

CITY COUNCIL  
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON GOVERNMENTAL OPERATIONS

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May 23, 2017  
Start: 1:51 p.m.  
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HELD AT: 250 Broadway - Committee Rm,  
16th 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

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

1 COMMITTEE ON GOVERNMENTAL OPERATIONS 3

2 [sound check]

3 [pause]

4 [gavel]

5 CHAIRPERSON KALLOS: Good afternoon and  
6 welcome to this meeting of the Committee on  
7 Governmental Operations. I am proud to be joined by  
8 Council Member Mark Levine, Council Member Joe  
9 Borelli, Council Member Carlos Menchaca, and Council  
10 Member Antonio Reynoso. Two of the colleagues need  
11 to get to another hearing or meeting, so I'll ask  
12 Committee Clerk, William Martin to please call the  
13 roll for Menchaca and Reynoso.

14 COMMITTEE CLERK: Council Member  
15 Menchaca.

16 COUNCIL MEMBER MENCHACA: I vote aye on  
17 all. Thank you.

18 COMMITTEE CLERK: Reynoso.

19 COUNCIL MEMBER REYNOSO: I vote aye on  
20 all.

21 CHAIRPERSON KALLOS: Thank you.

22 Today the Committee on Governmental  
23 Operations is holding a second hearing on ten bills  
24 relating to the Board of Standards of Appeals and  
25 they include a whole number of bills, which I will

1  
2 now get into. One of the bills is not related to  
3 BSA; relates to sending voter history information to  
4 residents of the city in an effort to get them to  
5 vote more; this is something that I particularly  
6 support, given that I probably still own the domain  
7 name VoterHistory.org, where I had hoped to use that  
8 information on a voluntary site for folks, but I got  
9 elected instead of launching that site.

10 So of the nine bills we are voting on for  
11 the Board of Standards and Appeals today, the first  
12 of which is Introduction No. 282; that legislation  
13 was initially sponsored by Jimmy Van Bramer and this  
14 is a bill that he introduced in the previous Council  
15 session that we're proud to be hearing and passing  
16 today. It would require the Board of Standards and  
17 Appeals to refer to relevant arguments and evidence  
18 submitted to them in rendering a final determination.  
19 It was amended to permit [sic] similar comments to be  
20 categorized together for such response. It will take  
21 effect 90 days after becoming law. Technical  
22 amendments were also made.

23 Proposed Introduction No. 418-A, by  
24 Council Member Koslowitz, which she has been  
25 introducing for several sessions now, would require

2 the Board of Standards and Appeals to provide a  
3 response when it makes a determination contrary to  
4 the recommendation of a community or borough board.

5 It was amended to clarify that inadvertent failure to  
6 comply should not invalidate the decision of the  
7 Board of Standards and Appeals. It would take effect  
8 180 days after becoming law and technical amendments  
9 were also made.

10 Introduction 514-A, introduced by Council  
11 Member Matteo, who used to be a member of the  
12 Committee on Governmental Operations; however, we  
13 replaced him with a younger republican from Staten  
14 Island, and we're grateful to have him. And so  
15 Proposed Introduction No. 514-A would require the  
16 Board of Standards and Appeals to provide a  
17 notification to the owner of record when a variance  
18 is about to expire. Use of such property after the  
19 expiration of such term may be a violation of the  
20 certificate of occupancy and such notice would inform  
21 the owner that the Board of Standards and Appeals may  
22 not approve an application to extend the term of the  
23 variance until any penalties for such violation are  
24 paid. Since the first hearing, the provision related  
25 to potential penalties was amended; the universe of

2 term variances covered by the notification  
3 requirement was amended to begin with variances  
4 issued after December 31, 2013. It would take effect  
5 90 days after becoming law. Technical amendments  
6 were also made.

7 Proposed Introduction No. 1200-A --  
8 'cause we've done that many bills in this session  
9 [background comment] -- [laugh] by Council Member  
10 Richards, who also chairs the Zoning Committee, has  
11 been amended since the first hearing so that it would  
12 now require that certain copies of an application or  
13 application material that are required to be mailed  
14 to a Council Member, Borough President, Community  
15 Board, or City Agency are sent by applicants using a  
16 method that provides proof of service and that such  
17 proof be provided to the Board of Standards and  
18 Appeals. The Board would note on its website when  
19 such proof of service of delivery has been received  
20 and verified. It was amended to take effect 180  
21 [sic] days after becoming law.

22 And I'll take a moment here to just pause  
23 and explain why these are all useful.

24 With regards to the first item by Van  
25 Bramer, a lot of folks found that the BSA didn't seem

1 to be taking into account evidence and in their  
2 decisions did not include findings of fact relating  
3 to the items that people were discussing.  
4

5 With regards to Introduction 14-A [sic],  
6 by Council Member Koslowitz, we found that there  
7 really weren't strong decisions from the BSA, they  
8 were very short; sometimes less than 100 words long,  
9 and we wanted to make sure that they have to have  
10 specific responses to any concerns raised by the  
11 community.

12 And with regards to Introduction 514-A;  
13 on Staten Island, where Council Member Matteo  
14 represents, there were a lot of people who had  
15 variances that had expired.

16 And with regards to Introduction 1200,  
17 there were a number of situations where Council  
18 Members and others weren't actually getting notices  
19 about BSA applications that were coming before them  
20 and their Community Boards and others, and in so  
21 doing, some folks -- by requiring the applicant to  
22 provide this information, we feel that it will put  
23 people on notice.

24 Proposed Introduction No. 1390 and on are  
25 bills that I was proud to work on with the Land Use

2 as well as Legislative Division. I want to thank our  
3 Committee Counsel, Brad Reid, for all the work he's  
4 put into these bills for a very long time. They were  
5 inspired by reports done by the Municipal Art Society  
6 in 1976 and 2004, and it only took 40 years to get  
7 these reforms implemented.

8 We've now been joined by Council Member  
9 David Greenfield. [background comment]

10 Proposed Introduction No. 1200 has been  
11 amended since first hearing so that it would now  
12 require that certain... I already read that one.

13 Proposed Introduction No. 1390 would  
14 require the Department of City Planning to publicly  
15 post the name and contact information of the employee  
16 acting as a coordinator with the Board of Standards  
17 and Appeals. The Department would also be required  
18 to post a record of each application for a variance  
19 or a special permit to the Board of Standards and  
20 Appeals for which the Department provided testimony,  
21 as well as a copy of such testimony. The bill was  
22 amended to require that the website of the Board of  
23 Standards and Appeals link to such testimony. It  
24 would take effect immediately. Technical amendments  
25 were also made.



2 The BSA process involved an applicant  
3 often without any other party on the other side.  
4 Technically, that party is the Department of City  
5 Planning, which is vested with protecting our Zoning  
6 Code from the variances that the BSA seeks to grant,  
7 and so the Department of City Planning had a person  
8 whose responsibility this was; since then, that  
9 person has retired. This legislation would require  
10 them to designate a new person and allow us to keep  
11 track on where they're representing the City and  
12 protecting the zoning from variances.

13 Introduction 1391-A would require the  
14 Board of Standards and Appeals to have access to the  
15 advice of a State certified general real estate  
16 appraiser with no less than five years' experience in  
17 analyzing and auditing real estate investments. It's  
18 been amended since introduction to provide that the  
19 access to such expertise may be attained through a  
20 contract of a third party or engaging the service of  
21 an appraiser already under contract with another  
22 agency. It was also amended to require that such  
23 appraiser have at least five years' of experience in  
24 analyzing and auditing real estate investments. It  
25 was amended to take effect 120 days after becoming

1 law. Technical amendments were also made. Let the  
2 world be on notice; that if you're out there and you  
3 are a general real estate appraiser, please begin  
4 applying for those jobs. We wanted to make sure that  
5 the BSA had that expertise so that they could analyze  
6 the financials. One of the grounds and one of the  
7 five findings of fact necessary is often that there  
8 is a financial hardship and so we need to make sure  
9 that when somebody is saying that they have a  
10 financial hardship that we have expertise to  
11 determine so.

12 We also have Introduction 1392-A; this  
13 legislation does quite a lot. It would require  
14 certain standards for applications to the Board of  
15 Standards and Appeals as well as for application  
16 process and would establish a civil penalty for false  
17 statements made to the Board. The bill would require  
18 certain materials to be included with certain  
19 applications, including a notarized certification  
20 that the statements in the materials are correct, a  
21 Neighborhood Character Study if a claim of uniqueness  
22 of physical conditions is being made, and a financial  
23 analysis by a qualified real estate professional,  
24 such financial analysis would contain market-based  
25

2 acquisitions costs, any appraisal of the property  
3 provided by the applicant as part of an applicant to  
4 a government entity within the five years prior, hard  
5 and soft costs, and proofs of attempts to obtain  
6 financing where relevant.

7 The bill has been amended to require that  
8 any minimum required materials beyond those above  
9 should be established by rule, provided that  
10 additional materials could be required from  
11 individual applicants in the discretion of the Board.

12 The bill was also amended to require that  
13 any materials presented by an applicant to a  
14 Community Board or Borough Board for a public hearing  
15 by those entities on the applicant must also be  
16 supplied by the applicant to the Board of Standards  
17 and Appeals; such entities may submit a copy of any  
18 such testimony and materials to the Board as well.

19 The bill would also require testimony delivered by an  
20 applicant at public hearings held by the Board on the  
21 application shall be sworn or affirmed under oath.

22 The bill was amended to require the Board to report  
23 to the Department of Investigation any information  
24 concerning a written instrument that contains a false  
25 statement that was presented to the Board with

2 knowledge or belief that such instrument would be  
 3 part of the record of the Board.

4 And finally, the false statement civil  
 5 penalty section of the bill was amended since the  
 6 prior hearing to require civil penalty should only be  
 7 applied to a false statement made or allowed  
 8 knowingly rather than negligently for the legal  
 9 scholars in the room -- like my good friend to my  
 10 right -- it is a much higher standard. It was also  
 11 amended to provide that the Corporation Counsel or an  
 12 agency designated by the Mayor would have the  
 13 authority to enforce the provision but that the  
 14 Office of Administrative Trials and Hearings would  
 15 adjudicate any such violation. Additionally, it was  
 16 amended to require that any person who notifies the  
 17 Board of such violation prior to receiving notice of  
 18 the potential violation shall not be subject to such  
 19 civil penalty. Further, the maximum amount of civil  
 20 penalty was reduced from \$25,000 to \$15,000.

21 A just to clarify, Proposed Introduction  
 22 1392-A is not intended to require that applicant  
 23 certify that the content in materials provided by  
 24 their consultants are correct; rather, the intent is  
 25 to require that every person submitting application

2 materials be held accountable for the accuracy of  
3 their statements, reports and the work product  
4 submitted in support of an applicant. The bill does  
5 hold applicants accountable for the submission of  
6 materials prepared by others that applicants know are  
7 incorrect. This was amended to take effect 12 months  
8 after becoming law. Technical amendments were also  
9 made.

10 Proposed Introduction 1393-A would  
11 require the Board of Standards and Appeals to report  
12 information about applications for variances and  
13 special permits, and appeals of decisions regarding  
14 variances and special permits to the Council twice  
15 per year. It was amended since the prior hearing to  
16 include reporting on pre-application meetings. It  
17 would also take effect immediately. Technical  
18 amendments were also made.

19 Introduction 1394-A would require the  
20 Board of Standards and Appeals to compile data on the  
21 location of variances and special permit applications  
22 into a data set. Since the last hearing, it's been  
23 amended to provide that such data set may be mapped  
24 as a layer on an existing interactive map and such  
25 data shall include variances and special permits to

2 applications beginning on January 1, 1998 -- when I  
3 graduated high school -- 1998. It was amended...  
4 [interpose background comment] Well no, 1998 was when  
5 I [background comment] graduated high school. It was  
6 amended to take effect 12 months after becoming law.  
7 Technical amendments were also made. This is also  
8 one of the recommendations from the Municipal Art  
9 Society and this would allow us to see on a map where  
10 the BSA is rezoning under the law.

11 And then on a non-BSA bill we have  
12 Introduction 848-A, which would required a voter  
13 history be mailed to each registered voter, but has  
14 been amended since last hearing to include such voter  
15 history with the Voter Guide prepared by the Campaign  
16 Finance Board. It has been further amended to  
17 provide the CFB flexibility in how such voter history  
18 is provided with such Voter Guide, and it was amended  
19 to take effect on January 1, 2018, but I severely  
20 hope that the CFB does it for this election.

21 Seeing no one here to testify... [pause] So  
22 if you care to... Please feel free to email your  
23 testimony to Policy@BenKallos.com and we will add it.  
24 Do we have any comments from any of the members? I  
25 now ask the Committee Clerk to call the roll.

2 COMMITTEE CLERK: William Martin,  
3 Committee Clerk, roll call vote Committee on  
4 Governmental Operations, all items are coupled.  
5 Chair Kallos.

6 CHAIRPERSON KALLOS: Yes on all.

7 COMMITTEE CLERK: Greenfield.

8 COUNCIL MEMBER GREENFIELD: Mr. Chair,  
9 may I explain my vote, please? Chair, may I explain  
10 my vote, please? Your eminence, may I explain my  
11 vote, please?

12 CHAIRPERSON KALLOS: David, I appreciate  
13 the gender-neutral use of Chair, thank you. Please  
14 do.

15 COUNCIL MEMBER GREENFIELD: Thank you,  
16 Chair.

17 I very much appreciate your leadership in  
18 this particular area. As you know, the BSA plays a  
19 significant role in the land use process by acting as  
20 the constitutionally necessary safety valve to grant  
21 relief from the City Zoning Code. The ability of  
22 property owners to apply for this relief reduces the  
23 risk of claims of takings of private property and  
24 ensures that our Zoning Resolution is upheld, and as  
25 such, the Board is instrumental in shaping our

2 neighborhood processes by granting special permits  
3 and variances outside of the ULURP process. And as  
4 Land Use Chair, I believe that the BSA needs to be  
5 more accountable and much more responsive to  
6 community concerns in order to bring more  
7 transparency and predictability to the application  
8 process, and I think that overwhelmingly this package  
9 will do just that. So by and large I'm in favor of  
10 this; however, I will abstain from one piece of  
11 legislation, which is Intro 1392-A. I support what  
12 it's trying to accomplish, specifically ensuring  
13 accuracy in BSA applications, holding practitioners  
14 accountable, enhancing predictability in the BSA  
15 process, and I congratulate you, Chair on your  
16 legislation, however, I have received letters from  
17 the New York City Bar Association's Committee on Land  
18 Use, Planning and Zoning, the American Council of  
19 Engineering Companies of New York, as well as land  
20 use law practitioners who routinely come before the  
21 BSA, and they have raised concerns regarding that  
22 potentially this bill might hamper the BSA's  
23 flexibility and the ability on, especially small  
24 property owners, schools, religious, and not-for-  
25 profit institutions who are seeking relief from the



1 BSA. Without getting into all the details, I look  
2 forward to having the opportunity to chat with you  
3 about that offline and to see whether it is still  
4 possible to make some more tweaks and certainly the  
5 tweak that you made -- the "knowingly" tweak is a  
6 very significant one, and absolutely, as an adjunct  
7 professor of law who teaches this exact subject, I  
8 appreciate that and I think it's significant,  
9 however, I do want to reserve my vote because of  
10 those specific concerns that were raised by the Bar  
11 Association and the American Council of Engineers,  
12 and I do, however, want to note that this is a  
13 significant achievement; this is the first major  
14 reform of the Board of Standards and Appeals  
15 literally in decades and the world of land use and  
16 BSA and variances and special permits have gotten a  
17 lot more complicated. When the first zoning text  
18 came out it was a handful of pages; it is now some  
19 3,000 pages, and so obviously a lot to work with over  
20 there and I look forward to working with you on this  
21 and I congratulate you, Chair on a very significant  
22 accomplishment. Thank you.

23  
24 COMMITTEE CLERK: Council Member Levine.  
25

2 COUNCIL MEMBER LEVINE: I can't compete  
3 with either the Chair's statements or that one, so  
4 I'm gonna simply vote aye on all. Thank you.

5 COMMITTEE CLERK: Borelli.

6 COUNCIL MEMBER BORELLI: Aye on all.

7 COMMITTEE CLERK: By a vote of 6 in the  
8 affirmative, 0 in the negative and no abstentions,  
9 all items have been adopted with the exception of  
10 Introduction No. 1392-A, which is adopted by a vote  
11 of 5 in the affirmative, 0 in the negative and 1  
12 abstention. Thank you.

13 [pause]

14 CHAIRPERSON KALLOS: Hereby conclude this  
15 hearing of the Committee on Governmental Operations.

16 [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 May 25, 2017