
16 we feel it's warranted within our purview.

17 CHAIRPERSON KALLOS: And who is in charge
18 of making sure that that happens at City Planning
19 Commission?

20 ALISON MCCABE: We rely heavily on the
21 borough offices for that task, for the applications
22 that are affecting **[inaudible]**... [crosstalk]

23 CHAIRPERSON KALLOS: So when a variance
24 goes through that maybe shouldn't have or that brings
25 question or that there's a lot of outreach around

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perhaps like Woodside, who do those Manhattan borough commissioners report to?

ALISON MCCABE: They would raise it to Council's office and our general counsel would discuss those issues with our borough staff and we would determine whether or not to formally contact the BSA. But we are also in close communication with the BSA regularly, because we have sometimes sites that have dual applications, as Ryan mentioned, so you know those we're certainly very on top of and when there's a coordinated environmental review, we are often an involved agency and we're reviewing those chapters about neighborhood character and so we have the ability to weigh in on those. **[inaudible]**...
[crosstalk]

CHAIRPERSON KALLOS: So I think the fact that DCP is as involved as it is is news to me. In all the BSA fights I've had as a community board member or even as a Council Member, I've never heard from DCP at all, and I think it's important as government for us to be transparent about what we're doing so that residents can actually see whether or not we're doing the work that we're doing. Would you support at least providing reporting and copies of

2 the responses from DCP on BSA items so that the
3 public can see, oh, DCP is engaged, they're defending
4 our Zoning Code?

5 ALISON MCCABE: Yes. I mean I think our
6 written testimony and letters and correspondence
7 should be available today at the BSA, it should be
8 part of their administrative record.

9 CHAIRPERSON KALLOS: Would you be open to
10 having that online; are you concerned about any
11 privacy concerns about your information being online?

12 ALISON MCCABE: Not if we're providing
13 our final agency decision on... our final take on a BSA
14 matter, but we do think it's most appropriate that
15 the BSA manage its online content.

16 CHAIRPERSON KALLOS: I would support... I
17 would be happy to do that amendment if that would
18 garner your support, and I guess the other piece is
19 it sounds like your general counsel is the de facto
20 BSA coordinator as we speculate working with the
21 directors of each borough, making sure that things
22 are being flagged and working with them on responses.
23 So it seems like you've already got the structure, so
24 this would just formalize that.

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2 ALISON MCCABE: Well we... our zoning
3 division is also -- I don't want to leave them out --
4 our zoning division is also heavily involved. Zoning
5 and counsel weigh in more on appeals cases whereas
6 the borough offices have more of an input probably on
7 the variance and special permit applications that
8 they think are important. So having a central
9 coordinator, we don't see the additional added
10 benefit to having that because we find it has been
11 more effective and efficient to have our staff, who
12 know the neighborhoods and know what's happening in
13 them, to be the ones kind of with their eyes on
14 things.

15 RYAN SINGER: Also, if I...

16 ALISON MCCABE: Yeah.

17 RYAN SINGER: If I may; I was formerly
18 the Deputy Director of the Bronx office at City
19 Planning and actually, in that role I wouldn't have
20 wanted to have someone who had to go through
21 downtown. I recall a specific instance where there
22 was a variance request on City Island and the Bronx
23 office is the expert on the City Island Special
24 District, uniquely, and so in my capacity at the
25 Bronx office, I simply called the Executive Director

2 at the BSA at the time and expressed... and you know,
3 talked to him about what the case was, sort of where
4 it was in the process and how we should sort of play
5 a role, and we ended up, you know, sending them a
6 letter saying this was... you know, what the intention
7 behind the zoning was and how this was to work.

8 ALISON MCCABE: And one thing that I'd
9 like to add also is that we actually in the past did
10 have a central coordinator and the bill that would
11 require this person to attend every BSA meeting and
12 take notes and you know that's a significant...
13 [crosstalk]

14 CHAIRPERSON KALLOS: Only report on
15 attendance; we can't actually compel.

16 ALISON MCCABE: So we did actually have
17 someone with that role around the late 90s -- I don't
18 have the exact year -- to the mid 2000s, and that
19 person, when they retired, we didn't fill that
20 position because we recognized that the efficacy of
21 our coordination with the BSA was really through our
22 borough offices and not through this central
23 coordinator, so I just wanted to point out that we
24 have tried that and we just think it's more efficient
25 and a better use of City resources to use the staff

2 that we have and we think that we're coordinating
3 with the BSA to the extent that we feel comfortable.

4 CHAIRPERSON KALLOS: Had you engaged the
5 BSA bills before our hearing was scheduled, the BSA
6 bills from Van Bramer, Mendez and others?

7 ALISON MCCABE: I'm sorry; could you...

8 CHAIRPERSON KALLOS: Sorry; I was...

9 [crosstalk]

10 ALISON MCCABE: Oh.

11 RYAN SINGER: Actually, my understanding
12 is that yes, City Planning was aware of them and
13 recall having sort of email exchanges with them over...
14 about **[inaudible]**... [crosstalk]

15 CHAIRPERSON KALLOS: I guess where I was
16 going with the point was just, when you have to go to
17 a meeting and you're forced to engage on it and
18 report on your behavior at that meeting, it is human
19 nature to engage on what is assigned to you versus
20 items that may not require you to sit through the
21 meeting on it. So I guess my feeling would be, and I
22 believe you might agree, that if a person has a
23 responsibility for and is attending those meetings,
24 then that person will actually be paying more

2 attention to that than meetings that they don't
3 attend.

4 ALISON MCCABE: Okay.

5 CHAIRPERSON KALLOS: So I have a question
6 from Council Member Gentile, and this is for BSA.
7 Why have you continued to neglect defining [sic] the
8 term, "community character"? Maintaining the
9 character of community is an essential component in
10 issuing variances to the Zoning Code, overlooking and
11 not defining it leaves applicants and community
12 members anxiously speculating as to how the BSA will
13 interpret community character and the negative
14 impacts it will have on the character of the
15 neighborhood.

16 RYAN SINGER: Neighborhood character is
17 actually a sort of hallmark of this Chair's tenure of
18 the Board and she's an architect and she believes
19 very strongly that neighborhood character is
20 something that you can actually measure, you can
21 measure the height of the buildings, can measure the
22 width of the lots, the size of the buildings in terms
23 of floor area, floor area ratio, but she also
24 believes that it's something that is perceived so
25 that you may not necessarily walk down a street and

1 say oh, all of these homes have .6 FAR; they might
2 have a variety of FARs, but they may have all the
3 same height. So there is a... what we are working
4 towards, especially in the materials that we're
5 requiring for applications is sort of both -- a
6 qualitative and quantitative analysis, so they have
7 to show us the heights of the buildings in the area
8 and the height of their proposed building, and then
9 they also have to do things like streetscapement
10 [sic] montages and photographs and sort of much more
11 modern manipulations where they'll draft the building
12 sort of rendering into a photograph to show us what
13 it will look like. So this is something that I
14 believe is important to this Board and we are
15 actually wanting to put together materials that are
16 part of our standards and guides that we would then
17 put on our website that help better define
18 neighborhood character for people. Yeah, so I'm
19 working towards that, but neighborhood character is
20 oftentimes in the eye of the beholder, so our
21 previous Chair may have had a different view of it.

23 CHAIRPERSON KALLOS: Please feel free to
24 follow up with Council Member Gentile as well as our
25

2 [background comment] counsel and my office and we're
3 happy to work with that.

4 I'd like to now call on Zoning Chair
5 Donovan Richards.

6 COUNCIL MEMBER RICHARDS: Thank you so
7 much Mr. Chairman.

8 Okay, this is a question I get all the
9 time and I hear it often from my community board.
10 Can you just speak to -- so you said you see 300
11 applications, around... [interpose]

12 RYAN SINGER: Yeah.

13 COUNCIL MEMBER RICHARDS: how many of
14 those are actually approved, on average?

15 RYAN SINGER: I believe the number that
16 was given out was 97%; those numbers, my
17 understanding, have been consistent. So it's in the
18 high 90s... [interpose]

19 COUNCIL MEMBER RICHARDS: So consistent
20 for -- can you give a ballpark of a time figure or
21 every... [crosstalk]

22 RYAN SINGER: Oh how long it takes?

23 COUNCIL MEMBER RICHARDS: I meant... No,
24 how long has... so every year on average... [crosstalk]

25 RYAN SINGER: Oh how long has that been?

2 COUNCIL MEMBER RICHARDS: it's 97%.

3 [background comment]

4 RYAN SINGER: Well I can tell you that
5 our Deputy Director Carlo Costanza has been with the
6 Board for 13 years and he said that he felt that they
7 were consistent back when he started; it was around
8 that figure as well.

9 COUNCIL MEMBER RICHARDS: And that's why
10 we're here today, because there has needed to be more
11 oversight, more discussion. I know just within my
12 own experiences at the BSA, my experiences have never
13 been -- and I'm not sure if you were the director
14 back then; I'm getting old, forgive me, my memory's
15 going..

16 RYAN SINGER: I've been only at the Board
17 for two years, so.

18 COUNCIL MEMBER RICHARDS: Alright,
19 because I have not had the experience with you, but
20 certainly your predecessors I've dealt with a lot and
21 has never been -- and I don't if it's changed -- has
22 never been a pleasant experience going to the BSA..

23 RYAN SINGER: Oh.

24

25

2 COUNCIL MEMBER RICHARDS: and so I'm
3 hoping that that has certainly changed; you seem like
4 a very nice guy and... [crosstalk]

5 RYAN SINGER: Thank you.

6 COUNCIL MEMBER RICHARDS: and maybe that
7 has, but I say that to say, you know our community is
8 always very concerned about [interpose]

9 RYAN SINGER: Sure.

10 COUNCIL MEMBER RICHARDS: applications
11 that come before you. So I'm just going to hop into
12 Int. 1200, and I think the Chairperson laid it out
13 probably better than me, although you do say that
14 developers and applicants in particular do send
15 applications over to elected officials' offices and
16 community boards; we've also heard discrepancies in
17 this area as well. [background comment] Could you
18 just speak to -- has anyone ever failed or is this a
19 100% passing rate here; are we talking about 97% of
20 all applicants actually get this right?

21 RYAN SINGER: I would guess that it is
22 lower than 97% of the applicants...

23 COUNCIL MEMBER RICHARDS: Okay.
24
25

2 RYAN SINGER: and that we have caught one
3 recently where they didn't provide the proper...
4 [interpose]

5 COUNCIL MEMBER RICHARDS: So out of 300
6 applications this year, how many failed to actually
7 do this; one of 300?

8 RYAN SINGER: one that we [background
9 comment] we have probably been more [background
10 comment] yeah, because... [interpose]

11 COUNCIL MEMBER RICHARDS: Can you give an
12 exact number?

13 RYAN SINGER: No...

14 COUNCIL MEMBER RICHARDS: Oh come on.
15 [background comment]

16 LOREAL MONROE: I'm... yeah, I'm not trying
17 to... [crosstalk]

18 COUNCIL MEMBER RICHARDS: Come on...

19 LOREAL MONROE: I'm not trying to avoid
20 the question.

21 COUNCIL MEMBER RICHARDS: My teacher
22 yelled at me when I came to... well, I don't want to
23 say that... yeah.

24 LOREAL MONROE: How many don't get it
25 right?

2 COUNCIL MEMBER RICHARDS: My teacher was
3 very upset at me when I would come to school without
4 my homework assignment done, so I... I mean [crosstalk]

5 LOREAL MONROE: **[inaudible]**...

6 COUNCIL MEMBER RICHARDS: did you not
7 know that this assignment was coming your way today
8 and that this question would be raised?

9 LOREAL MONROE: Oh that the question was
10 coming my way... [interpose]

11 COUNCIL MEMBER RICHARDS: Because you had
12 great comments on the bill, so I'm just a little
13 taken aback that you wouldn't know those numbers...
14 [crosstalk]

15 LOREAL MONROE: No, that's... that's...
16 that's fine [background comment]...

17 RYAN SINGER: the number. Well...

18 LOREAL MONROE: Yeah.

19 RYAN SINGER: the problem is, is this
20 isn't something that we track and put in **[inaudible]**...
21 [crosstalk]

22 COUNCIL MEMBER RICHARDS: You don't?

23 RYAN SINGER: No, we do not. If... what we
24 do is we deal with it and you know... [crosstalk]

2 COUNCIL MEMBER RICHARDS: But I'm just a
3 little upset because your testimony said this doesn't
4 happen and then you say you don't track... [crosstalk]

5 RYAN SINGER: Oh I don't... I wouldn't say
6 that it doesn't happen... [interpose]

7 COUNCIL MEMBER RICHARDS: Okay...
8 [crosstalk]

9 RYAN SINGER: Yeah, I don't know if
10 **[inaudible]**... [crosstalk]

11 COUNCIL MEMBER RICHARDS: so we can't
12 give a definitive reason on... a definitive...
13 [crosstalk]

14 RYAN SINGER: There are many reasons why
15 the may not do it and I don't want to hazard a guess
16 as to why. I think that -- let's just say that some
17 of the other provisions in the other bills that might
18 be helpful to this. So for example, the case where
19 we caught them most recently... [interpose]

20 COUNCIL MEMBER RICHARDS: When you caught
21 them once?

22 RYAN SINGER: We caught them once just
23 recently... [crosstalk]

24 COUNCIL MEMBER RICHARDS: Okay.

2 RYAN SINGER: they submitted to us their
3 proof of service and the proof of service was from
4 their original application two years ago, and I...
5 [interpose]

6 COUNCIL MEMBER RICHARDS: So this
7 happened two years ago?

8 RYAN SINGER: No, no, no; they... they...
9 [crosstalk]

10 COUNCIL MEMBER RICHARDS: Oh okay. Yeah.

11 RYAN SINGER: filed two years ago...

12 COUNCIL MEMBER RICHARDS: Oh they filed
13 two years ago. Okay.

14 RYAN SINGER: then they filed revisions
15 with... the revisions they didn't share with the proper
16 entities. As part of that filing, they gave us the
17 proof of service for their original application, when
18 they gave it to the Board two years ago. We didn't
19 notice this until later, when the community board was
20 calling and saying hey, what's going on with this; we
21 looked and said oh, they provided proof of service;
22 didn't you get it? And then we look -- oh, that
23 proof of service is from 2014...

24 COUNCIL MEMBER RICHARDS: Hm.

25 RYAN SINGER: that's when we caught them.

2 COUNCIL MEMBER RICHARDS: So you're
3 telling me that BSA does not track if this is
4 happening or not; did I just hear you say that?

5 RYAN SINGER: We... Yeah, we... [interpose]

6 LOREAL MONROE: We don't keep a database.

7 RYAN SINGER: We don't keep a database...
8 [background comment]

9 COUNCIL MEMBER RICHARDS: So why would
10 you oppose legislation that would require you to do
11 so?

12 RYAN SINGER: If the legislation was to
13 ask us [background comment] to track it, we could do
14 that... [crosstalk]

15 COUNCIL MEMBER RICHARDS: So we can
16 actually get to a compromise here... [crosstalk]

17 RYAN SINGER: I would be...

18 COUNCIL MEMBER RICHARDS: not that I want
19 to compromise, because I don't want to put this all
20 in the developer's court.

21 RYAN SINGER: I would be open to that.
22 If you asked us... [crosstalk]

23 COUNCIL MEMBER RICHARDS: Hm.

24 RYAN SINGER: track this and... you know we
25 could easily... [interpose]

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LOREAL MONROE: Report on it.

RYAN SINGER: Yeah, report on it or we
[inaudible]... [crosstalk]

COUNCIL MEMBER RICHARDS: You know
there's nothing in this order by the way; I'm just
being really animated today. Uhm... [crosstalk]

RYAN SINGER: I... I... I appreciate that...

COUNCIL MEMBER RICHARDS: Alright, so
let's imagine, so this one person did not do their
due diligence... [interpose]

RYAN SINGER: Sure.

COUNCIL MEMBER RICHARDS: can you just
speak to what is the consequence of their failure to
do so?

RYAN SINGER: That's actually where I was
going with this. So one of the other bills, or at
least a portion of the bill that we do support, would
have financial sanctions for -- I believe it was mis...
it was either by basically lying to the Board... or... or
through negligence... [crosstalk]

COUNCIL MEMBER RICHARDS: When did that...
I'm sorry; I didn't read that, so... what sort of
sanction... I'm sorry, Mr. Chairman; I'm unaware of

2 that. [background comment] I hope it's a steep
3 fine.

4 RYAN SINGER: It is... Yeah, I believe it
5 was... [interpose, background comment]

6 COUNCIL MEMBER RICHARDS: Okay.

7 RYAN SINGER: It is \$25,000 or...
8 [interpose]

9 COUNCIL MEMBER RICHARDS: Oh, okay.

10 RYAN SINGER: Right; this is your bill,
11 right... [crosstalk]

12 COUNCIL MEMBER RICHARDS: But \$25,000
13 could be little for someone with, you know billions..
14 [crosstalk]

15 RYAN SINGER: Right. But so currently
16 the... [crosstalk]

17 CHAIRPERSON KALLOS: If they don't send
18 it to us, they should pay \$25,000.

19 [background comment]

20 RYAN SINGER: Currently the sanction is
21 **[inaudible]**... [crosstalk]

22 COUNCIL MEMBER RICHARDS: And it should
23 go into... that 25K, guess what; plus another 25K,
24 'cause we want to pay the person well; right? So
25 maybe that person, whoever... that fine should go into

2 actually hiring someone to actually send the
3 applications into Council offices and community
4 boards. Is that not a compromise?

5 RYAN SINGER: That's not how the budget
6 works... [interpose]

7 COUNCIL MEMBER RICHARDS: Oh okay.

8 RYAN SINGER: yeah, we collect a fine and
9 it goes in the general... [interpose]

10 COUNCIL MEMBER RICHARDS: Well... Wait,
11 hold on, but I changed that, so I was the Chair of
12 Environmental Protection and that was actually
13 happening and guess what; so we were paying our sewer
14 bills in southeast Queens and some things were going
15 into the... [crosstalk]

16 RYAN SINGER: Right.

17 COUNCIL MEMBER RICHARDS: general fund
18 and now the Mayor has ruled that it needs to actually
19 go into infrastructure. So there are ways around
20 that, although that's happening... [crosstalk]

21 RYAN SINGER: Right.

22 COUNCIL MEMBER RICHARDS: so I'm saying
23 that to say that... [crosstalk]

24 RYAN SINGER: But...

25

2 COUNCIL MEMBER RICHARDS: we shouldn't
3 get stuck there because, in all honesty, things have
4 been done in the past a certain way... [interpose]

5 RYAN SINGER: Sure.

6 COUNCIL MEMBER RICHARDS: but this may be
7 one way to supplement, you know, if you're going to
8 have a hardship in paying for an additional staff
9 member, this may be one way to do it. Just a
10 recommendation.

11 RYAN SINGER: But then to get to the sort
12 of sanctions today, I took them off calendar, which I
13 know doesn't sound like a huge thing -- ooh, they
14 don't have their hearing, but they hate that, 'cause
15 oftentimes there are carrying costs to the properties
16 and other things like that, and also, their attorney
17 doesn't look that good when they have to tell their
18 client... [interpose]

19 COUNCIL MEMBER RICHARDS: And how long
20 does that informal sanction...

21 RYAN SINGER: Well I mean this gets to --
22 we're just trying to work with the entities who
23 wanted to review the case, so we reach out to
24 community boards and ask them if we gave them a month
25 to hold a hearing, would that be fine and they said

2 yes and so we said okay, you're booted for another
3 month **[inaudible]**... [crosstalk]

4 COUNCIL MEMBER RICHARDS: So I will just
5 say a month is not long enough...

6 RYAN SINGER: Yeah [sic].

7 COUNCIL MEMBER RICHARDS: I mean that's
8 just my opinion; maybe they need to be taken off the
9 calendar year; I mean we just had an issue that came
10 before the Zoning Committee where a similar situation
11 happened and they had to restart the process all over
12 and I think it took another six months or so to get
13 them back on the calendar, but maybe thinking in
14 terms of that; a month seems like, you know... if it's
15 the holiday season, I'm sure taking a month off is
16 not a bad thing; right? [background comment]
17 Alrighty... Alrighty, so I'm happy to hear that there's
18 wiggle room here; I'm also interested in hearing a
19 little bit more about -- and I think the Chair raised
20 it -- and open database, which I think is a good idea
21 because not everybody goes to their community board
22 office; not everyone wants to come to their Council
23 office, and people work -- you know in all honesty,
24 if you live in Rockaway, you know you may not get
25 home till 9:00 if the A train is not running right,

2 so it'd be hard to make it into the community board.
3 So I look forward to hearing a little bit more about
4 that as well. Thank you. [background comment]
5 Thank you; you seem like a great guy and we look
6 forward to working -- and gals, obviously -- we look
7 forward to working with you as we move forward.
8 Thank you, Mr. Chairman.

9 CHAIRPERSON KALLOS: Thank you and thank
10 you for the levity. Council Member Greenfield.
11 Thank you for your patience.

12 COUNCIL MEMBER GREENFIELD: Thank you.
13 This is going to be a tough act to follow, so.

14 COUNCIL MEMBER RICHARDS: Oh if you said
15 it, I believe it...

16 COUNCIL MEMBER GREENFIELD: I'm uh...

17 COUNCIL MEMBER RICHARDS: 'cause you're a
18 tough act to follow, Mr. Chairman.

19 COUNCIL MEMBER GREENFIELD: So the good
20 news is... The good news is, I'm going to say some nice
21 things about the BSA; the bad news is, [laugh] I'm
22 going to say some not nice things about the BSA. But
23 we're going to be fair and balanced here today.

24 So... [interpose]

25 CHAIRPERSON KALLOS: Like Fox News.

2 COUNCIL MEMBER GREENFIELD: like Ben
3 Kallos' favorite TV channel, yes. Is it true that
4 you've programmed all your TV channels to Fox News
5 now; there's no other options in the Kallos
6 household?

7 CHAIRPERSON KALLOS: I don't actually
8 have a TV.

9 COUNCIL MEMBER GREENFIELD: Oh. That'll
10 do it, so it's only your online subscription.

11 CHAIRPERSON KALLOS: No Fox News in my
12 house.

13 COUNCIL MEMBER GREENFIELD: Got it. Very
14 good. [background comment] [laugh]

15 Let's run through a few things, please.
16 So the applications per year, we said it was roughly
17 300 -- where was that little cheat sheet of ours? --
18 Here we go. Total applications per year, roughly..
19 [interpose]

20 RYAN SINGER: Oh, this is the first six
21 months of the fiscal year.. [crosstalk]

22 COUNCIL MEMBER GREENFIELD: Yeah.

23 RYAN SINGER: that you have there, but we
24 have about 300-500 a year.

2 COUNCIL MEMBER GREENFIELD: 300-500 a
3 year. Okay. And we said 97% get approved?

4 RYAN SINGER: That is... yes, it's around
5 that ballpark... [crosstalk]

6 COUNCIL MEMBER GREENFIELD: Okay. And
7 just to be fair, you mentioned that a significant
8 number of those don't even make it because you're
9 meeting with those applicants and tell them not to
10 submit it, so what was that, 60 or so...

11 RYAN SINGER: Right, we had... [crosstalk]

12 COUNCIL MEMBER GREENFIELD: over the
13 course of the year?

14 RYAN SINGER: we had 96 pre-application
15 meetings and then -- and this is just on variances;
16 the... [interpose]

17 COUNCIL MEMBER GREENFIELD: For the year
18 or for the six months?

19 RYAN SINGER: For the year; this is a
20 2015... [interpose]

21 COUNCIL MEMBER GREENFIELD: Alright.

22 RYAN SINGER: these are 2015... [crosstalk]

23 COUNCIL MEMBER GREENFIELD: Alright, so
24 it's fair to say that an additional 20%, roughly 20%

1 don't even make it to the final decision stage
2 because they're not even submitted?

3 RYAN SINGER: Yeah. Yeah.

4 COUNCIL MEMBER GREENFIELD: We're
5 guesstimating; none of this is.. [crosstalk]

6 RYAN SINGER: Yeah. Yeah, this is... these
7 are rough numbers, yes.

8 COUNCIL MEMBER GREENFIELD: I understand.
9 So the point that I'm making is that in terms of
10 applicants that either were going to submit or
11 eventually submitted versus what eventually gets
12 approved is probably closer to around 80% or 77-80%;
13 is that fair?

14 RYAN SINGER: That's probably fair, yeah.

15 COUNCIL MEMBER GREENFIELD: Okay. See,
16 sounds a little better. And then... [laugh] I really
17 should be on your side of the table... and then, let's
18 talk about changes. How many of these applications
19 get changed between the time that they're actually
20 submitted until the commission and commissioners
21 decide to actually approve them...? [crosstalk]

22 RYAN SINGER: So variance applications,
23 it is high; I'm going to say 90-95% of variance
24

2 applications in some way or modified during the
3 process.

4 COUNCIL MEMBER GREENFIELD: Hold on, hold
5 on... whoa, whoa, 90-95%; I mean but... but, you know
6 people criticize you all the time; you're approving
7 all these applications. You're saying you actually
8 change 90-95% of these applications?

9 RYAN SINGER: Yeah. Yeah... [crosstalk]

10 LOREAL MONROE: Yes.

11 COUNCIL MEMBER GREENFIELD: Wow. Okay,
12 oh that's good to know. Got it. Obviously your
13 point is that special permits generally, depending on
14 the kind of special permit or the application, you
15 may not actually be able to change, right..
16 [crosstalk]

17 RYAN SINGER: Right. Right. For
18 example, physical cultural establishments..
19 [crosstalk]

20 COUNCIL MEMBER GREENFIELD: A gym...

21 RYAN SINGER: or gyms, we are..
22 [crosstalk]

23 COUNCIL MEMBER GREENFIELD: Yeah. Yeah.
24 I mean personally, I think we should probably get rid
25 of that whole...

2 RYAN SINGER: Yeah, that's, you know...

3 [crosstalk]

4 COUNCIL MEMBER GREENFIELD: special
5 permit, but that's a different conversation for a
6 different time, yes.

7 RYAN SINGER: She's here, so.

8 COUNCIL MEMBER GREENFIELD: Do you agree
9 with me, Counselor?

10 ALISON MCCABE: No comment at this time.

11 COUNCIL MEMBER GREENFIELD: No comment
12 [interpose laughter] at this time. [background
13 comment] I'm going to send it over back to Chair
14 Richards, who will tell you about not being prepared
15 for class, but okay. [laugh] We'll try to get an
16 answer on the record; he's much more... he's much
17 tougher than I am. [interpose]

18 ALISON MCCABE: I can tell you we're
19 looking into the PCE special permit.

20 COUNCIL MEMBER GREENFIELD: What's that?

21 ALISON MCCABE: We are looking into the
22 PCE special permit... [crosstalk]

23 COUNCIL MEMBER GREENFIELD: You're
24 looking in -- very cryptic -- we are looking into the
25 PCE special permit.

2 ALISON MCCABE: We hear your opinion
3 about them...

4 COUNCIL MEMBER GREENFIELD: Fair enough.

5 ALISON MCCABE: loud and clear.

6 COUNCIL MEMBER GREENFIELD: I appreciate
7 that. Thank you. Yes, Ryan.

8 RYAN SINGER: Yeah.

9 COUNCIL MEMBER GREENFIELD: So the
10 question was, on a PCE -- we're just giving that as
11 an example -- so that's an example where you can't
12 really make much of a change... [crosstalk]

13 RYAN SINGER: Yeah, we...

14 COUNCIL MEMBER GREENFIELD: it's kind of
15 a yes or no.

16 RYAN SINGER: Yeah.

17 COUNCIL MEMBER GREENFIELD: So the point
18 that I'm making is that 90-95% of the applications
19 that come through, in terms of the ones that are very
20 discretionary in terms of exactly what you're giving,
21 which is a variance, which are the most discretionary
22 of your applications, are actually getting changed
23 and there's a very significant percentage of them
24 that aren't even being submitted because you are kind
25

1
2 enough to meet with those people and tell them don't
3 waste your time.

4 RYAN SINGER: Uhm-hm. Yeah.

5 COUNCIL MEMBER GREENFIELD: Okay. So
6 there are very few applications, in terms of the
7 completely discretionary applications, that come to
8 the Board of Standards and Appeals that go in the way
9 they wanted it and come out exactly the way they
10 wanted.

11 RYAN SINGER: Right.

12 LOREAL MONROE: Yes.

13 RYAN SINGER: Yeah.

14 COUNCIL MEMBER GREENFIELD: Alright,
15 good. Well I'm glad we're telling that story today.
16 So let's move along to the next item. So talk to me
17 about community boards, elected officials and you
18 know, they're very frustrated, right; community
19 boards come to you and say don't do this and then you
20 do it; what's wrong with you, Ryan; why didn't you
21 listen to the community boards, they told you not to
22 do it or the elected official told you not to do it.
23 How does your agency work; are you maybe like a quasi
24 judicial agency; do you have like some sort of rules...
25 [crosstalk]

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2 RYAN SINGER: Yes, we are. Yes.

3 COUNCIL MEMBER GREENFIELD: or
4 regulations, like how does it work that when
5 community boards yell and scream and say do not
6 approve this, you have the nerve to then go and
7 approve an application... [crosstalk]

8 RYAN SINGER: Right.

9 COUNCIL MEMBER GREENFIELD: Will you
10 explain this to us, please?

11 RYAN SINGER: Yes... [crosstalk]

12 COUNCIL MEMBER GREENFIELD: Okay.

13 RYAN SINGER: we are a quasi judic...
14 [crosstalk]

15 CHAIRPERSON KALLOS: **[inaudible]**, you can
16 testify on these bills.

17 RYAN SINGER: We are quasi-judicial
18 agency... [interpose]

19 COUNCIL MEMBER GREENFIELD: Putting on my
20 law professor's hat here, by the way... [crosstalk]

21 RYAN SINGER: I will... actually, I...

22 COUNCIL MEMBER GREENFIELD: those of you
23 who are in Brooklyn Law School, you can sign up for
24 my zoning and land use class; we do an in-depth class

25

2 on the Board of Standards and Appeals. But yes,
3 Ryan, keep going.

4 RYAN SINGER: And I actually can give you
5 an example. We recently had a -- it was a special
6 permit, so not one of our most discretionary actions,
7 but a special permit to allow parking on the roof of
8 a parking garage..

9 COUNCIL MEMBER GREENFIELD: Hate those
10 special permits.

11 RYAN SINGER: right -- and there are some
12 people who [sic]... [crosstalk]

13 COUNCIL MEMBER GREENFIELD: Why do I hate
14 those special permits, Ryan?

15 RYAN SINGER: Why?

16 COUNCIL MEMBER GREENFIELD: Why, yeah.

17 RYAN SINGER: Probably 'cause they allow
18 -- at least what we heard from the record is that a
19 community board felt that they would have headlights
20 shining into their residential district; that's, I
21 believe what was.. And a previous board denied it --
22 this was under the previous chair -- they denied it.
23 The applicant took the BSA to court and they
24 basically won; the court... [crosstalk]

2 COUNCIL MEMBER GREENFIELD: Why did they
3 win?

4 RYAN SINGER: Because they... We didn't
5 deny it on the findings; the findings were specific
6 that it not... [crosstalk]

7 COUNCIL MEMBER GREENFIELD: That's why I
8 hate the permits...

9 RYAN SINGER: Yeah...

10 COUNCIL MEMBER GREENFIELD: because
11 there's findings and if you meet the stupid findings,
12 you've got to give the permit, not matter how much we
13 yell and scream and how angry... [crosstalk]

14 RYAN SINGER: I know where you're going
15 with this. Okay.

16 COUNCIL MEMBER GREENFIELD: we are... yes,
17 that's right... how angry we are; we don't like these
18 permits and we don't want extra parking -- Do you
19 have a choice?

20 RYAN SINGER: It was remanded back to the
21 board [sic]... [crosstalk]

22 COUNCIL MEMBER GREENFIELD: You don't
23 always have a choice.

24 RYAN SINGER: and we granted it. Yes...
25 [crosstalk]

2 COUNCIL MEMBER GREENFIELD: Alright.

3 RYAN SINGER: we don't always have a
4 choice.

5 COUNCIL MEMBER GREENFIELD: This
6 concludes my defense portion of the BSA... [crosstalk]

7 RYAN SINGER: Right.

8 COUNCIL MEMBER GREENFIELD: We're now
9 going to move... [interpose, background comment] We're
10 now going to move to some questions..

11 RYAN SINGER: Uh okay.

12 COUNCIL MEMBER GREENFIELD: some
13 questions -- it couldn't have been all good, Ryan,
14 come on.

15 RYAN SINGER: I didn't expect that it..

16 COUNCIL MEMBER GREENFIELD: Okay, fair
17 enough. [background comment] So uh... yes, exactly.
18 Okay.

19 CHAIRPERSON KALLOS: You're going to need
20 to fill out two of these slips, one in support; one
21 in opposition.

22 COUNCIL MEMBER GREENFIELD: Councilman's
23 prerogative, my friend. You should be familiar with
24 the rules, Council Member Kallos; this... we have

25

2 plenty of latitude here as Council Members to ask
3 questions in favor and against. Okay...

4 CHAIRPERSON KALLOS: Just try not to have
5 too much fun.

6 COUNCIL MEMBER GREENFIELD: Alright.
7 Alright. Alright, I know, I know, levity is against
8 Chair Kallos' expresses wishes in this committee.

9 CHAIRPERSON KALLOS: We have too much
10 laughing in this committee and too much laughing in
11 my district office; we're trying to do something
12 about it.

13 COUNCIL MEMBER GREENFIELD: Fair enough.
14 Fair enough. Alright. So we'll take it a little
15 more seriously, at the Chair's request.

16 So you have over here something very
17 interesting, you have this fabulous report -- very,
18 very excited by this report -- average days filing to
19 decision appeals 244-BZ cases [sic]...

20 RYAN SINGER: Those are the special
21 permits and variance... [crosstalk]

22 COUNCIL MEMBER GREENFIELD: the
23 combination of both the variances and the special
24 permits... [interpose]

25 RYAN SINGER: Yep.

2 COUNCIL MEMBER GREENFIELD: right? BZ
3 cases 408 -- it seems like quite a while over there,
4 right, 408 days is a long time to make a decision on
5 a... [crosstalk]

6 RYAN SINGER: I mean...

7 COUNCIL MEMBER GREENFIELD: What's going'
8 on with that, Ryan...? [crosstalk]

9 RYAN SINGER: So these are averages, so I
10 look to see... the longest case that we had around that
11 was decided during this period was actually a single-
12 family home enlargement that was around for 1,300
13 days, about, and the reason why is that they were in
14 a property dispute with their neighbor, so we told
15 them that we can't grant or decide on a special
16 permit if we don't know the zoning lot that we're
17 deciding on, so we took it off calendar, they
18 resolved the lawsuit with their neighbor and then
19 they came back on.

20 COUNCIL MEMBER GREENFIELD: So Ryan, I'm
21 not concerned about the exceptions, but 408 days is a
22 lengthy amount of time; in fact, I actually was
23 wondering, do you happen... could you split it up for
24 me, the difference between the special permits and
25 the variances; on average, how long does a special

2 permit take and on average, how long does a variance
3 take?

4 RYAN SINGER: I can do that sort of..
5 [crosstalk]

6 COUNCIL MEMBER GREENFIELD: You were
7 going there too, right? Yeah.

8 RYAN SINGER: roughly, I will say..
9 [crosstalk]

10 COUNCIL MEMBER GREENFIELD: Yeah.

11 RYAN SINGER: but variances probably take
12 a year, they're tough to get through; there's a lot
13 of different parts and we want to be very thorough.
14 Special permits, probably more variety in terms of
15 time it takes to review them, but those can be six to
16 nine months. We'd like to get that down further; I
17 think that that is a goal, especially for things like
18 the PCE special permits **[inaudible]**... [crosstalk]

19 COUNCIL MEMBER GREENFIELD: So I guess
20 the question that I have is -- well we've been told,
21 and I don't have the data, 'cause you haven't given
22 it to me, but that's okay -- what we've been told is
23 that it has taken longer; since the new
24 administration, it has taken longer for the variances

1
2 to -- especially the variances to be processed than
3 it has before; is that a fair statement?

4 RYAN SINGER: I think that is fair for
5 the first year and a half; I think things have gotten
6 much better; as I said in my opening statement, we've
7 hired some people. It used to be that we had roughly
8 75-100 cases per project manager and we've got that
9 down to about 40-50 right now.

10 COUNCIL MEMBER GREENFIELD: Okay, but
11 even a year -- honestly, just from feedback that I
12 get, a year seems a little bit short on variances;
13 seems like the variances are taking quite a while to
14 get resolved. Why is that; why is it taking more
15 time; is it.. when you say you hired staff, as you
16 know, we were supportive of the hiring of staff and
17 you hired many more staff, so that's clearly not the
18 issue anymore, so what is it about these applications
19 that are taking longer? Are you asking more
20 questions? What kind of questions are you asking?
21 Are the questions directly related to the variances,
22 for example? What's going on over there?

23 RYAN SINGER: I would say there are two
24 things that are happening and sort of happened with
25 the changed administration at the Board. The

1
2 applicants will... even if we got them to hearing and
3 if we got them to hearing in two months or three
4 months, very quickly you know on the staff end,
5 oftentimes the board members will ask questions and
6 have revisions and those can take a long time to
7 change things, so we'll give -- we'll say the first
8 hearing, you have to totally redesign your building
9 and the applicants themselves will say, I need three
10 months to do that and so that adds another, you know
11 90 days to the whole process. And I also will say
12 that there was a learning curve on behalf of the
13 applicant community in terms of what the new chair
14 and new board members were looking for and I think
15 that we have gotten up that learning curve, I think
16 people are now more responsive when they come to the
17 Board and know sort of what the issues are going to
18 be better now than they did in 2015, when it first
19 started, the Board.

20 COUNCIL MEMBER GREENFIELD: We've been
21 hearing from applicants as well that some of the
22 questions that are being asked -- and I think this is
23 sort of part of what slows down the process as well
24 is that the review is more thorough, and we're all
25 for more thorough reviews obviously, but some

1 questions, you know you want to expand your building
2 a little bit and it becomes a whole question of we
3 need a parking study and know exactly how many cars
4 are coming and going because your building is going
5 to be a little bit larger. Seems like we've gotten
6 into a whole new level of questioning; is that
7 possible? Is it possible that we may have gone a
8 little bit too far when it's come to the questioning
9 of some of these variances, maybe issues are not
10 directly related to the application at hand; is that
11 a possibility perhaps, Ryan?

12 RYAN SINGER: I would say that in many
13 cases where we're asking for say an additional
14 parking study or something like that is when a
15 community board member or community groups come out
16 and say, parking's a disaster in this area; this is
17 going to make it worse, and so the Board says to be
18 responsive to you... [crosstalk]

19 COUNCIL MEMBER GREENFIELD: I mean... I
20 mean, but there's discretion, Ryan; if the building
21 is going to become 10 feet longer, that's not
22 necessarily going to make the parking worse.

23 RYAN SINGER: But I have bills before me
24 that want me to itemize each and every thing that we
25

2 hear in our hearings and respond to it; we have to
3 have a study... [crosstalk]

4 COUNCIL MEMBER GREENFIELD: But Ryan, you
5 can't have it both ways; you can't tell me you don't
6 like the bills, but I'm doing it anyway, right? So
7 it's either that you like the bills and you're okay
8 with the bills or maybe... [crosstalk]

9 RYAN SINGER: **[inaudible]**

10 COUNCIL MEMBER GREENFIELD: maybe we're
11 going a little too far. Maybe you're going' a little
12 too far. My only point is that -- I'm all for asking
13 questions and answer questions... [crosstalk]

14 RYAN SINGER: Sure.

15 COUNCIL MEMBER GREENFIELD: it's just
16 that I think that there's a very serious problem of
17 just timing of these cases, especially the variances,
18 especially the variances -- and I think you would
19 agree the variances are the lengthiest projects that
20 you have before you -- have become very, very long;
21 you know in some cases it's almost -- you know and
22 we're getting to the point -- and I'm warning City
23 Planning, that people are just going to say heck,
24 I'll just go for a rezoning, 'cause the rezoning
25 could actually be faster, in some extreme cases, some

2 cases [background comment] rezonings can be faster
3 than the BSA process -- we don't want to have, and so
4 what I'm encouraging you to do is that perhaps when
5 the question is not directly germane -- I understand
6 you know, you wield these awesome great powers; you
7 can ask any questions you want, you know such as what
8 will the weather be like in three months and what do
9 the weather patterns have to say about the raindrops
10 that will fall on your building and how much water
11 will... will come... [crosstalk]

12 RYAN SINGER: We've... We've never asked
13 that **[inaudible]**...

14 COUNCIL MEMBER GREENFIELD: I'm joking,
15 I'm joke... come one; you know you're not the only one.
16 The point that I'm making is that I do think we
17 should try to have the questions be a little bit more
18 germane to the project, 'cause I think that a lot of
19 the times -- what I've seen, and I can give you a
20 dozen examples on parking, just as an example, on
21 parking or traffic patterns or pick-up and drop-off
22 times, in the cases of schools or things like that,
23 where it's not really directly related to what the
24 application is or we've even had questions about
25 sizes of closets or storage facilities or things like

2 that -- you're smiling Ryan 'cause you know I'm right
3 -- that it may be possible for the BSA to be a little
4 bit more focused on the issues at hand. Is that a
5 fair criticism perhaps...? [crosstalk]

6 RYAN SINGER: I will... I will pass along
7 your concerns to the board members who ask those
8 questions.

9 COUNCIL MEMBER GREENFIELD: Okay.

10 RYAN SINGER: Alright?

11 COUNCIL MEMBER GREENFIELD: Alright. I
12 certainly appreciate that. Okay... [interpose]

13 RYAN SINGER: Would it be helpful, since
14 we're looking at this, to break out the variances
15 from the special permits; would it? And... [crosstalk]

16 COUNCIL MEMBER GREENFIELD: I think it
17 would be helpful; I think it would also be helpful to
18 have some of the historic times as well... [crosstalk]

19 RYAN SINGER: Sure. Yeah.

20 COUNCIL MEMBER GREENFIELD: if you could
21 go back five years and tell us hey, you know here's
22 how long it took... [crosstalk]

23 RYAN SINGER: **[inaudible]** be done very
24 quickly, so yeah, we could... [crosstalk]

1
2 COUNCIL MEMBER GREENFIELD: here's how
3 long it has taken. I think you would agree it's
4 probably taking a little bit longer; maybe the last
5 six months we'll see the times...

6 RYAN SINGER: Sure.

7 COUNCIL MEMBER GREENFIELD: have
8 improved. But I think it's important and I think
9 this goes back to your point -- and I hate to do this
10 to you, but you did mention it -- you know when you
11 said that when you punish someone, what did you do;
12 you told Chair Richards, you said that, "I punish
13 them by taking it off the calendar and they're going
14 to have to spend an extra month waiting." Well you
15 know, it's pretty... you know that's punishment, but it
16 takes on average 30% or 40 or 50% longer to get your
17 application through; that's also a punishment, and I
18 think that it's important for the folks who are
19 coming to the BSA -- and I actually like your
20 tagline; I'm going to put it on bumper stickers --
21 "Keeping zoning constitutional since 1960" -- and I
22 think it's also important that it happens in an
23 expedited manner and that there are resolutions as
24 quickly as possible, and while I understand certainly
25 that it's well within the purview of commissioners to
ask any questions they want, they're not council
members; they shouldn't just ask random questions
about you know... if you want to be a quasi -- we're a
legislative body, so we're having a good time over
here, but if you want to be a quasi-judicial agency,
you want to wrap yourselves in the cloak of -- well
we do this because this is the way we are and we

1 don't necessarily have to listen to a community board
2 or to an elected official -- I'll respect that, but
3 then we expect the same level of professionalism when
4 it comes to the questions that you're asking and we
5 shouldn't be pulling out measuring sticks for the
6 size of people's closets, in terms of deciding
7 whether to approve a special permit or a variance.

8 RYAN SINGER: Understood.

9 COUNCIL MEMBER GREENFIELD: Thank you,
10 sir.

11 CHAIRPERSON KALLOS: **[01:30:52] speaking**
12 **foreign language.** [background comment] I said we
13 serve with happiness and with singing [sic], which
14 is, I guess, what would describe the questioning from
15 the three of us; this is how much we care about it.
16 Council Member Reynoso.

17 COUNCIL MEMBER REYNOSO: Hello, thank you
18 guys for being here this afternoon; every important
19 issue, obviously; we have many Council Members here
20 present with concerns. With the BSA, I represent
21 Williamsburg and Bushwick in Brooklyn and Ridgewood
22 in Queens, so the BSA knows Williamsburg very well,
23 'cause they pretty much rezoned the entire district
24 solely through your office. So I want to be clear
25 that your agency is responsible for, outside of the
waterfront, a good portion of what Williamsburg looks
like in its gentrified form and displacement-based
policies that you guys put forth, so I want to speak
to that in hopes that, moving forward, you don't do
that and that that doesn't become what your role is.

What ended up happening in the
manufacturing areas in my district; the BSA slowly

1 started eating away at its edges and then using the
2 changes that they made as a reference to continue to
3 push the edges back and moving the goal post further
4 and further back. An example is: we have a street
5 that has -- 90% of it is manufacturing; by the time
6 it got to the end of the block and we only have 10%
7 manufacturing after you guys changed everything
8 around; the last person on the block says: well this
9 is a residential district; I shouldn't be here as a
10 manufacturing district and then they change. And
11 then the next block says well you know what; the
12 block in front of us just changed and became all
13 residential; it doesn't make any sense that we would
14 be manufacturing, and you kept that process going for
15 quite some time. We needed to invent something
16 called IBZs, or industrial business zones, to protect
17 against the BSA, specifically and it's encroachment
18 on industrial business zones, almost completely
19 oblivious to the fact of the impact that it was
20 having. So let's talk about what the BSA does and
21 how your planners and your experts -- 'cause we speak
22 to planning and experts in your agency -- how they
23 work. So do they not take an entire district into
24 context or do they just look at a property
25 individually, or do they do both, and if they do
both, how does my, I guess, what do you call it, my..
well how does my concern get addressed?

RYAN SINGER: Okay. I think in terms of
neighborhood character, this chair, her approach, and
the other board members echo this, is to look at the
entire neighborhood and to -- as I said, she believes
quite sincerely that there is an element in

1 neighborhood character that you can measure and use,
2 in terms of manufacturing use especially, is
3 something that you can measure and get a sense of.
4 Is there an active manufacturing core here? And we
5 have taken I would say a harder line on residential
6 in a manufacturing district than perhaps previous
7 boards have done. We have had applicants -- pre-
8 applicants, let's call them -- come in and say oh, I
9 want to put an apartment building on this block and
10 actually, one of the things that we've started to do,
11 when sharpening out pencils on this, is to make them
12 show us that an office use wouldn't work here, and as
13 you know, in Williamsburg, office use is something
14 that's pretty viable, and so that has stopped many of
15 our applicants to come in. So understood that the
16 Board doesn't have the best sort of legacy on this
17 issue, but that this current Board is aware of that
18 concern and is taking a harder look at those.

16 COUNCIL MEMBER REYNOSO: Financial
17 hardship -- how do you determine that in a real way?
18 So in Williamsburg, again -- and by the way, we had a
19 staff member that solely worked on BSA variances in
20 our office -- just think about the absurdity of that,
21 that we've got so many applications coming into the
22 office that we need one person working on it full-
23 time to talk to the BSA and do you know how many of
24 those we won? About 3%. So I want to be clear, we
25 spent all this time to pretty much lose at the same
rate that you guys were succeeding, right? So maybe
we shouldn't have wasted City dollars in trying to
find somebody to do that work. If the BSA could've
just done its part, I think we could've spent better.

1
2 But when you look at financial hardships,
3 what the owners are doing, they were selling their
4 properties for... or trying to rent out their
5 properties for let's say \$30 a square foot in
6 manufacturing districts when the going rate was about
7 \$19 or \$20; of course, their land laid vacant for
8 five years because they were asking for prices that
9 just didn't make sense for the building that they
10 were using and then they said oh, we can't find a
11 tenant, and you approved it; you actually said we
12 agree. And then, when we complained about it, you
13 said this community, that the community had to prove
14 the comps, so we had to go find comps. So I had a
15 staff member actually walk around the district
16 looking at empty spaces, or places that actually have
17 businesses in them to look at their comparable rates
18 and send it to you. So I had to do what I think was
19 the BSA's job of trying to find comps so that we can
20 stop the nonsense of financial hardships that didn't
21 really exist. So I want to know; what do you do in
22 those cases; do you guys do that do that research in
23 making sure that the financial hardships are real?

[background comment]

19 RYAN SINGER: Yes. Currently the current
20 practice is that we -- if we get a financial analysis
21 that has comps, we do our own look and thanks to sort
22 of the internet now, anyone can go and look and see
23 what the going rate is for square footage in any
24 neighborhood or for residential unit, and so we do
25 that work now ourselves and we will say to the
applicant, look, you clearly cherry picked your
comps; go back and do something more rigorous.

1
2 COUNCIL MEMBER REYNOSO: Okay. I'm just
3 saying that because that was what was most used..

4 [crosstalk]

5 RYAN SINGER: Sure.

6 COUNCIL MEMBER REYNOSO: as an argument
7 for the variance to be accepted by the BSA and how
8 they were still approved at an above 90% rate..

9 [crosstalk]

10 RYAN SINGER: Yeah, I would say that we
11 don't expect neighborhoods and community groups or
12 City Council people to do that research themselves;
13 of course, if they submit sort of things -- I mean
14 anyone can go on Zillow and say look at this listing
15 -- that is useful and helpful and is taken into
16 account. Yeah.

17 COUNCIL MEMBER REYNOSO: Okay. I hear
18 what you're saying; I'm just letting you know that
19 that's not happening, that is not true -- to me it's
20 not happening.. [crosstalk]

21 RYAN SINGER: No, it happened.. it
22 happened -- I understand it has happened in the past..
23 [crosstalk]

24 COUNCIL MEMBER REYNOSO: Maybe moving
25 forward, but you know at this point, Williamsburg is
what Williamsburg is.. [interpose]

RYAN SINGER: Yeah.

COUNCIL MEMBER REYNOSO: we can't take it
back..

RYAN SINGER: Yeah.

COUNCIL MEMBER REYNOSO: well we could if
we could, but we can't.

The next thing is -- [interpose]

1
2 CHAIRPERSON KALLOS: And one follow-up
3 [sic], Council Member Reynoso, just on your point and
4 on your behalf. So you just agreed to actually
5 respond to Council Member Reynoso's providing
6 evidence and I think that Council Member Van Bramer
7 and Koslowitz' bill would mandate that and that's I
8 think what people are looking for; if his office does
9 all of that great work, would you support this
10 legislation that would actually force BSA to respond
11 to when Antonio Reynoso comes back to you with all
12 these different listings that say that \$30 a square
13 foot isn't possible?

14 RYAN SINGER: I think if it was... My
15 unders... I mean just to... we're getting off sort of
16 topic in terms of we're back to the bill. That
17 wasn't my reading of the **[inaudible]**; I think if we
18 can -- like I said, I want to understand the intent
19 and perhaps we can sit down and sharpen the language
20 in terms of what is intended and how then it gets
21 interpreted by the Board and by the Court you know
22 ultimately would be important; I'd want to have that
23 discussion. But yes.

24 [background comment]

25 COUNCIL MEMBER REYNOSO: It's alright;
it's okay. The next thing is -- those variances in
our office happened very quickly, by the way; they
actually got passed within a one-year timeline in the
BSA, so it's great for developers and folks trying to
build, but then we have a not-for-profit applies to
the Board of Standards and Appeals, because they have
a building that they want to -- they have gym inside
of it for children; it's called... it's Settlement

1 House; it was put there; it was how the Italians,
2 when they came to Williamsburg and assimilated into
3 American culture and so forth, and it's an important
4 building, but the building itself, we wanted it do
5 more, especially for new incoming families from all
6 over, and they asked I think for an increase, a
7 slight increase regarding a basement issue that they
8 had and also they wanted to go up a little bit so
9 they could have a higher gym ceiling so they could
10 shoot the basketball and not hit the ceiling every
11 single time. You had a couple of people from the
12 block oppose it, and because of that, you delayed
13 this application for years and years and years on end
14 -- so while an entire community, a community board,
15 elected officials can fight or try to fight what we
16 consider a false statement regarding financial
17 hardship, that goes through nine months to a year,
18 but one person on a block complains about a community
19 center being built in the community and that delays
20 the process for three years. So explain to me how
21 that one person has the same... holds... no, no, holds
22 more weight or more clout in your process than an
23 entire community board, an entire community --
24 children, schools -- everyone writing letters of
25 support for this to happen, but that takes three
years and the other one takes one year, how one is
delayed and the other is not. Explain to me how you
take public opinion, I guess, and how you navigate
its importance, I guess, or it's value... [crosstalk]

RYAN SINGER: So... I mean I... I think that
there's -- one, I want to... my understanding is that
the variances by and large for the manufacturing

1
2 district sort of erosion were done prior to this
3 Board, but that's an aside. I think that...
4 [crosstalk]

5 COUNCIL MEMBER REYNOSO: That's a true
6 statement.

7 RYAN SINGER: yeah, but I think the
8 complaint that the Settlement House took too long is
9 a valid one, and I actually want to acknowledge that.
10 However, the Settlement House project was trying to
11 do something that was somewhat unique; it didn't have
12 a very good physical hardship on the site -- it has a
13 fairly regularly shaped lot; it said it had a high
14 water table, which is not really a unique hardship,
15 and then the applicant did something, which I thought
16 was clever and good. They said that they were trying
17 to achieve educational deference because they were
18 contracting with schools in the area, and they were
19 essentially doing a hybrid of a variance, where some
20 of the floor area was receiving educational deference
21 and some of the floor area was relying on a hardship.
22 And it actually took us a long time working with the
23 applicant to figure out how best to sort of parse out
24 all of that; acknowledging that it took too long
25 because this is an important -- and understand that
this is an important resource in this community --
and I would say that I don't know that the neighbors'
opposition necessarily slowed things down as much as
us trying to figure out the technical issues with
this application did.

24 COUNCIL MEMBER REYNOSO: So I guess what
25 I would say, outside of the voices, let's say it's
not the public opinion... [crosstalk]

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RYAN SINGER: Yeah.

COUNCIL MEMBER REYNOSO: or it's not
the...

RYAN SINGER: Yeah.

COUNCIL MEMBER REYNOSO: the owner... the
homeowners across the street that were complaining
and just speak to why the lack of confidence and
trust by a community like Williamsburg, where the BSA
-- well we believe -- rubber stamps and pushes
through projects that changed the context of our
neighborhood but then holds us back when we're trying
to do something for a community center.

RYAN SINGER: Sure.

COUNCIL MEMBER REYNOSO: It's just like
there's no balance, there's no real understanding as
to how we're supposed to be moving. So my
frustrations with the BSA are extremely clear and
while I'm reading a lot of these reports and comments
by like even REBNY, for example, and a lot of them
are -- they make some good cases as to what the
concerns are, but when you come to Williamsburg,
there's no way that BSA stands on two legs on what
it's done to the community, and you might be changing
it now, but I would push as many pieces of
legislation that allow for us to get more
transparency and more justice and equity in our
communities. So I guess that last part is a
statement. Not happy with BSA, obviously..
[crosstalk]

RYAN SINGER: Yeah. Alright.
Understood. Thank you.

COUNCIL MEMBER REYNOSO: Thank you.

1
2 CHAIRPERSON KALLOS: So we're going to do
3 a second round because we didn't get to ask enough
4 questions on the first round -- David Greenfield's
5 already signed up for it; Antonio, you're welcome if
6 you wish... [background comment] And I just want to
7 thank all the members of the public for being here
8 and standing with [sic], especially our advocates and
9 just folks who took the day off.

10 So in your testimony you said the Board
11 staff and chair had 96 pre-application meetings
12 regarding potential variances in 2015; of those, only
13 27 were filed. I think I just want to take a moment
14 and just talk about transparency. So beyond
15 reporting on it, I think we would welcome working
16 with BSA to create a transparent process so that at
17 the moment somebody is coming to BSA for pre-
18 application the community should be notified, the
19 Council Member should be notified; the community
20 board should be notified, because you're engaged in a
21 lot of the items and as Council Member Greenfield
22 colorfully went into, you're getting some concessions
23 but the community doesn't see it, the community's not
24 a part of it; it's all happening behind closed doors
25 in private and that isn't how a, as was discussed, a
quasi-judicial entity should really be working -- you
don't get to be judge, jury and executioner, so it's
one of those situations where -- I guess first
questions; do you think that there should be more
transparency around the pre-application process?

24 RYAN SINGER: I think we would be open to
25 ways to make the process more transparent; I don't
have an issue with that. In terms of: (1) reporting,

1
2 all of the materials that we receive, be it for pre-
3 application meetings, are subject to FOIL and so...
4 [interpose]

5 CHAIRPERSON KALLOS: You have to know
6 they exist, the FOIL **[inaudible]**... [crosstalk]

7 RYAN SINGER: Yeah; that's a problem. So
8 having a way to let people know that they exist...

9 CHAIRPERSON KALLOS: Yeah.

10 RYAN SINGER: is something I think that
11 we are open to definitely to **[inaudible]** that, yeah...
12 [crosstalk]

13 CHAIRPERSON KALLOS: And I think we might
14 want to include that in existing legislation as that
15 came up... [interpose]

16 RYAN SINGER: Sure.

17 CHAIRPERSON KALLOS: And I think along
18 those same lines, and while I oppose certain
19 timelines that if they come with a five-year
20 moratorium, I am in favor of timelines, as I've been
21 championed by Land Use Chair Greenfield; it seems
22 like there's any timelines on the application process
23 before the BSA; they can take 408 days; they can take
24 244 days; they can take 61 day... like, we don't know...

25 RYAN SINGER: Right. Yeah.

CHAIRPERSON KALLOS: Would you be willing
to come back to us with specific proposed timelines

1 that you're either willing to accept through
2 regulation or through legislation?
3

4 RYAN SINGER: I think we would want to
5 take that back and discuss it internally before we...
6 before talking about it... [crosstalk]

7 CHAIRPERSON KALLOS: So there...

8 RYAN SINGER: This is sort of an idea of
9 like ULURP where the community board has 60 days
10 **[inaudible]**... [crosstalk]

11 CHAIRPERSON KALLOS: It would be nice to
12 know if we've won, we've lost or if we're in limbo,
13 so let me give an example... [crosstalk]

14 RYAN SINGER: Sure.

15 CHAIRPERSON KALLOS: So I have a number
16 of applications before my board and so we have a
17 school for people on 5th Avenue who are able to pay
18 in excess of \$40,000 a year in tuition and they'd
19 like to move from 5th Avenue into a residential block
20 in East Harlem, which I also represent, and they
21 would love to just block off any light and air for
22 the NYCHA folks across the street and they're
23 currently perhaps violating some other laws, and so I
24 guess we... that... they were in pre-applica... like what's
25 the status of that? I don't know; we... [interpose]

2 RYAN SINGER: They've filed that
3 application -- I know you have it, 'cause you talked
4 about that... [crosstalk]

5 CHAIRPERSON KALLOS: Right, but... but... so
6 it...

7 RYAN SINGER: but they filed the
8 application and... [interpose]

9 CHAIRPERSON KALLOS: And so it's filed;
10 we put in a... a... [crosstalk]

11 RYAN SINGER: It's... I would say it's
12 under review... [crosstalk]

13 CHAIRPERSON KALLOS: we put in... we worked
14 with our Land Use division; we put in... [crosstalk]

15 RYAN SINGER: Sure.

16 CHAIRPERSON KALLOS: very hefty argument
17 in opposition and so I'm actually... did they file that
18 application against advice or with advice or is there
19 a way to let the community know whether or not the
20 appli... I think... during your testimony you indicated
21 that certain times people file against your advice
22 and sometimes they [crosstalk]

23 RYAN SINGER: Right. Right.
24
25

2 CHAIRPERSON KALLOS: do with your advice.

3 Could you at least disclose that so at least...

4 [interpose]

5 RYAN SINGER: Sure.

6 CHAIRPERSON KALLOS: Council Members like
7 myself and Reynoso know whether or not the cars are
8 stacked against us...

9 RYAN SINGER: Oh...

10 CHAIRPERSON KALLOS: or in favor?

11 RYAN SINGER: Well I would say that with
12 schools -- and it's specifically schools and
13 religious institutions -- it would be highly unusual
14 for us to say that they should not file because they
15 have educational and religious **[inaudible]**...

16 [crosstalk]

17 CHAIRPERSON KALLOS: But just for the
18 question; would it be possible to at least let us
19 know with applications whether or not BSA has advised
20 or advised against, because this is happening; it's
21 happening behind closed doors and it would just be
22 nice for the folks who are on the ground to know
23 where BSA... [crosstalk]

24 RYAN SINGER: Right.

25

2 CHAIRPERSON KALLOS: [inaudible] ahead of
3 time.

4 RYAN SINGER: So...

5 CHAIRPERSON KALLOS: should we just
6 assume all of them are with your support [sic]?

7 RYAN SINGER: So the... the advice at pre-
8 application meetings is not nearly as formal as all
9 that; I think we say things like -- oh, this seems a
10 little tall; why don't you take a look at that -- and
11 oftentimes they come to us with schematic sort of
12 drawings, and so we don't really have a good sense of
13 what they're doing. And I said, you know, that it
14 seems a bit tall is often the level that we get to,
15 so that's...

16 CHAIRPERSON KALLOS: I appreciate that.
17 So they have an application, we've put in a letter in
18 opposition; the community board has voted against
19 this and now what? How long ago did I put in my
20 application... their application was when?

21 RYAN SINGER: So I do not recall when
22 they... when they... when they filed... [interpose]

23 CHAIRPERSON KALLOS: This was like in the
24 summer.

2 RYAN SINGER: I will tell you I know this
3 project intimately. We sent them a notice of
4 comments; I believe it was in July, it was in the
5 summertime; they had 30 days to respond -- there were
6 many issues raised in the notice of comments; some of
7 them, I will just be frank, were things that we
8 noticed that had come to us from other parties --
9 from your thoughts on it and others that got passed
10 along in our notice of comments of things that we
11 wanted them to address and they, let's just say are
12 struggling to address those **[inaudible]**... [crosstalk]

13 CHAIRPERSON KALLOS: So they had 30 days
14 to respond?

15 RYAN SINGER: Well they... Here's what our...
16 [crosstalk]

17 CHAIRPERSON KALLOS: There's no timeline.

18 RYAN SINGER: We send a notice of
19 comments and we say please respond within... I think
20 it's 30 days. We actually have... We do not have the
21 ability to say, for example, to dismiss them without
22 a public hearing for lack of response until a year
23 has lapsed.

24 CHAIRPERSON KALLOS: That's something we
25 can change for you.

2 RYAN SINGER: Sure.

3 CHAIRPERSON KALLOS: So...

4 RYAN SINGER: Actually, I think it's
5 something...

6 LOREAL MONROE: It's in our rules.

7 RYAN SINGER: It's in our rules, yeah.

8 CHAIRPERSON KALLOS: So perhaps either
9 you can change that in rules or that's something we...
10 [crosstalk]

11 RYAN SINGER: Yeah, we **[inaudible]**...

12 CHAIRPERSON KALLOS: we can change, but I
13 think just having a timeline to know... because like,
14 if that was July; it's December... [interpose]

15 RYAN SINGER: Right. They have submitted
16 several letters to the record asking for extensions;
17 I can share those with your office, but.

18 CHAIRPERSON KALLOS: And so I guess... but
19 it's one of those things where this is a fight and we
20 still won't even know the results in 2017, and I
21 think just having some sort of transparency around
22 the process, around the applications and if the... I
23 didn't even know that you sent a notice; did you send
24 a copy to me; does... [crosstalk]

25 RYAN SINGER: Oh...

2 CHAIRPERSON KALLOS: anyone have a duty
3 to share that information with the community that
4 **[inaudible]**... [crosstalk]

5 RYAN SINGER: This is actually something
6 that we are just learning sort of as we've been here
7 for two years. We send notice of comments and we
8 have had, let's just say heightened interest in what
9 our notice of comments say, and actually are looking
10 for a way to share our notices... [interpose]

11 CHAIRPERSON KALLOS: Sure.

12 RYAN SINGER: with the interested
13 parties, 'cause we've had community boards ask for
14 that as well and we're interested in doing that...
15 [crosstalk]

16 CHAIRPERSON KALLOS: So just... both
17 through Int. 1200 as well as my own introduction,
18 under -- I'm an attorney, David's an attorney, Brad...
19 we've got a bunch of attorneys... [interpose]

20 RYAN SINGER: Sure.

21 CHAIRPERSON KALLOS: here and so we have
22 something called e-filing and that's happened at the
23 federal level; it now happens at most of the county
24 courts, and so literally what the system does is in
25 order to be an applicant you have to agree to

2 e-filing; you upload all the system -- and this is
3 all available, it's all free and open-sourced, and
4 you could have the applicant upload the PDF into a
5 system and then the system could actually just send
6 to the parties and it's farfetched technology from
7 the 90s that we could use [laughter] here today in
8 2016.

9 RYAN SINGER: We have explored e-filing
10 and actually, City Planning has a very, I guess -- I
11 don't know how many dollars contract; lots of zeros
12 -- to do that for their applications. One of the
13 things I wanted to go back to and address is that I
14 think it's fair to look at the pre-hearing process at
15 the BSA as similar to the pre-certification process
16 at City Planning, which, as I can say, that can take
17 many years also to resolve things. Oftentimes we
18 will be asking people to do environmental reviews and
19 things like that. They actually do take a very long
20 time... [interpose]

21 CHAIRPERSON KALLOS: So I've been through
22 pre-application -- and I'll turn it over briefly to
23 David before I take it back to just follow up on --
24 but I've been through pre-application and we actually
25 filed something for pre-application; there was public

2 notice; people knew what we were doing; we were
3 pretty descript in what we were pushing for. Does
4 that happen with your pre-application?

5 RYAN SINGER: Are you talking about at
6 City Planning... [interpose]

7 CHAIRPERSON KALLOS: That's correct.

8 RYAN SINGER: you filed a pre-
9 application?

10 CHAIRPERSON KALLOS: There's a formal
11 pre-application... [interpose]

12 RYAN SINGER: Yes.

13 CHAIRPERSON KALLOS: process; there's...
14 [interpose]

15 RYAN SINGER: Right.

16 CHAIRPERSON KALLOS: a timeline; there's
17 a certain number of meetings; it sets a timeline...
18 [crosstalk]

19 RYAN SINGER: That is... That is very new
20 at City Planning I would add and then, as a...
21 [crosstalk]

22 CHAIRPERSON KALLOS: So yeah, but I filed
23 a pre-application for the land use item which I now
24 filed an application on I think a week or two ago.

25 RYAN SINGER: Right.

2 CHAIRPERSON KALLOS: So I think to the
3 extent we could do that... and so if you wanted to
4 follow up on... [crosstalk]

5 COUNCIL MEMBER GREENFIELD: I just wanted
6 to add that... [crosstalk]

7 RYAN SINGER: **[inaudible]** there was a
8 **[inaudible]** change at City Planning.

9 COUNCIL MEMBER GREENFIELD: that on the
10 City Planning side we've also requested more
11 transparency when it comes to pre-applications, and
12 we're waiting for progress on that front as well. So
13 this is pretty consistent across the board that we in
14 the Council, and we understand that there is a
15 judgment call that needs to be made and our judgment,
16 at least, and certainly we always have the ability to
17 FOIL; I think the Manhattan Borough President has
18 been availing herself of that option over the last
19 few years in some cases, especially in City Planning,
20 but we don't think that's the better way to do it; we
21 think the better way to do it is to be more
22 transparent so that communities do have more
23 information rather than less information and I
24 understand that there are struggles within all of
25 that, but in the end of the day our judgment comes

2 down on the side of more transparency is better, even
3 though it sometimes does muck up the system and we
4 recognize that, but that certainly is the judgment of
5 this Council.

6 CHAIRPERSON KALLOS: And I guess just one
7 quick think for City Planning; do you currently have
8 an RFP out for this software or have you awarded a
9 contract or where?

10 ALISON MCCABE: I believe we do have a
11 vendor... [crosstalk]

12 CHAIRPERSON KALLOS: Okay.

13 ALISON MCCABE: I'm personally not
14 involved in that contract, so I don't have
15 **[inaudible]** information about it... [crosstalk]

16 CHAIRPERSON KALLOS: The federal courts
17 have PACER; it belongs to the federal government and
18 I'd be more than happy to ask -- I've worked with the
19 clerks of the court when I was an attorney and I'm
20 happy to get free software for the City to use if it
21 means saving us millions; if we already have a
22 vendor, I'm also happy to connect and maybe we can
23 see how much it might cost to allow BSA to have a buy
24 off that license or an item like that, but if we can

2 make that happen. Council Member Greenfield, if you
3 wanted to follow up.

4 COUNCIL MEMBER GREENFIELD: Thank you. I
5 actually just had some technical questions that I
6 wanted to follow up on. I wanted to chat just
7 quickly about some of the additional responsibilities
8 that you've acquired since we changed the law
9 regarding Mandatory Inclusionary Housing and Zoning
10 for Quality and Affordability. Can you talk to us a
11 little bit more about things like the special permits
12 and hardship waivers and how you've been staffing up
13 on that front and what are your plans for that,
14 please?

15 RYAN SINGER: So we have added four new
16 positions in our office since sort of the last time,
17 you know, sort of in the last year or so. And in
18 terms of the Mandatory Inclusionary Housing sort of
19 waiver, we haven't seen any applications for that,
20 and in fact, because of the way that that works, we
21 don't anticipate seeing any; currently it's only
22 mapped in East New York, still only, and so we don't
23 anticipate a lot of folks wanting to waive the
24 inclusionary housing requirement in East New York.
25 Although there is a provision that would mandate that

2 any City Planning Commission or some subset at City
3 Planning special permits then also have MIH applied;
4 there we feel like, you know, working with City
5 Planning we would get a heads up before anything were
6 to come out way on that.

7 And then in terms of the Zoning for
8 Quality and Affordability special permit, we have
9 started to see some inquiries; and in fact, I believe
10 we have one already filed to waive existing parking
11 to permit new affordable units to be built, so we're
12 starting to see that and we will have I think a
13 dedicated pipeline for those types of projects that,
14 you know get... Currently I have one staff person who's
15 dedicated to Build It Back, but now that that is
16 winding down, I think that I will have one staff
17 person who is dedicated -- that same... I'll just
18 switch that person over to working on all things sort
19 of affordable housing related.

20 COUNCIL MEMBER GREENFIELD: Okay, great.
21 Thank you.

22 CHAIRPERSON KALLOS: Thank you for your
23 testimony, for addressing our questions, for
24 supporting some of the legislation, for being open to
25 legislation you didn't initially support, for this

2 report; in advance of enacting some of the
3 legislation we look forward to working with you. We
4 may send additional questions that we may receive
5 from Council Members and my Committee Counsel will
6 reach out to you folks, but at this time I'd like to
7 excuse you... [interpose]

8 RYAN SINGER: Alright. Thank you.

9 CHAIRPERSON KALLOS: Our next panel will
10 include Municipal Art Society and Citizens Union, who
11 have previously provided testimony and reports, which
12 were the basis for some of our legislation. The next
13 panel after that will include Sheldon... [background
14 comment] perfect... will include Sheldon Lobel as well
15 as others, and so we will keep going, and thank you
16 all. But we... sorry, we have everyone... if you filled
17 out one of these, we have it; I just wanted to give
18 some of the folks a heads up on what's coming up, so
19 next will be MAS; we have Landmark West, Greenwich
20 Village, Sheldon Lobel, Queens Civic Congress,
21 Auburndale Improvement Association, and more.

22 So we now have Thomas Devaney from
23 Municipal Art Society and Ethan Geringer-Sameth from
24 Citizens Union; if Municipal Art Society could please
25 lead.

2 THOMAS DEVANEY: Good afternoon;
3 appreciate the time. I am Thomas Devaney; I'm the
4 Senior Director of Land Use and Planning at the
5 Municipal Art Society.

6 In 1976 and 2004, as you've stated, MAS
7 released landmark studies regarding the BSA zoning
8 variance process, an issue that has been a persistent
9 concern of neighborhoods trying to preserve their
10 unique identity and character.

11 BSA... [interpose]

12 COUNCIL MEMBER GREENFIELD: I'm sorry;
13 did you read the 1976 report?

14 THOMAS DEVANEY: I can attest that I was
15 alive at that time, but I did not... [crosstalk]

16 COUNCIL MEMBER GREENFIELD: Okay. You
17 haven't read it either?

18 THOMAS DEVANEY: I have been at MAS since
19 March 2006 [sic]... [crosstalk]

20 COUNCIL MEMBER GREENFIELD: Alright. So
21 Ryan, you're definitely not **[inaudible]** now.

22 THOMAS DEVANEY: I've read it.

23 COUNCIL MEMBER GREENFIELD: Ben Kallos,
24 you read everything.

2 THOMAS DEVANEY: I should have prefaced
3 my testimony attesting that I was alive in 1976.

4 COUNCIL MEMBER GREENFIELD: Do you know
5 that it's available on Ben Kallos' personal website...

6 THOMAS DEVANEY: [laugh]

7 COUNCIL MEMBER GREENFIELD: along with
8 other interesting, random pieces of information?

9 THOMAS DEVANEY: But I do know that he
10 was not alive in 1976 though.

11 COUNCIL MEMBER GREENFIELD: Is that true?
12 Will you attest to that, Ben?

13 CHAIRPERSON KALLOS: I absolutely wasn't.
14 Were you alive in 1976?

15 COUNCIL MEMBER GREENFIELD: No. And I
16 also did not read the 1976 report.

17 THOMAS DEVANEY: So as the veteran of the
18 three of us, I will continue.

19 BSA was created to keep zoning out of the
20 courts, protect zoning from takings and claims and
21 provide property owners a quasi-judicial procedure
22 for addressing deprivation of the reasonable use of
23 their property. However, the findings in the most
24 recent BSA study by MAS indentified clear problems
25 with the variance process.

1
2 First, with a shift from "bulk" to "use"
3 variances in recent years, the BSA has taken on a
4 planning role theoretically reserved for the City
5 Planning Commission (CPC). Use variances that permit
6 residential units in manufacturing zones or
7 institutional uses in residential zones for example,
8 typically engender more significant changes to
9 community character and composition. Second, the
10 clear clustering of variances in certain communities
11 threatens community character while simultaneously
12 inviting precedents for further variances that often
13 lead to eventual zoning changes. Third, an extremely
14 high variance approval rate called into question the
15 scrutiny applied to applications. Just want to point
16 out that in the 1976 study, 84% of the variances were
17 approved and in 2004, 93% were approved. Finally,
18 the report noted the lack of expertise at the BSA to
19 deal with the extremely complicated financial reports
20 often submitted with variance applications.

21 With these concerns in mind, the 2004
22 report included the following recommendations:

23 A. Improve the application of the five
24 findings through rulemaking.

1 Set forth better guidance for the BSA
2
3 through rulemaking. Common urban hardships, such as
4 proximity to subway easements and rail lines, should
5 not form the basis for variances; an exhaustive list
6 is not presented in these recommendations.
7 Construction on historic fill or the presence of aged
8 manufacturing building is common in New York City; it
9 can hardly be claimed as a unique physical hardship.
10 Furthermore, the pursuit of a variance immediately
11 following a purchase of property must be discouraged
12 by creating a rebuttable presumption that the recent
13 purchase accounted for existing hardship. Physical
14 hardships and zoning limitations that exist at the
15 time of a property purchase are clearly best
16 addressed at purchase and should be reflected in the
17 price. Finally, when considering community impact,
18 the third required finding, the application should
19 present a uniform study area, and not just a study of
20 adjacent areas that support the application.

21 B. Provide better oversight of the BSA
22 and the variance process.

23 Aside from the courts, the BSA and the
24 variance-granting process receive little direct
25 oversight. At a minimum, the BSA's special permits,

1 appeals and variances should be analyzed each year in
2 the Mayor's Management Report. BSA itself might be
3 charged with compiling annual statistics on its
4 workload. This review would provide a basis for
5 year-to-year comparisons of the variance process and
6 help identify trends that require the attention of
7 the CPC or the City Council. To this end, the BSA
8 should be required to map all variances, similar to
9 what was done in the 2004 study, in which the report
10 showed mappings of variances at the time. Such maps
11 should be displayed prominently on the BSA website,
12 in the BSA offices and at hearings. Rulemaking
13 should empower and require the CPC to draft a report
14 that considers the underlying zoning in a community
15 district upon the filing of the eleventh variance in
16 a twelve-month period for that district. This
17 "density alarm" would prevent the slow erosion of
18 underlying zoning that the variance process can
19 cause. Furthermore, a staff member at DCP should be
20 assigned as the BSA coordinator. This person should
21 be responsible for reviewing BSA variances and
22 overseeing the comments submitted through the borough
23 offices of City Planning. These recommendations
24

1
2 would permit greater government and public oversight
3 of the process.

4 C. Add expertise to the BSA.

5 If the courts are to defer to BSA as an
6 expert body, the BSA must have the expertise to deal
7 with the modern variance application. Legal and
8 financial expertise are the most critical resources
9 for dealing with the applications. With hundreds of
10 calculations, the potential for manipulation is
11 great. Financial and real estate expertise needs to
12 be added to the staff. The chair and commissioners
13 of the BSA also need to have some planning background
14 and familiarity with the City's planning process.
15 Additionally, since the BSA is not composed of
16 attorneys, training in case law and the
17 interpretation of the findings should be required for
18 staff and commissioners. For example, courts are
19 constantly interpreting what a reasonable rate of
20 return is and the requisite level of detail required
21 in administrative decisions.

22 D. Strengthen the variance application
23 process.

24 Cross-referencing other local variances
25 should be limited to prevent what is called "boot-

1 strapping" in changing communities. This occurs when
2 an applicant relies on previous variances, either
3 directly or indirectly, to establish grounds for the
4 latest one. If mentioned, other variances must be
5 related to this unique hardship of the applicant.
6 The minimum variance requirement can be better
7 enforced as well by stipulating that all relevant
8 lower use groups within a zoning category be
9 addressed. For example, in M3 Heavy Manufacturing
10 Zones, applicants should be required to calculate
11 return on lighter industrial uses permitted in M1 and
12 M2 zones before seeking radical changes. Renewal
13 applications should prove that the original variance
14 conditions were complied with as a factor in whether
15 a new variance will be granted. Compliance history
16 is relevant to the impact of the community and the
17 "C" finding. Furthermore, mandatory penalties should
18 be imposed for intentional submission of erroneous
19 financial information. And the final recommendation:

21 E. Create a commission to study the
22 creation of a zoning administrator position and new
23 standards for area variances.

24 MAS believes that rapid implementation of
25 recommendations A and [sic] D would significantly

1
2 improve the variance process. However, given the
3 persistent problems that have been identified in the
4 study and throughout BSA's history as well as the
5 increasing use of zoning administrators nationwide, a
6 study of the position of zoning administrator and its
7 usefulness in New York City is in order. One of the
8 first tasks of such a study will be to consider the
9 experiences of other municipalities and the role the
10 zoning administrators play in the variance processes;
11 MAS' study has begun this work. This will identify
12 what options are available to the City and how they
13 operate elsewhere. The official can serve in an
14 administrative, advisory or adjudicatory capacity.
15 The zoning administrator in New York City might
16 simply improve the relationship between City Planning
17 and the BSA by providing oversight and advice. In
18 making this recommendation, MAS does not assume that
19 a zoning administrator would improve the process or
20 that such an official could function better than the
21 BSA.

22 So in light of the amendments before the
23 Council, MAS has these comments and recommendations.

24 We're generally pleased to see that some
25 of the amendments introduced by the Council reflect

1
2 the recommendations from our 2004 report. In
3 particular, Intros. 1390, 1391, 1393, and 1394
4 respond to our concerns about BSA oversight.

5 We support Int. 1390, which would
6 designate a BSA coordinator within DCP and be
7 required to post on the DCP website a record of the
8 coordinator's attendance at BSA hearings as well as
9 any written testimony from that representative at
10 DCP.

11 MAS generally supports Int. 1391, which
12 would require the BSA appoint a state-certified
13 general appraiser and member of the Appraisal
14 Institute with expertise in analyzing and auditing
15 real estate investments. However, MAS questions
16 whether an appraiser provides the comprehensive
17 financial expertise required to evaluate all of the
18 aspects of a financial analysis provided by
19 applicants. In addition, the bill does not reflect
20 our full request to provide annual training for
21 commissioners and staff in application of the five
22 findings and the latest case law on variances for
23 added legal expertise.

24 We recognize Int. 1932 as the most far-
25 reaching proposal in terms of addressing the five

1 criteria considered by the BSA for determining
2 hardships for granting variances and special permits,
3 and feel it responds to many of the concerns
4 expressed in our 2004 study. Although we value the
5 importance of requiring notarized certifications for
6 supporting documentation in applications before the
7 BAS, MAS believes the proposal does not address the
8 larger need for better guidance on what is considered
9 "unique" as the basis for granting variances.
10

11 As before, we insist that applicants be
12 held to a high degree of scrutiny with regard to
13 claims of site condition uniqueness that in actuality
14 are common throughout the city. Many sites in the
15 city are constructed on landfill. Many sites are
16 within close proximity to subway easements or contain
17 levels of contamination that are typical of
18 previously developed sites. These conditions should
19 not be considered unique in their own right and
20 should be carefully vetted through the BSA pre-
21 application process.

22 Consistent with the 2004 study, MAS
23 maintains that owners of recently purchased
24 properties who seek variances for alleged unique site
25 conditions that were known at the time of the sale

1 should be discouraged from pursuing variances based
2 on these conditions. MAS believes these are self-
3 created hardships. For the most part, costs
4 connected to physical hardships and site zoning
5 limitations that are present at the time an applicant
6 purchases a property should be reflected in the
7 purchase price and not serve as the basis for the
8 variance application.
9

10 While we agree that the proposal to
11 require a uniform study (400-square-foot radius) to
12 be evaluated for variance request applications -- as
13 it is consistent with the guidelines outlined in the
14 *CEQR Technical Manual* for projects subject to
15 environmental review -- we suggest that a larger
16 area, such as a quarter-mile radius, be considered
17 based on guidance from BSA when a project involves a
18 large site that would have a greater potential for
19 significant impacts on a particular community.

20 While we favor the BSA requirement that
21 applicants provide as much information as practicable
22 with regard to adjoining sites as part of its review
23 process, we are concerned that access to
24 environmental studies of adjoining properties may be
25 problematic. For example, conditions described in

1 the proposed amendment are typically identified and
2 evaluated in Phase I and Phase II site assessments
3 and site investigations and geotechnical reports
4 completed by private sector consultants for
5 developers. These documents are often not readily
6 available online and are frequently only accessed
7 through FOIL requests with the agency responsible for
8 reviewing and approving them.
9

10 While we support the proposed
11 specifications under Int. 1392 pertaining to economic
12 analyses in BSA applications and the increased level
13 of applicant accountability regarding market studies,
14 hard and soft costs, sources for financing, and
15 documenting attempts to obtain financing for
16 applicants who claim they cannot afford to develop a
17 site based on existing site conditions, we feel that
18 these are the basic components that should be
19 expected of a rigorous economic analysis provided by
20 an applicant seeking a variance or special permit
21 before the BSA. The larger issue is whether the
22 requirement proposed under Int. 1391 for the BSA to
23 employ a state-certified appraiser fully addresses
24 the need for a financial expert on the BSA staff.
25

1 This was a critical recommendation in our studies and
2 an issue that still requires further clarification.

3 We commend the proposal under Int. 1392
4 for requiring all information presented in BSA
5 applications, including at public hearings, to be
6 made available online.

7 We support Int. 1393, as it would require
8 the BSA to report information about applications for
9 variances, special permits and appeals of decisions
10 regarding variances and special permits to the
11 Council twice per year. The proposal specifies dates
12 for submitting the report as approximately one and a
13 half months prior to the mandated due dates for the
14 Preliminary Mayor's Management Report and the Mayor's
15 Management Report.

16 MAS supports Int. 1394 with the following
17 recommendations. We welcome the requirement under
18 the bill for the BSA to create and post on its
19 website an interactive map displaying the location of
20 the variances and special permits approved by the
21 Board since January 1, 1996. The map would allow a
22 user to filter by borough, council district;
23 community district type of variance, active and
24 inactive status. In addition to the proposed online
25

1 platform, however, we recommend that the map should
2 be made available as a downloadable file in a format
3 that facilitates further analysis. Poorly designed
4 websites, disorganized spreadsheets, and un-editable
5 PDF files are common obstacles that limit examination
6 of such materials. And the database should be made
7 available through the open data portal in formats
8 that facilitate evaluation, such as a CSV file or
9 Excel spreadsheet.

11 MAS supports Int. 282, which would
12 require BSA to establish rules for the consideration
13 of arguments and evidence submitted by parties, and
14 to refer to such arguments and evidence in final
15 determinations. The City Charter requires the BSA to
16 grant equal rights to the CPC, borough boards,
17 lessees and tenants, and property owners for
18 submitting arguments and evidence related to their
19 submissions. However, the City Charter does not
20 specify a procedure by which those rights would be
21 granted. Int. 282 would expand that section of the
22 City Charter to require the BSA, at its own
23 discretion, to promulgate rules that will establish a
24 formal procedure by which it would consider arguments
25 and incorporate them as part of their decision-making

1 process. Although the recommendation in the previous
2 MAS report does not address this particular issue, we
3 believe that Int. 282 represents a positive step
4 towards strengthening BSA application procedures.

5 I'm almost done.

6 MAS supports Int. 418, which amends the
7 City Charter... [interpose]

8 CHAIRPERSON KALLOS: You waited ten years
9 for this, so you can take your time.

10 THOMAS DEVANEY: [laugh] I grant you, it
11 won't take that much longer for me to finish.

12 CHAIRPERSON KALLOS: Or 40 years in the
13 desert **[inaudible]**.

14 THOMAS DEVANEY: Again, 418 -- this is a
15 reasonable requirement for the BSA, since other City
16 agencies perform this function in similar ways. For
17 example, lead agencies in the CEQR process, such as
18 DCP, are required to provide a summary of all public
19 comments in final EISs and a summary of findings in
20 the Statement of Findings for EISs. Furthermore,
21 according to testimony in 2002 [sic] from a former
22 BSA executive, BSA resolutions already identify the
23 recommendations of community boards, borough boards
24 and project modifications, discussing the reasoning
25

1
2 behind its particular decision. This bill simply
3 formalizes an existing BSA procedure.

4 MAS supports Int. 514. Although this
5 section of the City Administrative Code specifies
6 penalties for violators or owners who fail to comply
7 with the Board's orders or requirements, the City
8 Code does not require the BSA to notify owners when a
9 variance is about to expire. Moreover, the City
10 allows violators with unpaid penalties to receive
11 extensions from the Board. We feel that Int. 514
12 would resolve these issues, and this bill would
13 expand the Administrative Code to require BSA to
14 notify the person holding a variance at least six
15 months before the variance expires.

16 MAS supports Int. 691, which extends the
17 period for BSA decision appeals from thirty days to
18 four months. Generally, we think that this is
19 consistent with what is prescribed for Article 78
20 proceedings, which is the legal relief for
21 environmental review projects. We also feel that by
22 extending this period would not lengthen the BSA
23 application process since appeals occur after the
24 Board makes its resolution.

1 We support Int. 1200 with the following
2
3 recommendations. The City Charter describes the
4 procedure in specific ways in which the community
5 boards and borough boards review zoning variances and
6 special permits within the jurisdiction of the BSA.
7 This section of the City Charter also grants the CPC
8 the authority to judge and have standing to challenge
9 the granting or denial of a variance. However, this
10 section does not require BSA to inform Council
11 Members about applications for variances or special
12 permits in their districts, nor does it describe
13 review procedures or grant them the authority to
14 judge.

15 Int. 1200 would also improve oversight
16 with regard to the variance process by requiring BSA
17 to send a copy of each proposal or application for a
18 zoning variance or special permit, within five days
19 of receipt, to the local Council Member representing
20 the district in which the property is located.
21 Despite this improvement, MAS believes that without
22 giving the Council Member the opportunity to comment
23 on applications, the mere action of informing them is
24 not likely to result in substantial improvements
25 regarding BSA oversight in the variance application

2 process. Int. 1200 should be expanded to include
3 procedures describing the review process, including
4 the incorporation of recommendations made by local
5 Council Member examination of applications.

6 In conclusion, MAS has long advocated for
7 transparency and improvement in the City's various
8 land use processes. MAS believes the amendments
9 before the City Council begin to address the problems
10 we identified in our previous studies. We are
11 hopeful that the Council will incorporate our current
12 recommendations identified herein to provide a
13 necessary level of improvement with regard to the BSA
14 application process and the role the BSA plays in
15 making important planning decisions in the city.

16 CHAIRPERSON KALLOS: Thank you. Please
17 continue.

18 ETHAN GERINGER-SAMETH: Good afternoon
19 Chair Kallos and members of the Committee on
20 Governmental Operations in absentia. My name is
21 Ethan Geringer-Sameth and I am the Public Policy and
22 Program Manager at Citizens Union. Thank you for the
23 opportunity to testify today on the package of bills
24 related to the Board of Standards and Appeals.

1
2 Citizens Union brings New Yorkers
3 together to strengthen our democracy and improve our
4 city. We are nonpartisan and independent and our
5 goal is to build a political system that is fair and
6 open to all, one that values each voice and engages
7 every voter.

8 In 2010, we released a report on charter
9 revision entitled *Increasing Avenues for*
10 *Participation in Governing and Elections in New York*
11 *City*. In that report and reemphasized in testimony
12 before this committee in April of 2012, we supported
13 measures to expand the structure of the BSA to
14 include members not only appointed by the Mayor, but
15 also by the Public Advocate and Borough Presidents.
16 While we support a strong mayoralty, which we believe
17 has improved the effectiveness of city governance
18 over nearly the past three decades, we believe that
19 such an expansion of the BSA would better ensure that
20 community concerns are adequately represented.

21 In our charter revision recommendations
22 of 2010, Citizen Union advocated for two significant
23 measures that would alter the structure of the Board
24 and the makeup of its members in a way that promotes
25 community interests and input more directly within

1 the process by which the BSA makes determinations.
2 Specifically, we recommended that (1) the BSA be
3 expanded to include one appointee from the Public
4 Advocate and one appointee from each of the five
5 Borough Presidents. For a given ruling, the voting
6 BSA members would consist of seven members, five
7 appointed by the Mayor, one by the Public Advocate
8 and one representing the borough impacted by the
9 ruling, as is the practice with the Franchise and
10 Concessions Review Committee. Secondly, we
11 recommended that members of the BSA from the mayoral
12 appointments now be required to possess professional
13 expertise, suggesting that two of the five appointees
14 be architects, and one of the five be an urban
15 planner.
16

17 While a proposal to expand BSA membership
18 has yet to be introduced as legislation by the
19 Council, we are pleased to see Int. 1391, which
20 places a professional accreditation requirement on
21 BSA staff. Citizens Union supports this bill
22 conceptually, but would like to see BSA membership;
23 not just staff, comprised of individuals with
24 stronger relevant professional credentials. In order
25 to impact BSA determinations, we believe that the

1
2 legislation should go further, not only to require
3 staff to have certain professional expertise, as this
4 bill does, but to ensure that all mayoral appointees
5 to the Board be equipped with relevant professional
6 expertise in lieu of the knowledge of, and
7 sensitivity to, the needs of neighborhoods and
8 communities that an appointee of the Public Advocate
9 and Borough Presidents would bring.

10 Several of the other bills under
11 consideration today reflect a similar but small push
12 towards more meaningful community representation. We
13 support them philosophically, but have not taken a
14 position on any in particular. We support the spirit
15 of improving opportunities for community input and
16 wish to emphasize that Citizens Union feels serious
17 advances toward public accountability cannot be
18 achieved through legislative measures short of
19 expanding and making more inclusive the membership of
20 the BSA.

21 I want to thank you again for seeking
22 Citizens Union's testimony on the matter of improving
23 community input in BSA decision-making.

24 CHAIRPERSON KALLOS: I want to thank the
25 first group of advocates for your testimony, given

2 the short turnaround on notice, two weeks of notice
3 for forty years of work, or in some cases, ten years
4 or five years.

5 With regards to I guess concerns brought
6 by Citizens Union, I think the focus of this hearing
7 is on legislation and what we can accomplish short of
8 a charter revision, and we welcome Citizens Union to
9 continue the advocacy around charter revision, and
10 should we have, at the next charter revision, making
11 sure we can do that and ultimately just figuring out
12 what we can do in each case. One moment.

13 [pause]

14 With regards to Municipal Art Society, I
15 want to thank you for the guidance, your 2004 report
16 was my inspiration and I was reaching out to many of
17 the members who were involved in that; sadly, Vicki
18 Been did not provide much advice beyond her
19 participation in the initial report, but a lot of the
20 other folks were incredibly helpful.

21 With regards to Int. 1393, it was
22 originally our intention for it to be included in the
23 PMMR and the MMR, and the A version should hopefully
24 reflect your request that it be updated, so 1393 for
25 the A version will specify the PMMR and MMR; it was

1 just an issue in drafting an introduction that did
2 not happen in time.

3
4 With regard to adding professional
5 expertise -- which is something both of your groups
6 testified to -- the BSA has now testified they do not
7 have enough work for somebody with financial
8 expertise and would prefer to outsource it. What say
9 you?

10 THOMAS DEVANEY: I was surprised by that.
11 I mean in terms of -- you know I mean, in my
12 experience as a planning practitioner, and now in
13 this capacity at MAS, BSA -- you know, applicants --
14 the number one goal of an applicant is to show the
15 numbers based on, for example, comparing what it
16 would cost to construct a building on a site as-of-
17 right and then compared to what -- essentially, how
18 much money they would be losing by constructing
19 without the variance, and we feel that, in the
20 amendment, that an appraiser, their job is to do
21 appraisals and show the value of property, but it's
22 only part of the financial analysis. So we were
23 surprised that that wasn't sort of front and center
24 in consideration from the BSA as a part of reform and
25

2 the financial analysis is really the main part of an
3 application.

4 CHAIRPERSON KALLOS: Citizens Union;
5 [background comment] is part-time good enough or do
6 you want full-time?

7 ETHAN GERINGER-SAMETH: We don't really
8 have a position at that level of detail on the issue.
9 Our main goal is for the professional expertise of
10 the membership itself to be increased. So you know,
11 we really support the spirit of improving
12 professional expertise within the BSA, but don't have
13 any comments on that particularly.

14 CHAIRPERSON KALLOS: We were trying to
15 find the right level of expertise and the right
16 certification that would indicate financial
17 expertise; we ended up going with a general
18 appraiser's license and then certification for the
19 state and then bolstering that with making sure that
20 they were a member of the Appraisal Institute, which
21 is quietly guarded; that did not seem to raise to the
22 requirement. What specific certification degree or
23 experience do you think would be necessary for the
24 financial expert at BSA to meet your threshold?

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THOMAS DEVANEY: I am not a financial advisor or a financial analyst, so I'm not really privy to what the certification would be, but we can certainly get back to you on that and provide some information on this -- what we think is sort of like the second half of that analysis. But I do know in my experience that, you know, working with developers, that the financial analysis is more than just the appraisal; it's a complicated analysis and it's often -- during BSA hearings, it probably takes the most time and it's sort of the back and forth between the BSA and the developer's team; it's a significant part of it, so.

CHAIRPERSON KALLOS: Just please provide -- I think you may be satisfied with the general appraiser when you have more than two weeks to take a review, but if you can suggest exactly what...

[interpose]

THOMAS DEVANEY: Sure.

CHAIRPERSON KALLOS: we will take that under advisement, as can anyone who's going to be testifying or online, we would just be interested.

With regard to 1392, we're trying to make sure that as much as we can gets into the

2 application, especially around uniqueness and
3 justification why something might be unique; is there
4 specific language you might suggest that might help
5 us determine what is unique or what might force an
6 applicant to tell the truth, the whole truth and
7 nothing but the truth and in so doing, undermine
8 their own argument?

9 THOMAS DEVANEY: This is for Int. 1392?

10 CHAIRPERSON KALLOS: That's correct.

11 THOMAS DEVANEY: And specifically about
12 providing this information online..

13 CHAIRPERSON KALLOS: Well no, no, sorry.
14 Int. 1392 is with regard to the applications and you
15 noted that we do mention "unique," but we may not
16 have... we've been trying to do as much as we can to
17 try to get at uniqueness, and so the question is; is
18 there specific language or a specific standard we can
19 set forth in the law that would force BSA to say that
20 "unique" is only when it's actually unique and it is
21 not the character... [interpose]

22 THOMAS DEVANEY: Well...

23 CHAIRPERSON KALLOS: sorry... situation
24 everywhere on the block?

1
2 THOMAS DEVANEY: Well I mean it's really
3 incumbent upon BSA to better define that, but I think
4 I can speak from experience in that I've worked for
5 developers as a private planning consultant on sites
6 that had specific soil conditions that were not
7 unique. You know, for example, a lot of developers
8 will -- in applications before the BSA -- soil
9 conditions, for example -- if the site is partially
10 within landfill and partially on regular land, that
11 it requires extra costs for foundations or deeper
12 foundations, and it goes before the BSA under the
13 premise that it's a unique condition, but in
14 actuality there are a number of sites in the city
15 that have those conditions, especially a landfill on
16 the west side of Manhattan, for example. So I can
17 say that in some instances I was surprised that the
18 BSA accepted that level of uniqueness knowing that
19 there were many other sites that had similar
20 conditions. So and in the city, you know, it will be
21 hard-pressed to find a site that doesn't have some
22 degree of environmental conditions -- site
23 contaminates -- and these are typical of most city
24 properties; very rarely are you going to find a city
25 property that was never developed. So I think the

2 BSA needs to establish firm guidelines as to what is
3 unique.

4 CHAIRPERSON KALLOS: So perhaps the lang...
5 the lang... [crosstalk]

6 THOMAS DEVANEY: And we... we will be happy
7 to work with them in looking at that.

8 CHAIRPERSON KALLOS: So I think if we can
9 get that done, hopefully before the new year or very
10 soon, in terms of either our legislation could
11 require that they define uniqueness as well as
12 perhaps character, but if there's specific language
13 that we can set as a minimum floor, that would be
14 amazing.

15 With regard to the 400-foot, BSA felt it
16 was good in certain places, bad in others; it seems
17 your testimony is very similar in that that some
18 places 400 is great; might be too much in others, so
19 could MAS provide us a threshold of on the block in
20 some places; around the block in another and quarter-
21 mile if it's a multiple dwelling unit with than ten
22 units or something like that?

23 THOMAS DEVANEY: Well we think that... I
24 think we're generally pleased that some of these
25 proposals are consistent with the City Environmental

2 Quality Review Guidelines -- 400-foot radius us
3 typically what's required as the primary impact area
4 for a project, but then there are other study areas
5 that are identified, depending on what... you know, for
6 larger rezonings there's a quarter-mile radius;
7 sometimes there's a half-mile radius, depending on
8 the site. So for variances for a very large site
9 that has the potential for more significant impacts,
10 we do think that that radius could be expanded,
11 depending on the potential... [interpose]

12 CHAIRPERSON KALLOS: What measure would
13 that be; would it be the number of units, the height;
14 the size of the lot... [interpose]

15 THOMAS DEVANEY: Probably the size of the
16 lot, you know. I mean you have smaller site
17 variances for a specific lot and sometimes the lot is
18 a lot bigger and it affects more properties.

19 CHAIRPERSON KALLOS: 'Kay, if you can
20 give us a specific size, so if it's lots over 2,000
21 square feet; whatever it is, so that -- I guess might
22 not want to capture single-family homes, even if they
23 are lucky enough to be on an acre... [interpose]

24 THOMAS DEVANEY: Sure.

1
2 CHAIRPERSON KALLOS: might want to
3 capture somebody who's in a 200- or 100-unit building
4 that happens to be on a tenth of an acre. So if you
5 can help us with that. And I guess -- we shared your
6 concern with regards to having as much information as
7 practical with regard to adjoining sites as part of
8 the review process specifically aimed at getting to
9 the Environmental Site Assessments and site
10 investigations. What is the best way for us to get
11 to that information, given the fact that the
12 applicant might need to FOIL it; is that something
13 they should have as part of pre-application because
14 it'll be in the application and they'll see it? How
15 do we set it so that we're getting the information we
16 need without setting it so high that it is impossible
17 to **[inaudible]**... [crosstalk]

18 THOMAS DEVANEY: Yeah, and that's a
19 concern of ours. I mean I think we both can agree
20 that we don't want to bottle up the works, as it
21 were. But I do know that the various websites that
22 are mentioned in the amendments don't necessarily
23 make these documents available and that they are
24 usually accessed through a FOIL request process. So
25 I guess it gets into the issue of how much... what is

2 available from these websites and you know doing.. and
3 I think the spirit of your suggestions in the
4 amendment were that this information should be
5 readily available and it should be provided as part
6 of the application, but in actuality, like I said,
7 geotechnical reports -- Phase I's, Phase IIs -- are
8 usually documents that are not necessarily available
9 online and have to be FOILED, so it's a challenge. I
10 mean if we limit to what is available online, then
11 you're probably not going to get that level of
12 technical reports that support the application, so.

13 CHAIRPERSON KALLOS: So is requiring
14 applications where they're already spending 403 days
15 or a year to start FOILING that information so that
16 they have it for their applications to be complete;
17 is that something that is feasible?

18 THOMAS DEVANEY: I think it's feasible; I
19 think it gets into your suggestion that the
20 information that's provided in applications is made
21 available online; if the geotechnical reports and
22 environmental reports are part of the application,
23 then perhaps if they are available online through the
24 BSA website, then one wouldn't have to FOIL them or...

2 CHAIRPERSON KALLOS: Any other questions
3 that I haven't had a chance to address? And I just
4 want to just say; we will take this testimony and all
5 the testimony and really use it to make sure we get
6 the best possible drafts possible and... and...

7 [crosstalk]

8 THOMAS DEVANEY: Sure. And we'll be
9 happy to get back to you with our suggestions and..
10 [interpose]

11 CHAIRPERSON KALLOS: And just please
12 continue to engage the process. So want to excuse
13 this panel. I want to thank the BSA for staying;
14 that is not something that agencies usually do; I
15 want to acknowledge that Executive Director Ryan
16 Singer is in the audience and is paying attention.
17 I'm going to recess for five minutes and then our
18 next panel will be Sheldon Lobel, Kevin Forrestal,
19 [background comment] Henry.. Henry E from Auburndale
20 Improvement Association, Sean from Landmark West, and
21 Harry from Greenwich Village Society for Historical
22 Preservation. So we'll be back in five.

23 [gavel]

24 [pause]

25 [background comments]

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[gavel]

CHAIRPERSON KALLOS: Bring this committee out of recess. We have Sheldon Lobel; we have Kevin Forrestal of the Queens Civic Congress; we Henry... [background comments] well no, we can... if you want to just pull your chairs up or if you prefer to go separately. No, no, you stay. [background comments] Yep. [background comments]

[pause]

We have Henry; we have Sean? Perfect. And Harry? Perfect. I've said everyone's names? [background comments] And we have Kevin from Queens Civic and I believe almost all of you are in favor, except for Sheldon. Sheldon, if you want to start with opposition and then... [background comment] and make sure to press the red light button so that you are on the record and uh... [crosstalk]

SHELDON LOBEL: Okay, thanks.

CHAIRPERSON KALLOS: please take your time and then we have one more panel left, and I want to thank those who took time off to be here today.

SHELDON LOBEL: So Council Member, thank you for giving me again the opportunity, because I've testified at a number of hearings over the years.

1 I've been doing land use work since 1972 and I'm also
2 the President of the Zoning Advisory Council, and
3 often I find is this knee-jerk reaction against the
4 Board of Standards and Appeals. My father-in-law, I
5 must say, worked for the City 51 years and was a
6 Commissioner with the Board of Standards and Appeals
7 -- he retired; he died many years ago and he was
8 really an outstanding civil servant.

9
10 And first of all, let me correct
11 something that people keep talking about -- this
12 uniqueness. For a bulk variance, a bulk variance, an
13 area variance, the uniqueness finding is not
14 required, although the Board seems to -- I don't know
15 if they understand that, but -- Council Member's a
16 lawyer; I'll send you a copy of the Pantelidis case,
17 which says -- Judge Schlesinger, as other judges have
18 said -- there's a difference between uniqueness which
19 you don't need in a bulk area variance; you don't
20 need a finding of uniqueness, you just have to show
21 practical difficulties and unnecessary hardship.

22 And then another thing is; they talk
23 about these financial people. You know we only have
24 two people who will prepare financial analyses for
25 our Board cases; that's why we're filing less and

1 less cases, and they get paid \$10,000, but they don't
2 -- we have two people, one is Friedman; another one
3 is Barbara Cohn [sp?]; we can't get people to do
4 that. So and we're filing less cases now because
5 also, the Board -- and people are here and they say
6 the Board does this and this -- we find the Board is
7 taking -- and I think Council Member Greenfield spoke
8 to this -- we find that filing applications at the
9 Board are very, very difficult, time-consuming; you
10 can't get paid as much as the time we spend. Mostly
11 we represent -- I think 75% who file cases at the
12 Board are small businesses, are small homeowners, are
13 small whatever who, faced with a 3,000-page
14 resolution -- originally in 1916 it was 16 pages --
15 and now the architects; engineers, they have a very
16 difficult time; they get approvals -- I have a case
17 on Ocean Parkway, 265 Ocean Parkway, someone built a
18 building, I think 32 apartments; at the end of the
19 process the Building Department said wait a minute,
20 there's a rear yard requirement in part of the
21 property, and they won't give them a Certificate of
22 Occupancy. So this is eight years later and now they
23 have to go to the Board to show hardship and all this
24 other stuff and that's going to take a year, but we
25

1
2 have to file the case because there's no other way
3 for this builder-owner, small operator to get that
4 building functioning to get any kind of income. So
5 we see every day the problems that people have
6 dealing with the resolution, dealing with objections
7 of zoning and the necessity to go to the Board. They
8 don't want to go to the Board usually; they have to
9 go to the Board. Now we understand -- I don't want
10 to get into the constitutional question -- but the
11 Board is a safety valve from this Zoning Resolution,
12 from this onerous resolution. Every time something
13 comes up, put it in the resolution; every time
14 there's a new district -- 3,000 pages -- and that's
15 why, without a safety valve, there's no zoning. And
16 also, I find that all of this stuff that we're
17 talking about I like to say clogs the safety valve
18 and makes it difficult for people to survive and
19 build or own businesses in the city.

20 There's been a recognition that some --
21 years ago, and probably even today, it's very
22 difficult to get a variance for a one-family house,
23 except in certain zones where City Council, at the
24 request of City Planning, adopted the special permit
25 section for enlargements to buildings in three

2 community boards in Brooklyn because there was a
3 recognition that the people in those districts have
4 large families and they let them go to the Board and
5 get a special permit. And then this issue about how
6 many cases are approved -- unfortunately, we do have
7 this pre-application process, which I say
8 unfortunately, because there's a lot of cases that I
9 think have merit; I'll go to the Board, the
10 chairperson sits there with some of her staff [bell]
11 -- yes, no; yes, no. [bell]

12 Okay, I'm going to wind up.

13 CHAIRPERSON KALLOS: Thank you. And if
14 you can also provide the written testimony.

15 SHELDON LOBEL: Right. But basically,
16 and I just want to say, I have a copy of the
17 Municipal Art Society report; we questioned one of
18 the representatives of the Municipal Art Society --
19 my Zoning Advisory Council, 11 years ago -- it's a
20 lot of hogwash; they mentioned all the cases that the
21 Board approved; many of them were special permits --
22 gyms... [interpose]

23 CHAIRPERSON KALLOS: Do you have anything
24 you wanted to say in wrapping up?

2 SHELDON LOBEL: Yeah, in wrapping up, I
3 think what the Council should do is think about the
4 many people, the small businesses -- regulation is
5 getting out of hand -- this is more, more regulation
6 which takes away the ability of people to enlarge; to
7 do business in this city. Thank you.

8 CHAIRPERSON KALLOS: No worries. Thank
9 you. Whoever wishes to go first from the supporting
10 side.

11 KEVIN FORRESTAL: Okay. I'm Kevin...
12 [crosstalk]

13 CHAIRPERSON KALLOS: Thank you all for
14 your patience.

15 KEVIN FORRESTAL: Okay. I'm Kevin
16 Forrestal; I'm the President of Queens Civic
17 Congress, which is an umbrella organization for over
18 100 civic organizations in Queens and of the Zoning
19 Committee at Council Member 8 and have had Mr. Lobel
20 represent clients in hearings.

21 I'd like to do with transparency to say
22 something that; my first child was born in 1976, and
23 I did not read the 1976 report.

24 We would like to echo what you said at
25 the beginning, Chairman, about many of the concerns

2 about the BSA, which we sometimes euphemistically
3 call the Board of Standards and Approvals, and we are
4 very concerned about many of these issues where
5 unbelievable requests have come in, particularly a
6 lot of times with religious freedom issues and what
7 the Board has approved is outrageous, in our view.

8 We're also very pleased to hear the
9 testimony today of the BSA, the Executive Director
10 being largely supportive and open to reconsider some
11 of the goals and objectives that these bills call
12 for. I believe the Queens Civic Congress Board is in
13 full support over the intent of the ten bills. In
14 particular, 1392, I have heard testimony many times
15 where the applicant not only leaves out key
16 information, but blatantly lies, and having that
17 become illegal and punishable would be, while hard to
18 enforce, I think a worthwhile undertaking.

19 I would also like to state that there's
20 one other type of ruling or bill that I would like to
21 have you consider in the future, and that is that I
22 believe that -- or actually, I know that in many
23 cases our enforcement of various rules and
24 regulations, whether they be environmental violations
25 of the Building Department or whatever, is that the

2 Board of Standards and Appeals should not be able to
3 accept an application when there is significant and
4 substantial delays in payments of fines that come in.
5 At about the beginning of the de Blasio
6 Administration, we had one religious group who wanted
7 to do a preschool; they had over \$500,000 in fines
8 that were over two years old, including a Certificate
9 of Occupancy for a school. I think that that type of
10 legislation would also be very useful.

11 I will submit written testimony by email
12 within the next two days. Thank you for your
13 attention.

14 CHAIRPERSON KALLOS: Thank you for your
15 service.

16 HENRY EULER: Thank you. My name is Hen...
17 My name is... Is it alright?

18 [background comment]

19 CHAIRPERSON KALLOS: If you're on the
20 panel, you're welcome to stay out there if you wish,
21 or if you need to leave, you're also welcome to
22 leave. I know it's been a long hearing. [background
23 comment] Sorry to interrupt.

24 HENRY EULER: It's okay. My name is
25 Henry Euler; I'm First Vice President of the

1 Auburndale Improvement Association. My civic
2 association serves the Auburndale-Flushing sections
3 of Queens as well as western Bayside. We have over
4 500 members and we've been in existence over 100
5 years. I'm also a member of Community Board 11 in
6 Queens and a Vice President of the Queens Civic
7 Congress. I'm here representing my civic association
8 today.

10 We approve all of the ten proposed pieces
11 of legislation to make the Board of Standards and
12 Appeals more accountable and transparent. We go very
13 frequently to the BSA when there are variance cases
14 and special permit cases that come up within our area
15 and I must say that the Board commissioners are very
16 confident and they do listen to the issues many
17 times, but they also sometimes do not listen to the
18 community voices that appear at the BSA, which is
19 very troubling.

20 Recently we had a case in Flushing where
21 there was a religious facility proposed to be
22 constructed and they needed four variances in order
23 to be constructed. They chose a very small lot and
24 they needed more height and side yard variance as
25 well as an FAR variance and they didn't want to have

1 any parking on-site, and all of those issues created
2 problems for the community. The community came out
3 strongly against it, they had no objection to the
4 religious facility itself; they just thought they
5 should be choosing a larger site. The community
6 board turned it down unanimously, as did the borough
7 president, and the BSA approved it and they approved
8 it enthusiastically.

10 That's why I'm very much in favor of Int.
11 418, which was proposed by Council Member Koslowitz,
12 which would require written explanations when the BSA
13 approves an application that a community or community
14 board or borough board or borough president reject
15 it, I think that's very important. In fact, I don't
16 think that goes far enough. I think that that
17 particular instance should trigger an automatic
18 appeal so that the community, civic association and
19 the community members do not have to go through an
20 Article 78.

21 We're also very much in favor of
22 Int. 514, which was introduced by Council Member
23 Matteo. It's very important that when variances are
24 about to expire that notices go out so that the
25 applicants can come back in a timely manner to renew.

1 We had a case within our area where we had an auto
2 dealership whose five-year variance expired and it
3 took them another five years before they actually
4 came to reapply for that variance. It was outrageous
5 and this particular auto dealership was causing lots
6 of problems in the community. We also had a gas
7 station in the community that did not reapply within
8 two years and I sent a letter to the former executive
9 director of the BSA and he did write a letter telling
10 the applicant they had 60 days to apply and they
11 never did, and there were no consequences. And so we
12 felt that was very unfair to the community,
13 especially since that particular gas station was also
14 causing problems in the area.

16 We are very happy to support all of the
17 other bills; we think it's very important that they
18 are passed.

19 I would also suggest that a bill be set
20 forth that would increase the membership of the Board
21 of Standards and Appeals so that there are
22 representatives from the different boroughs and the
23 Public Advocate.

24 In the end, I just want to thank all the
25 Council Members who sponsored and co-sponsored these

2 ten bills. It has been a widespread belief for years
3 that the BSA needs to be more transparent and
4 accountable to the citizens that they represent.

5 Thank you.

6 CHAIRPERSON KALLOS: Thank you.

7 SEAN KHORSANDI: Good afternoon Council
8 Member Kallos. This is Sean Khorsandi for Landmark
9 West; I have a brief statement I'd like to share.

10 CHAIRPERSON KALLOS: Thank you for your
11 partnership on so very many issues.

12 SEAN KHORSANDI: And more to come. The
13 Board of Standards and Appeals plays a crucial role
14 in regulating land use development and construction,
15 they serve as a necessary function of providing
16 relief from the Zoning Code when extenuating
17 circumstances exist; in theory, ensuring that we live
18 in a safe, healthy, pleasant environment, with non
19 undue burden placed on any single property owner.

20 That said, the BSA is not a methadone
21 clinic; its work has increased, however, as
22 developers, lawyers, lobbyists, and designers have
23 intentionally sought out and assembled complex deals,
24 eyes wide open, and manipulated designs and financial
25 findings for greater profit. When this becomes the

1
2 normative condition, it defies the unique hardship
3 requirement for zoning variances by its very
4 definition. The result is a chaotic urban
5 environment where citizens have no sense of what to
6 expect beyond excess and a process where regular
7 citizens are left to defend their property rights at
8 great financial and emotional cost against developers
9 often civically untethered to the sites they seek to
10 monetize; for them, it has become a gamble worth
11 taking.

12 In this way, the BSA indirectly overrides
13 the Department of City Planning, incrementally
14 sanctioning changes that collectively generate great
15 impact. Landmark West has great recent experience
16 with the BSA involving projects impacting our
17 historic neighborhoods on the Upper West Side.

18 In the case of 361 Central Park West, an
19 individually landmarked, internationally recognized
20 historic church by the same architects of the main
21 branch of the New York Public Library on 42nd Street,
22 a developer sought six variances in order to create a
23 39-unit luxury condo conversion. During the five
24 public hearings there were unchecked instances of
25 misinformation by the applicant, such as forgetting

1
2 to include restoration costs, abatement and appliance
3 costs, proof of evidence withheld at prior Landmarks
4 Commission hearings and community board hearings,
5 such as the Providence of the artistic stained glass,
6 as well as an imbalance of standing. In one
7 instance, the opposition's lawyer sought to respond
8 to an applicant's claim he was stymied, informed by
9 the Vice Chair that the applicant could continue
10 uninterrupted because "it's his hearing" -- it should
11 be a public hearing. To their credit, the BSA
12 ultimately denied this application after a nearly
13 ten-month process at their agency alone, but that
14 came with a six-figure legal bill to neighbors and
15 private citizens forced to defend their property
16 interests against developer greed.

17 Our organization applauds the City
18 Council efforts to reset the balance at the BSA and
19 to make sure that zoning variances are not a rubber
20 stamp. Agency capture is a serious concern at the
21 BSA and in other City agencies as well. We stand
22 ready to work with this committee in further
23 documenting our various recent and direct
24 experiences. Thank you.

1
2 HARRY BUBBINS: Great. Hello. I am
3 Harry Bubbins with Greenwich Village Society for
4 Historic Preservation, the largest membership
5 organization in Greenwich Village, East Village and
6 NoHo.

7 And I do want to state my personal
8 experience. Though all the BSA staff are great, but
9 based upon years of experience, we would say that the
10 BSA variance process is nevertheless indeed in need
11 of reform. All too often the process appears to be
12 driven by the applicants who provide data and
13 projections to make their case, which too rarely
14 seems to be checked or disputed. In many cases, we
15 have seen variances granted based upon data and
16 projections provided by applicants which simply turns
17 out not to be true -- and unsurprisingly, the
18 projections always seem to skew in favor of the
19 applicant's request.

20 It is critical that the Board be required
21 to only grant the minimum variance necessary to
22 afford the applicant a reasonable return. The
23 reasonable return should be more clearly defined, and
24 the Board should exhaust all option which are in
25 greater conformance with existing zoning before

2 granting any variance. Int. 1392 would be
3 particularly helpful in addressing this issue by
4 establishing standards for uniqueness and by
5 discouraging false statements in applications by
6 applying a substantial monetary penalty for doing so.
7 And I would suggest to the Council Member who's not
8 here, as far as the lengthy time; having the needed
9 swearing and notarization of statements would
10 preclude the applicants from providing potentially
11 false information, which then leads them to have to
12 come back to the Board many months later and
13 themselves delaying the application process.

14 Extending the time frame for appealing
15 BSA decisions would be both helpful and warranted, as
16 required by Int. 0691. The extension from 30 days to
17 four months would allow a more reasonable amount of
18 time for concerned parties to take up appeals and
19 bring the time frame in line with Article 78 appeals.

20 The Executive Director noted that would
21 be perhaps an onerous length of time for small
22 homeowners or small businesses to have to wait 120
23 days before proceeding. I would note that some
24 applicants before the BSA -- as my colleague
25 indicated, this is a gamble for developers to take --

1
2 some of them are building and constructing and
3 excavating for complying developments even while
4 they're awaiting a variance, indicating a reasonable
5 rate of return is expected on a compliance
6 development, but they're taking the chance at the
7 variance hearing at the BSA anyway in the hopes to go
8 higher and bulkier and out of context.

9 Requiring notification to Council Members
10 of applications, a state-certified general appraiser
11 on the BSA staff, provision of regular reports to the
12 City Council, and an interactive map on the BSA
13 website, all of that is obviously needed and
14 essential to the public integrity of the process.

15 We would note -- and I know that one of
16 the intros mentions an allocation -- this could
17 create more work for the BSA and one of the Council
18 Members had an idea as far as greater resources that
19 might be needed to increase the staff and expertise
20 there.

21 We support ways to add further expertise
22 to the BSA, both in terms of staff and commissioners,
23 so that more of the financial and structural
24 calculations which are the bases for variances can be
25 fully reviewed or rebutted by the Board, rather than

2 simply relying upon the experts hired by the
3 applicants.

4 You asked before about specific language;
5 here's some.

6 Current BSA instructions indicate that
7 the Board expects to see certain data on all
8 properties that includes "market-based acquisition
9 costs." To better determine the actual return on
10 investment by the property owner claiming economic or
11 other hardship, we would suggest that the real
12 acquisition cost and acquisition date should be part
13 of the application, regardless of the time frame.
14 The conditions are often indicated by the price
15 purchased and knowledge therein.

16 Finally, we would recommend that the BSA
17 be required to regularly review how the rate of
18 return and other projections which are the basis for
19 approved applications match up with the real rates of
20 return in those cases. The results of those analyses
21 should be published regularly. This will show us if
22 the BSA is being overly generous in their granting of
23 variances, and if the bases for those approvals are
24 in fact regularly skewed in favor of the applicants.

25 Thank you very much.

2 CHAIRPERSON KALLOS: If you don't mind
3 filling the empty seat and we'll just have a panel of
4 four in support. I want to thank all of you for --
5 please stay -- thank you for participating in what is
6 perhaps a lengthier hearing than may have been
7 expected, but actually I had hoped more members would
8 come out; I'm glad with how many did; the BSA is one
9 of the least popular agencies amongst community
10 boards, borough presidents and City Council members.

11 I wanted to just note that there is an
12 Introduction 810 which became Local Law 47 of 2016,
13 which I authored, which requires City agencies to
14 account for repeat violations when granting new
15 permits and we'll take a look at whether or not it
16 applies to BSA and work with BSA to include that.

17 I think all of us have had the
18 "uniqueness" sham and had to go up against that. I
19 think the same as what I said to Municipal Art
20 Society; to the extent you have some specific ideas
21 or language on how to deal with the "uniqueness" and
22 how large a survey area. Is it whatever the size of
23 your block is, plus all the surrounding blocks? Is
24 it your community district? Is it your borough? Is
25 it your city? Or is it different standards for

2 different types of claims of uniqueness, so if you're
3 claiming that there is a soil issue; then perhaps
4 it's boroughwide; if it is an irregular shaped lot;
5 then it is in the neighborhood, and so on and so
6 forth, but try to figure out what standards we should
7 use.

8 And I guess just for... [interpose]

9 SEAN KHORSANDI: Can I just comment on
10 that for one second?

11 CHAIRPERSON KALLOS: Oh, of course.

12 SEAN KHORSANDI: Sure. There was... In
13 some of our instances there's -- in the Upper West
14 Side, it usually comes to play in historic districts
15 and individual landmarks and it seems to be accepted
16 as a rule, even though it's not written anywhere,
17 that a landmark already is a hardship because this
18 building is on this site I can't build the tower I
19 want or whatever I want. So I would love to clarify
20 that a landmark is not an inherent hardship; if that
21 could somehow be worked into any of the initiatives
22 [sic]... [crosstalk]

23 CHAIRPERSON KALLOS: Accepted. We will
24 work on it; my counsel will note it and hopefully we
25 can add that. I think to the extent that Landmark

2 West can just assist us with whatever legal research.
3 One of the frustrations I've heard repeatedly from
4 people testifying is: why can't we just change the
5 makeup; why can't we transfer some of that expertise
6 into the Commission; and why can't we change the
7 makeup of the Commission, and it's because that might
8 require a charter revision, which is a larger fight
9 than what we have here where we're trying to change
10 the BSA without voting a vote of the public, though I
11 am sure that the public, after being educated on what
12 the BSA was, and if they stayed awake through that
13 education, would be in favor of any revisions. So
14 absolutely, thank you. Good suggestion.

15 Does anyone else want to comment?

16 HARRY BUBBINS: I will mention; the
17 legislation that you introduced I believe that
18 indicated the compilation of all of the applicants'
19 engagements with the other City agencies might be
20 more inclusive if possible to state; federal -- for
21 example, the DEC requires water withdrawal permits
22 for construction and that then could be used as a
23 basis for a hardship, but sometimes the
24 representations made to one agency is not to the
25 other, so being more inclusive to figure out how

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state and federal agency applications could be included in that.

CHAIRPERSON KALLOS: So you are suggesting that a developer before the BSA might value their property in one way for the BSA and another way for the IRS?

HARRY BUBBINS: I am suggesting that more comprehensive information allows greater evaluation and even financing, sometimes agency financing is provided by the State Housing Financing agency and applications are made to them and the public doesn't have that information but only what the BSA has and they might not always link up.

CHAIRPERSON KALLOS: So I believe the legislation does require that any applications for financing that have been denied are included; we did not include that they should all applications for financing, but their financing documents and then I would imagine that any appraisals that they've done, whether they're tax appraisals or others. So I like that; keep 'em coming; this is great brainstorming and exactly what hearings are meant for. Anything else in terms of that? There's more.

1
2 I wanted to also speak to -- tell me
3 about the difference between market-based acquisition
4 and real acquisition costs; tell me what -- I'm not
5 familiar if real acquisition is a term of art.

6 HARRY BUBBINS: [laugh] Well you're
7 indicating a direction. Actual costs should be
8 presented; whatever other term of "art"; whatever
9 other evaluation; whatever other estimation may
10 indeed play a role, but if the market rate one month
11 is five million and then there's a crash and the next
12 month it's one million, is the BSA going to evaluate
13 projects every week; every month; every year; every
14 ten years? What if a property was purchased ten
15 years ago at one million dollars and now, ten years
16 later, the value has skyrocketed, perhaps due to
17 upzoning, and they're already making a wonderful rate
18 of return and yet they're asking for more bulk or
19 height. So being able to say this is how much the
20 applicant paid for it at this time and this time;
21 over a period of time they may have already made that
22 cost back and yet the market acquisition costs at
23 that period of time, which is not the real cost
24 already paid, reflects a number much higher than
25 might seem to be included in an onerous development

2 cost that could then lead to a variance application
3 being approved, when it has no basis in reality.

4 SEAN KHORSANDI: And the church I
5 mentioned -- 361 Central Park West -- the owner's
6 actual price was never disclosed at the hearing and
7 the lawyer said, "You don't make us do that; we don't
8 have to do that." They put the value of what they
9 felt the church was worth and that was completely
10 legitimate, and we have that all documented and can
11 provide those numbers.

12 [background comments]

13 CHAIRPERSON KALLOS: So we'll -- you'll
14 get a chance to speak very shortly, I'm sorry, and
15 they'll be available, but. So that is incredibly
16 helpful information, so we will ask them to include
17 the actual cost and the date that it was acquired,
18 and as well as other pieces... [interpose]

19 [background comment]

20 SEAN KHORSANDI: And I think in that
21 also, just to clarify... [crosstalk]

22 CHAIRPERSON KALLOS: Yeah, keep going.

23 SEAN KHORSANDI: from this specific
24 instance, the definition of an "arm's length deal,"
25 'cause this was a case where someone bought it, sold

2 it to their sister and then was partnering with
3 another developer and there was nothing recorded;
4 there were no taxes and any other further
5 transactions, in this particular case on 96th Street.

6 CHAIRPERSON KALLOS: So we want to see
7 full disclosure of all parties involved and all
8 transactions... [interpose]

9 SEAN KHORSANDI: Verification of where
10 this number came from. Yeah.

11 CHAIRPERSON KALLOS: Okay. And we would
12 also I guess like to see who the partners are;
13 identifying the human beings behind the corporations,
14 so that if LLC One sells to LLC Two, we can find out
15 even though the Supreme Court believes that a
16 corporation is a person. If I am Ben Kallos and I
17 have LLC One and LLC Two and LLC One sells to LLC
18 Two, sure, they're separate and distinct entities
19 under law, but at least the community should be able
20 to see who's behind it and who owns more than a 15%
21 stake in the companies or if it's closely held who
22 the partners are. This is helpful. Any other great
23 ideas? These are all helpful.

24

25

1
2 SEAN KHORSANDI: I don't want to
3 monopolize, so this is going to be my last comment...
4 [crosstalk]

5 CHAIRPERSON KALLOS: You... You... No, this
6 is good [sic]... [crosstalk]

7 SEAN KHORSANDI: I'd invite you to join
8 us at the BSA in January, at the first hearing; we're
9 looking at another case where there's varying sets of
10 documentation; I was looking at your language about
11 the fine of \$25,000 for false information and there's
12 a question of -- we have one site; it's one block and
13 one lot, yet there's different information being
14 presented to the community board to the opposition
15 argument versus what was filed with the DOB versus
16 what was shown at the LPC and then it's an
17 incomprehensive set of documents, so in each case the
18 applicant has curated the narrative and they're
19 picking and choosing from the story and the set of
20 facts. So I guess I would want some clarity in the
21 definition of, you know how do you impose this fine
22 and what defines misinformation, and I would say if
23 you file an office building with the Department of
24 Buildings, full ready; willing to build it and then

2 go back to the BSA for a school building, that would
3 classify misinformation.

4 CHAIRPERSON KALLOS: Thank you...

5 SEAN KHORSANDI: There's no real
6 definition of what that...

7 CHAIRPERSON KALLOS: I appreciate it. To
8 the extent you can help us determine what the full
9 set of documents was; what they handed to each group,
10 that will help us have a specific.

11 I guess another piece I'd just like to
12 ask of all of you; we've had a little bit of trouble
13 with getting attention on this issue and I think the
14 reason being; generally when you're trying to tell a
15 story and you have a hundred words or 30 seconds to
16 tell a story, you want to be able to visually stand
17 in front of a place where something went wrong and
18 we've had trouble finding the "list of horrors," as
19 it were, and your case at Landmark West, you actually
20 won your fight at the end of the day, but if we could
21 have that list of horrors -- there's a building
22 that's 10 feet wide on Staten Island -- but
23 ultimately, in order for this legislation to really
24 gain attention in the public discourse, we're going
25 to need one or two horrible situations where the

2 community was right, bad things did happen and what
3 have you, and I guess I think this is a theme
4 throughout all, but just if folks could reply in the
5 affirmative. Have you in your experience on the
6 community board or as an active advocate felt that an
7 applicant before the BSA was not truthful in their
8 representations before the BSA or the community
9 board?

10 [background comment]

11 SEAN KHORSANDI: We have proof.

12 [background comment]

13 CHAIRPERSON KALLOS: And so hopefully
14 this \$25,000 fine would do so. And I guess the other
15 piece is, and one question is: should everyone
16 involved be subject to this \$25,000 fine, so should
17 the lawyers, the architects, the financial folks all
18 have to be on the hook for what they put in the
19 application?

20 KEVIN FORRESTAL: To the extent you can
21 prove culpability by any of the representatives. If
22 you as an attorney, I lie to you as the client and
23 you're acting in good faith; going to be hard to..

24 [interpose]

25

2 CHAIRPERSON KALLOS: Lawyers have a duty
3 to due diligence.

4 SEAN KHORSANDI: I think in the case if
5 you have architects on record speaking or in drawings
6 filed, that would qualify as two, if it's on a
7 statement and drawing form and in spoken form at a
8 hearing.

9 CHAIRPERSON KALLOS: One question that we
10 had internally and within the BSA and -- but for
11 those of you on community boards -- one question was,
12 and what I've seen in my community board, is that the
13 drawings are not reflective of the items that have
14 been certified. Should drawings have to be certified
15 and do people really make their decisions based on
16 the drawings they see at community boards? Anyone is
17 free to answer.

18 KEVIN FORRESTAL: Certainly you're right;
19 the drawings do not **[inaudible]**... [crosstalk]

20 CHAIRPERSON KALLOS: Can you make sure
21 your...

22 KEVIN FORRESTAL: The drawings frequently
23 do not represent what is being done or [sic]
24 represent the application. The applications
25 themselves, it's a farce, they have multiple zoning

2 -- in the same application they have different
3 things; the numbers don't add up. So if the
4 Department of Buildings or the BSA were ever graded
5 on the ability to get a clean application, they would
6 fail.

7 And the other thing that's going on now,
8 and actually, you made a comment -- I picked it up
9 before when you're talking about the maps -- people
10 are asking for changes and dividing lots into two
11 different tax lots; then they use the words back and
12 forth and the words "tax and zoning" disappear and
13 they start using the word "zoning" and people are
14 getting confused in applications as to what the zone
15 is and things are getting by also.

16 CHAIRPERSON KALLOS: Yeah.

17 HENRY EULER: Recently we had an
18 application for a medical facility in my community
19 and the drawings were very badly done, and
20 thankfully, the BSA noticed that; they said that this
21 is wrong and your side lots are wrong and everything
22 was wrong about it, and they are being forced to go
23 back to redo the whole plans. But they presented
24 this at a zoning committee of the community board as
25 if this was, you know everything was fine, and so it

2 was really not very honest of them to present those
3 plans to us when in fact they had a lot of flaws in
4 them.

5 CHAIRPERSON KALLOS: Thank you very much;
6 I'm just... [pause] In the testimony for Greenwich
7 Village, it says: "exhaust all options which are in
8 greater conformance with the existing zoning before
9 granting a variance." How could we institute that as
10 part of the application?

11 HARRY BUBBINS: Well I know -- that's a
12 great point. Oftentimes -- and again, a lot of
13 these... it depends on, as your colleague mentioned,
14 someone going from Rockaway to testify from Bayside
15 to be there in person to represent a community
16 board's opposition or concerns in the first place for
17 it to rise to some point of greater oversight. A lot
18 of times the BSA will require an applicant to provide
19 a different scenario, a different development
20 scenario that should provide for all the possible
21 complying development scenarios; not just one with a
22 different setback or one with, you know, take off a
23 few inches, which might be occurring in the
24 pre-application process behind closed doors. If they
25 want to verify that they cannot provide a reasonable

2 rate of return for any complying development, they
3 ought to provide a series of drawings or views or
4 financial schematics for all of them, and that would
5 take out the kind of discretion that applicants might
6 not feel sure about and know that this is what they
7 have to do if they really want to prove their case.

8 CHAIRPERSON KALLOS: I want to thank you
9 all for joining us for three and a half hours of
10 testimony and thank you for your service and hundreds
11 of hours on community boards you do not get paid.
12 Thank you to the preservation community for coming
13 out; we need all the preservation groups all over the
14 city, anyone with a historic district, we need them
15 all to come out and let their Council Members know
16 how important this is and really start mobilizing
17 anyone and everyone who's ever had a problem with the
18 BSA to get this package through so we can get the
19 conversation started and with one victory under our
20 belts, hopefully we can get a charter amendment that
21 will get what we really need. Thank you very much.

22 Our last pane is Robert Altman from the
23 Queens and Bronx Building Association, also we have
24 Lisa Paule. I want to thank Lisa; she represents
25 Serene Green as well as her neighborhood where she

2 lives, at the intersections of 84th and East End
3 Avenue. And I just want to thank Lisa; we have been
4 working together following the results of a BSA
5 application and she has worked with the community on
6 making sure that new construction was kinder and more
7 tolerable for neighbors, and working with her we've
8 actually made sure that other expansions on East End
9 Avenue respected their neighbors -- you can grab one
10 of the chairs. Feel free to move over to one of the
11 swivel chairs. And last but certainly not least,
12 Alan Sugarman...

13 ALAN SUGARMAN: Yeah.

14 CHAIRPERSON KALLOS: Perfect. And do we
15 still have Robert Altman here? We do not, so this
16 will be a panel of two. If you wanted to give
17 testimony, please make sure to fill out this card.
18 If you are watching on TV and you are watching
19 somewhere between December 14, 2016 and December 17,
20 2016, you can email your testimony or even just what
21 you feel or a video or whatever you would like to
22 BKallos@BenKallos.com and I will forward that on to
23 our committee counsel. And with that, whoever would
24 like to go first, we'd like to hear from you and
25 you've got five minutes.

1
2 CHAIRPERSON KALLOS: If there is a red
3 light, it is on.

4 LISA PAULE: Okay, hi. So my name is
5 Lisa Paule and I'm representing neighbors who live
6 primarily on 84th Street around East End Avenue. Our
7 experience stems from going in front of the BSA to
8 oppose The Chapin School request for four zoning
9 variances last year, 2015.

10 I wanted to just mention a couple things;
11 I did provide a written report that has details, but
12 I found it extremely interesting that in 1916, New
13 York City adopted its first comprehensive Zoning
14 Resolution in which it said: "The Board of Appeals
15 shall have power in a specific case to vary any such
16 provision in harmony with its general purpose and
17 intent so that the public health, safety and general
18 welfare may be secured and substantial justice done."
19 Well the reason I mentioned that -- which is in the
20 documented provided by the City Council today -- is
21 that our experience with the BSA shows that they did
22 exactly contrary to that and we were absolutely
23 appalled by the way the BSA handled the request for
24 four zoning variances and our takeaway from that --
25 which is in my report -- contains a little bit of

1 discussion on several topics which have to do with:

2 (1) accountability -- we feel that as a city agency

3 where the commissioners and the agency personnel are

4 paid in part by taxes raised by residents of the

5 city, they are therefore accountable to the needs of

6 residents and the city neighborhoods; (2) the right

7 to oppose -- we feel that we were not given the

8 platform to oppose in an organized format that we

9 prepared, which was unacceptable; (3) there was

10 minimal scrutiny of our evidence, which was quite

11 vast that we provided. We provided numerous letters,

12 fact-based testimony, statistics and illustrations,

13 statements by experts, a PowerPoint presentation, and

14 results of an online petition that garnered over 300

15 signatures of neighbors very appalled by what the

16 school was doing; we felt this was not given proper

17 scrutiny; there was a lack of care by the BSA about

18 our community experience; we felt there was an

19 inherent bias toward the developer, and also, a pre-

20 determined decision. We noted that in Ryan's earlier

21 testimony he mentioned it can take a year to get a

22 zoning variance approved, yet surprisingly, the four

23 variances got approved in five months and in fact,

24
25

1 they seemed to be approved prior to the end of the
2
3 five months.

4 The BSA failed to heed a major decision
5 by the community board that opposed the zoning
6 variances and in fact opposed the "as-of-right"
7 expansion of the school, and the BSA failed to
8 recognize the severity of the expansion; vis-à-vis
9 the contextual angle of the request for variances.

10 These were each really major aspects of
11 what we experienced and we feel are relevant to the
12 support, particularly of Resolution 282 and 418, and
13 we feel a comprehensive written decision absolutely
14 should be required and is essential to make sure that
15 all the points raised by opposition are covered and
16 noted.

17 Lastly, I want to mention that one of the
18 proposals was to have, in addition to the
19 commissioners, a representative from each borough of
20 each petition. As well as -- I forget, one other
21 person -- I feel that does not go far enough because
22 that amounts to seven people, which means even a
23 majority of the five commissioners could therefore
24 approve a variance when in fact the person
25 representing the borough on behalf of, for example,

1 the community, would have no voice. I therefore
2
3 would suggest it would be essential to have something
4 like at least a dozen people, you know, the five
5 commissioners, plus more, so that a majority would be
6 able to effect the decisions and recognize the rights
7 of the community.

8 And lastly, I want to say that we do this
9 to ensure quality of life and respect for the Upper
10 East Side community we live in, which has a lot of
11 charm, period charm and that was also not recognized
12 by the BSA. Thank you.

13 CHAIRPERSON KALLOS: Thank you very much.
14 Please stay.

15 LISA PAULE: Yeah.

16 ALAN SUGARMAN: Good afternoon. I'm Alan
17 Sugarman; I'm an attorney. I have been fighting a
18 variance proceeding before the BSA since 2007; it was
19 approved by the BSA in 2008; we did an Article 78,
20 went to the Supreme Court; the Appellate Division
21 Court of Appeals denied the appeal. Obviously, the
22 variance was granted. Then the applicant then waited
23 for several years to get everything done again and
24 they came back with change plans, and we're now back
25 before the BSA -- in fact, I filed a 40-page brief

2 and 600 pages of exhibits just one week ago today,
3 and this is the Congregation Shearith Israel project
4 on West 70th Street -- Sean from Landmark West was
5 alluding to that. The land there was purchased, and
6 they carry it on their books at \$79,000 bucks, and we
7 just got an appraisal for \$35 million bucks, and now
8 I guess they'll claim and unless they get, you know,
9 all of that back plus a profit, that they're somehow
10 losing money.

11 I'm going to file a statement
12 subsequently; I hope you can give us a few more days
13 if it's late -- I just heard of this. There's so
14 many issues you've raised, including -- I was so
15 happy to hear you mention the ECF of the court
16 system, the federal court system, which I've been
17 using since 1999, and the state finally got its act
18 together with its own thing. I do not understand
19 what the BSA is doing. And let me tell you something
20 -- and I wish Mr. Singer was here -- they now
21 finally, and this is an improvement, require a
22 digital filing, PDF filing, so anything you file with
23 them has to be filed by email or with a CD. You then
24 have to go down within 24 hours and file a paper
25 version, which by the way could really be a problem

1 if you live many places in the city. But -- and Sean
2 can verify this -- he went down a couple months ago
3 and asked to get a CD of what they had in the system
4 with his case and they refused; they said, "We don't
5 do that." So they're sitting there with electronic
6 copies; they won't give you the electronic copies;
7 you have to do a FOIL; you may not even know you want
8 to do a FOIL until weeks after stuff happens, and
9 then they give you paper copies and charge you for
10 it. And I just do not understand -- let me tell you,
11 and I've had websites for over 20 years -- all they
12 have to do is create a folder on the web and people
13 can click onto that for the case and download any
14 document they want to; they don't need anything
15 fancy, nothing fancy, you don't put an index file in
16 the folder; that's the way it works. I could get
17 that working for them in like five hours. I'm also,
18 in addition to a lawyer, an electrical engineer and
19 taught computers to lawyers since 1982.

20
21 Okay, let me give you some specific
22 things based upon my computer knowledge.

23 (1) BSA should require that any of the
24 spreadsheets they get from Freeman and the other
25 "appraiser" should be provided in Excel format with

2 the formulas. The SEC has been doing this for years,
3 for years. This is so simple, so when you get these
4 spreadsheets, you have to spend all your time keying
5 in stuff and trying to figure out how they computed
6 stuff; this is just so easy, so.. just almost
7 brainless.

8 The other thing; back in 2007 I
9 commissioned a SketchUp drawing -- do you.. SketchUp
10 is a three-dimensional public domain program that
11 Google has and you can see the property, you can put
12 it on Google Maps or Google Earth; you can see the
13 project in the location and every single big project
14 in the city is done by architects who do it maybe in
15 a higher end CAD program, but they could easily
16 provide a SketchUp version of this, or even provide
17 the CAD version, so you don't get the perspective
18 from the nicest spot on the street. So that's just
19 two little details on.. and I can see I have 23
20 seconds to go. I agree that the Article 78 time
21 period should go for more than 30 days; the problem
22 is, if you don't have an attorney representing you
23 before the BSA, it's going to take them 45 days just
24 to find the documents from the BSA through a FOIL and
25 there's no way [bell] they could do it in 30 days.

2 So I have many more things I can say; I
3 can comment on many of the questions you asked
4 before, and I've been up to here with this for so
5 many years. Thank you.

6 CHAIRPERSON KALLOS: By way of reference,
7 we might have a lot in common; I'm also an attorney,
8 but I'm also a software developer, so I could set up
9 that index file that you were just mentioning in
10 about 30 seconds.. [crosstalk]

11 ALAN SUGARMAN: Good.

12 CHAIRPERSON KALLOS: so.. but it might
13 take.. [crosstalk]

14 ALAN SUGARMAN: We should..

15 CHAIRPERSON KALLOS: five hours to
16 explain..

17 ALAN SUGARMAN: We need to speak again
18 then.

19 CHAIRPERSON KALLOS: Absolutely, and I
20 think you've mentioned certain names that I've had
21 similar dealings with.

22 So Lisa, I want to thank you for coming;
23 thank you for.. did you believe me when I said I was
24 coming after BSA way back when?

25 LISA PAULE: Yeah.

2 CHAIRPERSON KALLOS: Oh good, wow.

3 LISA PAULE: Yeah.

4 CHAIRPERSON KALLOS: Okay. Thank you for
5 taking me at... [interpose]

6 LISA PAULE: Yes.

7 CHAIRPERSON KALLOS: my word. We're
8 limited by the Charter, so that... we have two sections
9 for the City, we have the Charter; we have the
10 Administrative Code; the Administrative Code, we can
11 go nuts with, but the Charter is harder to amend;
12 [background comment] we can still amend it, but in
13 all cases, we aren't able to take away the powers of
14 the Mayor and we're also sometimes preempted by the
15 State; sometimes there are some Home Rule issues,
16 but... and those are... so yeah.

17 So the reason we can't change the makeup
18 of it so far is we believe that would take a charter
19 amendment, so that's why we're not even really
20 engaged in the collection of five or seven or doing
21 it more like the City Planning Commission.

22 [interpose]

23 ALAN SUGARMAN: Can I make one...

24 [crosstalk]

25 CHAIRPERSON KALLOS: Yeah.

2 ALAN SUGARMAN: other comment on
3 something... [crosstalk]

4 CHAIRPERSON KALLOS: Yeah, sure.

5 ALAN SUGARMAN: you said before about the
6 pre-application meetings? Those are terrible..

7 CHAIRPERSON KALLOS: Uhm-hm.

8 ALAN SUGARMAN: terrible; they're
9 private; they don't keep minutes; they don't keep a
10 recording..

11 CHAIRPERSON KALLOS: Yep.

12 ALAN SUGARMAN: to me they're an ex parte
13 contact or a meeting and a quasi-judicial proceeding;
14 on my appeals the City has tried to say they weren't
15 quasi-judicial, but it's just so offensive and what
16 happens there -- let's just look at the human part of
17 what goes on -- the BSA staff sits there [background
18 comment] with an applicant and they say okay, yeah,
19 do this and do that and it'll get through. So they
20 basically already approved it; it's very hard for
21 three and four months later for that same BSA staff,
22 a senior to say, oh you know, now that I know more,
23 think about it or we've gotten all this opposition
24 from the community boards and people that we -- I've

2 changed my mind, they can't do it on a personal and
3 human level... [crosstalk]

4 CHAIRPERSON KALLOS: And I think that the
5 record for this hearing now, and I think you've all
6 -- you've spoken truth to what came out of the record
7 of this hearing. So Lisa, I guess I wanted to just
8 hit on it. So I think what we're trying to do
9 through this legislation is address a lot of the
10 issues that you may have had concerns about, so
11 [background comment] have you had a chance to look at
12 any of the bills at all or?

13 LISA PAULE: Yeah.

14 CHAIRPERSON KALLOS: Okay. So I believe
15 Jimmy Van Bramer and Karen Koslowitz' bills around
16 evidence and making sure that they actually have to
17 speak to and **[inaudible]** deal with the issue of their
18 minimal scrutiny of your evidence... [crosstalk]

19 LISA PAULE: Yes.

20 CHAIRPERSON KALLOS: as well as
21 experience. I think throughout the hearing you heard
22 us talking to them about their bias and hopefully out
23 of this legislation we'll be able to talk a little
24 bit about creating some more framework around the
25 pre-application process and the whole idea of it

1 being predetermined, and I believe I even asked them;
2 can you at least tell us; can you show us your cards
3 about whether or not or it's a done deal or not,
4 whether they've pre-approved or what have you. Under
5 Karen Koslowitz' bill, whenever they make a decision
6 that contravenes a community board, they're going to
7 have to deal with those situations. We're trying to
8 get more of a written decision, so I think varying
9 levels of the testimony have gotten at this issue one
10 way or the other, but right now they kind of put out
11 like 20 words, which can be very hard to appeal from.
12 We were hoping to actually get a real item and I'm
13 sorry; I only got elected in 2013 to get this done in
14 2014 and I'm sorry it took so long to get this
15 hearing, but hopefully, with your help and the help
16 of others, we can get these bills passed and heard,
17 and if there's a way we can make the hearing process
18 a little bit less painful and easier for the
19 community to come out for. Thank you and I think to
20 the extent you have specific issues with a list of
21 horribles or specific sites where we've seen trouble
22 and if you don't mind sharing your appeal with us
23 electronically, we'd be interested in seeing it so at
24 least we can start sharing stories and putting media
25

2 in front of a specific building so that they can see
3 the exact problem that we're looking at. And I love
4 a lot of your ideas, whether it's having the
5 SketchUp drawings provided or providing the CAD files
6 in an open format so that's... [crosstalk]

7 ALAN SUGARMAN: Absolutely.

8 CHAIRPERSON KALLOS: **[inaudible]** I love
9 the idea of having the Excel files so that you can
10 actually see the formulas, so... [interpose]

11 ALAN SUGARMAN: Those were my suggestions
12 from eight years ago, so...

13 CHAIRPERSON KALLOS: So feel free to send
14 more... [crosstalk]

15 ALAN SUGARMAN: Technology moves forward
16 slowly.

17 CHAIRPERSON KALLOS: I can look at some
18 suggestions if they come in after 72 hours, but in
19 order for them to be a part of the official record,
20 so that if somehow I don't get this done now, I'm
21 able to look at the 2012 hearing, because it was... I
22 looked at the official record from there, so please
23 do your best to just get us something, anything in
24 time before 72 hours from now.

1
2 I want to thank everyone who came out
3 today. I want to thank our preservationists. I want
4 to thank MAS and Citizens Union for their overarching
5 work. I want to thank BSA for really engaging and
6 being open to a lot of the changes. I want to thank
7 so many Council Members who came out, from our Land
8 Use Chair, who stayed for much of the hearing, to our
9 Zoning Chair and so many others and hopefully with
10 the serious amount of leadership from the Council and
11 the fact that so many committee chairs have this
12 issue and that 51 Council Members all have their BSA
13 nightmare, that we can try to get something done in
14 2017. So **[03:43:35] [foreign language]** at the BSA.
15 For those watching, that is next year at the BSA. I
16 hereby conclude this meeting of the Committee on
17 Governmental Operations.

18 [gavel]

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C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date December 21, 2016