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## THE COUNCIL

# **COMMITTEE REPORT and Briefing Paper OF THE GOVERNMENTAL AFFAIRS Division and LAnd Use Division**

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**COMMITTEE ON GOVERNMENTAL OPERATIONS**

*Hon. Fernando Cabrera, Chair*

**COMMITTEE ON LAND USE**

*Hon. Rafael Salamanca, Jr., Chair*

#### September 26, 2019

**Oversight:** General Operations of the Board of Standards and Appeals, and Zoning Lot Mergers

**Int. No. 1723-2019:** By Council Member Kallos

**Title:** A Local Law to amend the New York city charter, in relation to sworn testimony before the board of standards and appeals

**Charter:** Sections 663 and 668

**Int. No. 1691-2019:** By Council Members Cabrera, Powers and Kallos

**Title:** A Local Law to amend the New York city charter, in relation to assigning a unique identifying number to each zoning lot in the city

**Charter:** Section 191

**Int. No. 1692-2019:** By Council Members Cabrera, Powers and Kallos

**Title:** A Local Law to amend the administrative code of the city of New York, in relation to the creation of an interactive zoning lot map

**Administrative Code:** Adds a new Section 25-116

**Int. 1701-2019:** By Council Members Kallos, Rosenthal, Reynoso, Levine and Powers (in conjunction with the Manhattan Borough President)

**Title:** A Local Law to amend the administrative code of the city of New York, in relation to community notification requirements for transfers of development rights

**Administrative Code:** Adds a new Section 7-628

# **Introduction**

On September 26, 2019, the Committee on Governmental Operations, chaired by Council Member Fernando Cabrera, and the Committee on Land Use, chaired by Council Member Rafael Salamanca, Jr., will hold a joint oversight hearing on general operations of the Board of Standards and Appeals (“BSA”) and zoning lot mergers, and a first hearing on Int. No. 1723-2019, in relation to sworn testimony before the BSA, sponsored by Council Member Kallos; Int. No. 1691-2019, in relation to assigning a unique identifying number to each zoning lot in the city, and Int. No. 1692-2019, in relation to the creation of an interactive zoning lot map, both sponsored by Council Members Cabrera, Powers, and Kallos; and Int. No. 1701-2019, in relation to community notification requirements for transfers of development rights, sponsored by Council Members Kallos, Rosenthal, Reynoso, Levine, and Powers (in conjunction with the Manhattan Borough President). The committees expect to receive testimony from City agencies with a role in zoning and city planning, including the Department of City Planning (“DCP”),[[1]](#footnote-2) the Department of Buildings (“DOB”), and the BSA, as well as advocates and members of the public.

# **Background**

The Zoning Resolution is enacted primarily through a process known as the Uniform Land Use Review Procedure (“ULURP”) set forth in section 197-c of the City Charter. Amendments of zoning text pursuant to sections 200 and 201 of the Charter follow a similar process.[[2]](#footnote-3) The City Planning Commission (“CPC”), comprised of thirteen members,[[3]](#footnote-4) must vote on the proposed amendments to the Zoning Resolution, and if approved or approved with modifications, the City Council then acts to approve, disapprove, or modify the proposal.[[4]](#footnote-5) Once enacted, the Zoning Resolution is enforced by the DOB.[[5]](#footnote-6) In New York City, most development is “as-of-right” and the only governmental body to weigh in on compliance with the provisions of the Zoning Resolution is the DOB. The Zoning Resolution can be waived in several ways. The CPC can grant discretionary approvals in the form of authorizations and special permits, and the BSA, as discussed below, can grant discretionary approvals of zoning provisions through special permits, variances, and appeals of the DOB’s interpretations of the Zoning Resolution.

During this hearing, the Committees will conduct general oversight of the BSA’s operations, in particular focusing on the agency’s procedures for accepting testimony under oath. This hearing will also focus on the role of both the DOB and the BSA in interpreting the provisions of the Zoning Resolution, in particular those provisions relating to zoning lot mergers.

# **The Board of Standards and Appeals**

The BSA was originally established in 1916, when New York City adopted its first comprehensive zoning resolution, as an “independent board to grant ‘relief’ from the zoning code.”[[6]](#footnote-7) The BSA is comprised of five commissioners, each appointed by the Mayor for a term of six years.[[7]](#footnote-8) Of these, one must be a professional planner, one a registered architect, and one a professional engineer, each with ten years of experience.[[8]](#footnote-9) Both the chair and vice-chair of the BSA are designated by the Mayor, but must satisfy the requisite experience to serve as the planner, the architect, or the engineer.[[9]](#footnote-10) No more than two of the BSA’s commissioners may reside in any one borough.[[10]](#footnote-11)

The BSA is empowered to interpret the meaning or applicability of the Zoning Resolution, Building Code, Fire Code, Multiple Dwelling Law, and Labor Law, with respect to the usage of private property.[[11]](#footnote-12) This includes the ability to “vary” in certain instances the provisions of these regulations.[[12]](#footnote-13) This ability to grant such relief on an individual basis is necessary in order to satisfy the “takings clause” of the United States Constitution.[[13]](#footnote-14) In that role, the BSA can act “as a safety valve by releasing restrictions in certain instances from their possible confiscatory effect in depriving a property owner of a proper use of his property while at the same time requiring him to pay taxes thereupon.”[[14]](#footnote-15) Specifically, when the application of a provision of the Zoning Resolution to an individual property results in “practical difficulties or unnecessary hardship,” provided specific findings are made,[[15]](#footnote-16) the BSA may “vary or modify the provision so that the spirit of the law shall be observed, public safety secured and substantial justice done.”[[16]](#footnote-17)

The BSA is also empowered to grant “special permits” for specified uses, or for the modification of use and bulk regulations[[17]](#footnote-18) in appropriate cases.[[18]](#footnote-19) Special permits that affect use regulations are granted to permit a certain use in a district where that use might not otherwise be allowed, such as an auto service station in designated commercial districts,[[19]](#footnote-20) or an electric or gas utility substation in a residence district.[[20]](#footnote-21) The uses that may be permitted, and the conditions under which they may be permitted, are also enumerated within the Zoning Resolution.[[21]](#footnote-22) Special permits that affect bulk regulations include the enlargement of single- and two-family residences in designated areas of Brooklyn, enlargement of non-residential buildings, and modification of community facility uses.[[22]](#footnote-23) The BSA can extend the term of variances and special permits, or modify previous approvals.[[23]](#footnote-24)

The BSA can also renew, or “vest,” building permits that have lapsed due to zoning changes or common law doctrine, if the work is determined to have commenced under validly-issued permits and tangible change occurred, or if economic loss would result due to significant expenditure or irrevocable financial commitment.[[24]](#footnote-25) The BSA may grant waivers of certain provisions of the State General City Law, such as of the prohibition of building in the bed of any street identified on an official map[[25]](#footnote-26) or to grant certificates of occupancy to buildings that do not front on a mapped street.[[26]](#footnote-27) The BSA may also vary or modify certain provisions and requirements of the State Multiple Dwelling Law.[[27]](#footnote-28)

Finally, one of the more often-used powers of the BSA is to hear and decide appeals to decisions rendered by the DOB, or any City agency that has jurisdiction over the use of land or bulks of buildings, for which the BSA may reverse, affirm, or modify such decisions.[[28]](#footnote-29)

Public input is required for the exercising of certain powers of the BSA. Prior to the consideration of applications for variances or special permits, community boards (“CBs”) and borough boards are to review such applications under a process codified in the City Charter.[[29]](#footnote-30) CBs, borough boards, lessees, tenants, and owners have a right to appear before the BSA to submit arguments and evidence in support of or in opposition to an application, and the BSA must respond to them in its final written decision.[[30]](#footnote-31) The CPC shall also be a party to any proceeding to vary the Zoning Resolution and may appear and be heard on any application.[[31]](#footnote-32) The DCP must post on its website a copy of testimony it provides on applications for variances and special permits.[[32]](#footnote-33) Because the BSA reviews orders from the DOB, the Fire Department, the Department of Transportation, or any other agency responsible for enforcement of the Zoning Resolution, Building Code, Fire Code, Multiple Dwelling Law, and Labor Law, with respect to the usage of private property,[[33]](#footnote-34) such agencies may also appear before the BSA. The BSA rules provide that the chair may permit testimony of several people, including elected officials; CB representatives; any individual called by an applicant; any person who resides at, leases, or owns real property within an affected area, or such person’s representative; neighborhood, civic, business, or industry association representatives; and members of the general public.[[34]](#footnote-35) The BSA chair may also compel the attendance of witnesses.[[35]](#footnote-36)

In 2017, the City Council passed Local Law 103 of 2017, amending the Charter to provide that certain testimony delivered at a public hearing must be sworn or affirmed under oath. Specially, only testimony *by the applicant* on a proposed application to either vary the Zoning Resolution or for a special permit shall be sworn or affirmed under oath.[[36]](#footnote-37) The BSA’s chair or vice-chair may administer such oaths.[[37]](#footnote-38) Local Law 103 also established a civil penalty for any person who knowingly makes, or allows to be made, false statements to the BSA.[[38]](#footnote-39) In addition to the applicant, the property owner and the preparer of any document accompanying an application must certify before a notary under penalty of perjury that the statements made in the application are correct.[[39]](#footnote-40) The BSA must also report to the Department of Investigation all information concerning a written false statement, or false information, offered to the BSA.[[40]](#footnote-41)

Notwithstanding Local Law 103, the BSA rules do not require any person offer testimony under oath. Rather, the rules require only that any person offering testimony “must state his or her name, address within the affected area, and/or representative capacity.”[[41]](#footnote-42)

# **Zoning lot mergers**

The City Register tracks every assessable unit of real property. Such units are referred to as “tax lots.” Every tax lot is identified by a borough block and lot number.[[42]](#footnote-43) The City Tax Maps maintained by the City Register show every tax lot.

The New York City Zoning Resolution regulates the height and bulk of buildings.[[43]](#footnote-44) The regulations of the Zoning Resolution apply to every “zoning lot” in the City.[[44]](#footnote-45) A zoning lot can consist of a single tax lot or any number of contiguous tax lots.[[45]](#footnote-46) For instance, a row of townhouses constructed on contiguous tax lots may occupy a single zoning lot, or several separate zoning lots.[[46]](#footnote-47)

For every zoning lot in the City, the Zoning Resolution specifies a maximum number of square feet of building area per square foot of zoning lot area. This ratio is known as the maximum floor area ratio (“FAR”).[[47]](#footnote-48) For a variety of reasons, including changes in zoning and the expiration of urban renewal plans, existing buildings may not utilize the maximum FAR available on their zoning lots. The difference between the maximum allowable square footage and the built square footage constitute “development rights.” The owners of transferable development rights can transfer their unused development rights to other tax lots within a zoning lot, enabling a transferee to build a denser, taller building.

The Zoning Resolution provides that property owners can agree to subdivide or merge their zoning lots by recording zoning lot descriptions and “declarations of restrictions” against each affected tax lot.[[48]](#footnote-49) Such declarations must describe the entire tract of land covered by the zoning lot and must be recorded in the City Register.[[49]](#footnote-50) Parties also typically record (although they are not required to) a zoning lot development agreement (“ZLDA”), or similar document, which contains the principal business terms of the transaction, including the development rights being transferred.[[50]](#footnote-51) The transfer of development rights from one owner to another is subject to real property transfer tax.[[51]](#footnote-52) Within thirty days of the transfer of the deed to such rights but prior to the recording of such deed, the grantor and the grantee must file a joint real property tax return.[[52]](#footnote-53) Upon filing, the City Register shall affix evidence of such filing to the deed.[[53]](#footnote-54)

Zoning lot mergers are distinct from other transfers of development rights. Programs to transfer development rights include landmark transfers intended to compensate owners of landmarked buildings for development loss by allowing them to transfer development rights to properties across a street or intersection.[[54]](#footnote-55) Additionally, special transfer programs, such as those created to benefit the South Street Seaport, theater district, and the High Line, among others,[[55]](#footnote-56) allow transfers between specified districts. Unlike zoning lot mergers, which may take place as-of-right, without public review, landmark transfers and transfers within special districts do require approval by the CPC or City Planning Chair, and are subject to other regulations.[[56]](#footnote-57)

This image[[57]](#footnote-58) illustrates a zoning lot merger and other transfer of development rights:



While the documents evincing the merger and subdivision of zoning lots become a public record when they are recorded, such actions do not require any public review.[[58]](#footnote-59) For this reason, developers prefer them to other methods of adding capacity, such as an upzoning, which does require discretionary approvals.[[59]](#footnote-60) Also, there are no publically-accessible maps of zoning lots, and no centralized system to identify and track zoning lot mergers and other transfers of development rights.[[60]](#footnote-61) In fact, at the time of publication of a 2012 draft paper from the Furman Center for Real Estate and Urban Policy at New York University, the Center’s own database of about 400 such transfers executed between January 2003 and June 2011 (the overwhelming majority of which were zoning lot mergers), was the most comprehensive information available on such transfers. The Furman Center compiled its information by painstakingly examining legal documents filed with the City Register, among other sources.[[61]](#footnote-62) Reportedly, some real estate brokers also maintain their own transfer lists.[[62]](#footnote-63) This is in contrast to how the City keeps track of tax lots and zoning districts, information for which the public can readily find on DCP’s online interactive Zoning and Land Use Application (“ZoLa”) at www.nyc.gov/zola.

The lack of readily accessible data about zoning lot boundaries and development rights makes it difficult for the public and its elected representatives to know when a developer is accumulating development rights to erect a new structure that is out of scale with the surrounding neighborhood. In recent years, some particularly unusual zoning lot boundaries and transfers have given rise to controversies, zoning challenges, and litigation.

# **200 Amsterdam Avenue**

As discussed above, zoning lots can be composed of a single tax lot or any number of contiguous tax lots. Whether or not zoning lots can also be composed of partial tax lots was the subject of a recent challenge to a proposed residential tower on Manhattan’s Upper West Side.[[63]](#footnote-64)

Developers sought to build a 55-story residential tower on an 110,794 square-foot development site at 200 Amsterdam Avenue.[[64]](#footnote-65) In order to build to that height, developers assembled a 39-sided zoning lot, 10 times the size of the project’s footprint, assembled from a combination of full and partial tax lots, as illustrated below:[[65]](#footnote-66)



The DOB issued a building permit authorizing construction of the project on September 27, 2017.[[66]](#footnote-67) Opponents of the development included multiple elected officials and civic groups.[[67]](#footnote-68) Opponents appealed the DOB’s decision to grant a construction permit to the BSA.[[68]](#footnote-69) As discussed above, the BSA is empowered to hear and decide appeals to decisions rendered by the DOB, or any City agency that has jurisdiction over the use of land or bulks of buildings, for which the BSA may reverse, affirm, or modify such decisions.[[69]](#footnote-70) After the BSA affirmed the DOB’s decision in July 2018, opponents asked the New York State Supreme Court, New York County, to vacate the BSA’s decision and revoke the DOB’s permit for 200 Amsterdam Avenue.[[70]](#footnote-71)

Among other objections to the project,[[71]](#footnote-72) opponents argued that the proposed development’s zoning lot is not a proper zoning lot within Zoning Resolution § 12-10’s definition of “zoning lot” because it is comprised of several partial tax lots, instead of whole, un-subdivided tax lots.[[72]](#footnote-73) Opponents argued that compiling portions of several neighboring tax lots “gerrymandered” them into a zoning lot that skirts both the letter and intent of the Zoning Resolution.[[73]](#footnote-74) Subdivision d of § 12-10 reads that a zoning lot is:

(d) a tract of land, either unsubdivided or consisting of two or more lots of record contiguous for a minimum of 10 linear feet, located within a single *block*, which at the time of filing for a building permit (or, if no building permit is required, at the time of filing for a certificate of occupancy) is declared to be a tract of land to be treated as one *zoning lot* for the purpose of this Resolution. Such declaration shall be made in one written Declaration of Restrictions covering all of such tract of land or in separate written Declarations of Restrictions covering parts of such tract of land and which in the aggregate cover the entire tract of land comprising the *zoning lot*. Any Declaration of Restrictions or Declarations of Restrictions which individually or collectively cover a tract of land are referred to herein as “Declarations.” Each Declaration shall be executed by each party in interest (as defined herein) in the portion of such tract of land covered by such Declaration (excepting any such party as shall have waived its right to execute such Declaration in a written instrument executed by such party in recordable form and recorded at or prior to the recording of the Declaration). Each Declaration and waiver of right to execute a Declaration shall be recorded in the Conveyances Section of the Office of the City Register or, if applicable, the County Clerk's Office of the county in which such tract of land is located, against each lot of record constituting a portion of the land covered by such Declaration.

A *zoning lot*, therefore, may or may not coincide with a lot as shown on the official tax map of the City of New York, or on any recorded subdivision plat or deed.[[74]](#footnote-75)

In the course of opponents’ challenge at the BSA, the DOB adopted opponents’ interpretation of the Zoning Resolution, finding that it precludes zoning lots from consisting of partial tax lots.[[75]](#footnote-76) The DOB argued before the BSA that, while the 1961 version of the zoning lot definition permitted zoning lots to contain partial tax lots, the 1977 amendment to the definition required that zoning lots only contain entire tax lots.[[76]](#footnote-77) The DOB argued that a “lot of record” in § 12-10 refers only to complete tax lots because complete tax lots are the only types of lots that declarations of restrictions can be recorded against.[[77]](#footnote-78) The DOB also argued that the term “unsubdivided” in § 12-10 refers to a single tax lot, and that the “may or may not coincide language” reflects that zoning lots may only consist of two or more complete tax lots.[[78]](#footnote-79) Counsel for the DOB testified before the BSA, saying,

. . . the Department agreed that the correct interpretation of the ‘zoning lot’ definition does not permit the zoning lots to consist of parts of tax lots for multiple reasons. For zoning lots [formed] pursuant to subsection D, which is the case today, the zoning lot can consist of un-subdivided tracts of land within a block. By virtue of creating a zoning lot within an un-subdivided tract of land, they are necessarily subdividing the tracts of land. *Therefore, it’s illogical to accept. . . . the developer’s argument that, after the creation of the zoning lot, they’re still un-subdivided.”[[79]](#footnote-80)*

In reaching this conclusion, the DOB repudiated a 1978 departmental memo issued by Acting Commissioner Irving E. Minkin (the “Minkin Memo”), which had previously interpreted § 12-10 (d) to mean that a single zoning lot may consist of one or more tax lots or “parts of tax lots.”[[80]](#footnote-81) The DOB began the process of writing a new departmental bulletin to clarify that “*A 12-10 (d) zoning lot is a tract of land that consists of one tax lot or more tax lots (not parts of tax lots)*. . . .,”[[81]](#footnote-82) and to set forth conforming “administrative procedures and forms required to create and verify the formation of a zoning lot.”[[82]](#footnote-83)

Nevertheless, the DOB asked the BSA to affirm the 200 Amsterdam Avenue permit because it relied on the Minkin Memo, which had yet to be rescinded.[[83]](#footnote-84) The DOB said it chose not to act on its draft bulletin until the legal challenge against the development was concluded.[[84]](#footnote-85)

On March 14, 2019, the State Supreme Court vacated the BSA’s decision upholding the development’s building permit.[[85]](#footnote-86) The court found that the BSA erred by not adopting the DOB’s “plain language” interpretation of § 12-10 (d).[[86]](#footnote-87) It also found that the BSA could not rely on the Minkin Memo because the DOB’s “corrected interpretation” of § 12-10 (d) is entitled to retroactive application, thus invalidating the building permit.[[87]](#footnote-88) The court wrote, “Indeed, by publically correcting its interpretation of ZR Section 12-10 (d) during the Appeal, DOB undermined the statutory basis for its issuance of the Permit in the first instance.”[[88]](#footnote-89) The court remanded the case back to the BSA with instructions to review the permit application in accordance with the plain language of the zoning resolution.[[89]](#footnote-90)

On remand, a majority of the BSA commissioners again voted on June 25, 2019 to affirm the DOB’s decision to issue a building permit for 200 Amsterdam Avenue, to the consternation of the development’s opponents.[[90]](#footnote-91)

The BSA majority’s resolution relied in principal part on its own interpretation of the language of § 12-10 (d).[[91]](#footnote-92) The BSA concluded that § 12-10 (d) “requires only that a zoning lot be an ‘unsubdivided’ ‘tract of land’ or a ‘tract of land’ ‘consisting of two or more lots of record;’” that § 12-10 (d) provides no definitions for “tract of land,” “unsubdivided,” or “lots of record,” nor reference to “tax lots” specifically; but that the 200 Amsterdam Avenue site, as surface land, is “land” under § 12-10.[[92]](#footnote-93) The BSA concluded that the 200 Amsterdam Avenue site is a tract of land that is “either unsubdivided or consisting of two or more lots of records,” consistent with the Zoning Resolution.[[93]](#footnote-94)

The BSA found that the 200 Amsterdam Avenue site has been “declared to be a tract of land to be treated as one *zoning lot*,” consistent with § 12-10 (d), as evidenced by the zoning lot declaration, which, contrary to the DOB’s assertions, the BSA found may be recorded against partial tax lots, and had in fact been recorded with the City Register in this case.[[94]](#footnote-95) The BSA concluded that because “no categorical rule appears in the provisions of the Zoning Resolution that a ‘tract of land’ need be a complete tax lot,” the 200 Amsterdam Avenue site “in and of itself constitutes a single, unified tract of land.”[[95]](#footnote-96) The BSA also concluded that the phrase in § 12-10 (d) that a zoning lot “may or may not coincide with a lot as shown on the official tax map,” means that a zoning lot’s perimeter “may not coincide” with tax lot boundaries.[[96]](#footnote-97) Accordingly, the site was “unsubdivided” within the meaning of § 12-10 (d).[[97]](#footnote-98)

Similarly, the BSA concluded that “lot of record” does not only mean a complete tax lot, but rather “must be an umbrella category in which complete tax lots are included, though not to the exclusion of other recorded lots.”[[98]](#footnote-99) For support, the BSA argues that the § 12-10 (d) definition of zoning lot refers to different types of lots, not limited to tax lots, including, a lot as shown on “any recorded subdivision plat” or on any recorded deed, and “parcels . . . that were numerically identified for leasing purposes. . . .”[[99]](#footnote-100)

For the foregoing, the BSA did not dismiss the Minkin Memo, but rather said it provided an “interpretation equally supported by a plain reading of the text” of the Zoning Resolution.[[100]](#footnote-101) The BSA rejected the DOB’s new, “corrected” interpretation of § 12-10 (d) in part because the DOB reportedly “furnished no evidence to support [its] position,” but rather “relies on its own bare assertion that a lot of record ‘must’ only be a complete tax lot—rather than a recorded parcel.”[[101]](#footnote-102) The BSA reviewed and considered the DOB’s interpretation, but need not follow such interpretation in rendering its own decision on appeal.[[102]](#footnote-103)

The BSA considered the DOB’s position that, while its new interpretation of § 12-10 (d) “promotes clarity and transparency,” the 200 Amsterdam Avenue site nevertheless meets the DOB’s currently-in-effect “historical interpretation,” as memorialized in the Minkin Memo.[[103]](#footnote-104) In fact, the BSA noted that, in accordance with this historical interpretation, the DOB reportedly issued 28 binding certificates of occupancy to buildings on the subject block certifying that parcels of land comprised of partial tax lots complied with applicable zoning requirements.[[104]](#footnote-105) The BSA further argued that because the Minkin Memo was issued contemporaneously with a 1977 amendment to the zoning lot definition, this indicates that the memo’s drafters “had firsthand knowledge of the context surrounding the amendment to the zoning lot definition.”[[105]](#footnote-106) The BSA also cited other City planning documents and a prior BSA decision for support that tax lot boundaries do not limit zoning lot boundaries.[[106]](#footnote-107)

Finally, the BSA noted that the Minkin memo was not actually rescinded.[[107]](#footnote-108) While noting that the DOB “is in the process of writing” a new draft bulletin to replace the Minkin Memo, the BSA also asserted that the DOB, “expressed a significant amount of uncertainty as to whether it will proceed with *releasing* this allegedly corrected ‘current interpretation.’”[[108]](#footnote-109) According to the BSA, the DOB declined on numerous occasions to give a clear response when commissioners asked whether it was certain to move forward with issuing the bulletin.[[109]](#footnote-110) The BSA reports that commissioners also heard testimony about the DOB’s practice of preparing draft bulletins “‘to get comments internally’ or to solicit ‘limited external review,’” and that the bulletin “may not see the light of day.”[[110]](#footnote-111) At a BSA hearing, the DOB’s general counsel reportedly also noted that changing its interpretation of the definition of zoning lots, “would be a ‘fairly significant change.’”[[111]](#footnote-112)

* 1. ***Discussion topics***

During the hearing on September 26, the Committees will conduct general oversight of the BSA’s operations. In particular, the Committee will review the BSA’s procedures for accepting testimony under oath, and examine whether the requirement that certain testimony be sworn or affirmed under oath should be expanded to include other BSA hearing types in addition to hearings regarding applications for variances and special permits.

The Committees will also explore various issues relating to zoning lot mergers. Of particular interest to the Committees will be the City’s capacity to identify and map existing zoning lot mergers. The Committees will also examine the public policy implications of the City’s current interpretation of the Zoning Resolution that zoning lots may be comprised of partial tax lots.

# **Legislative Analysis**

**Int. No. 1723-2019**

 Int. No. 1723-2019 would expand upon Local Law 103 of 2017, which currently only requires a property owner applying for a variance or special permit to provide testimony to the BSA under oath.[[112]](#footnote-113) Instead, this bill would amend § 663 of the Charter to require that property owners providing testimony at *all* BSA hearings do so under oath. The bill repeals a provision of § 666(d) of the Charter, added by Local Law 103, that would now be duplicative of § 663. This local law would take effect immediately.

**Int. No. 1691-2019**

 Int. No. 1691-2019 would amend the Charter to require the DCP to assign a unique identifying number to each zoning lot in the City and subsequently amend each such zoning lot number to reflect any changes to each zoning lot, such as a subdivision or zoning lot merger. This local law would take effect immediately.

**Int. No. 1692-2019**

 Int. No. 1692-2019 would amend the Administrative Code to require the DCP to make available to the public an online interactive map displaying each zoning lot in the city and update such map at least quarterly to reflect any subsequent changes to any zoning lot. The bill would authorize the DCP to secure such additional information as it deems necessary to complete this online map from the DOB, the BSA, and the City Register, as well as any other government or private organization. This local law would take effect one year after it becomes law.

**Int. No. 1701-2019:**

Int. No. 1701-2019 would amend the Administrative Code to add a new § 7-628 that would require the City Register to notify an affected CB, council member, borough president, and the Speaker within five days of the recording of any deed memorializing a transfer of development rights or any zoning lot description recorded by an applicant for a DOB permit for a development or enlargement. By providing such notice, communities and their representatives would have an opportunity to inquire about planned developments and, when necessary, to pursue interventions.

Int. No. 1723

By Council Member Kallos

A LOCAL LAW

To amend the New York city charter, in relation to sworn testimony before the board of standards and appeals

Be it enacted by the Council as follows:

Section 1. Section 663 of the New York city charter, as amended by local law number 49 for the year 1991, is amended to read as follows:

§ 663. Meetings. Meetings of the board shall be held at the call of the chair and at such other times as the board may determine. The chair, or in his or her absence the vice-chair may administer oaths and compel the attendance of witnesses. All hearings before the board shall be open to the public and shall be before at least three members of the board, and a concurring vote of at least three members shall be necessary to a decision to grant an application or an appeal, to revoke or modify a variance, special permit or other decision of the board, or to make, amend or repeal a rule or regulation. All testimony delivered at a public hearing by an applicant for a variance, special permit, or waiver or modification pursuant to the general city law, the multiple dwelling law or any other applicable law within the board’s jurisdiction, or by an applicant for a vested right filed pursuant to section 11-30 of the zoning resolution or common law, or by an applicant for an order, requirement, decision or determination appealed to the board pursuant to subdivision six of section 666 or state law, shall be sworn or affirmed under oath. The board shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official action. Such minutes and such records shall be public records.

§ 2. Subdivision d of section 668 of the New York city charter, as amended by local law number 103 for the year 2017, is amended to read as follows:

d. The recommendation of a community board or borough board pursuant to subdivision c of this section shall be filed with the board of standards and appeals and a copy sent to the city planning commission. The board of standards and appeals shall conduct a public hearing and act on the proposed application. [All testimony delivered at a public hearing by the applicant on the proposed application shall be sworn or affirmed under oath.] A decision of the board shall indicate whether each of the specific requirements of the zoning resolution for the granting of variances has been met and shall include findings of fact with regard to each such requirement. When the board of standards and appeals grants or denies an application for a variance or special permit, the board shall respond, as applicable, to any relevant recommendation filed with such board by a community board or borough board regarding such application. Inadvertent failure to comply with the preceding sentence shall not result in the invalidation of any board decision.

§ 3. This local law takes effect immediately.

DFC

LS # 7303

09/10/19, 12:00 p.m.

Int. No. 1691

By Council Members Cabrera, Powers, and Kallos

..Title

A Local Law to amend the New York city charter, in relation to assigning a unique identifying number to each zoning lot in the city

..Body

Be it enacted by the Council as follows:

Section 1. Subdivision b of section 191 of the New York city charter, as amended by local law number 101 for the year 2017, is amended to read as follows:

b. The director of city planning shall:

1. Advise and assist the mayor, the borough presidents and the council in regard to the physical planning and public improvement aspects of all matters related to the development of the city.

2. Provide staff assistance to the city planning commission in all matters under its jurisdiction.

3. Be the custodian of the city map and record thereon all changes legally authorized.

4. Conduct continuous studies and collect statistical and other data to serve as the basis for planning recommendations.

5. Provide community boards with such staff assistance and other professional and technical assistance as may be necessary to permit such boards to perform their planning duties and responsibilities under this chapter.

6. Assist the mayor in the preparation of strategic plans, including the preparation of the report provided for in section sixteen concerning the social, economic and environmental health of the city, the strategic policy statement provided for in section seventeen and the ten-year capital strategy provided for in section two hundred fifteen.

7. Appoint a deputy executive director for strategic planning.

8. Make a complete transcript of the public meetings and hearings of the commission available for public inspection free of charge within sixty days after any such meeting or hearing. The director shall also provide a copy of any requested pages of such transcript at a reasonable fee to cover the costs of copying and, where relevant, mailing.

9. Indicate on the department’s website the name and contact information of an employee who acts as a coordinator with the board of standards and appeals.

10. Provide on the department’s website, a record of each application for a variance or special permit to the board of standards and appeals where the department or the city planning commission has submitted testimony and a copy of such testimony in a searchable format.

11. Assign a unique identifying number to each zoning lot, as defined in section 12-10 of the New York city zoning resolution, in the city, and subsequently amend each such unique identifying zoning lot number to reflect any changes to the metes and bounds of any zoning lot, including, but not limited to the subdivision of any zoning lot, the transfer of development rights from one zoning lot to another zoning lot and the aggregation of two or more zoning lots declared to be a tract of land to be treated as one zoning lot pursuant to paragraph (d) of the definition of “zoning lot” in section 12-10 of the New York city zoning resolution.

12. Perform such other functions as are assigned to him or her by the mayor or other provisions of law.

§ 2. This local law takes effect immediately.

DFC

LS # 11420

08/23/19, 6:50 p.m.

Int. No. 1692

By Council Members Cabrera, Powers, and Kallos

..Title

A Local Law to amend the administrative code of the city of New York, in relation to the creation of an interactive zoning lot map

..Body

Be it enacted by the Council as follows:

Section 1. Chapter 1 of title 25 of the administrative code of the city of New York is amended by adding a new section 25-116 to read as follows:

§ 25-116 Interactive zoning lot map. a. The department of city planning shall make available to the public an interactive map, maintained on a city website, displaying each zoning lot, as defined in section 12-10 of the New York city zoning resolution, in the city. Such map shall be updated not less frequently than quarterly to reflect any subsequent changes to the metes and bounds of any zoning lot including, but not limited to the subdivision of any zoning lot, the transfer of development rights from one zoning lot to another zoning lot and the aggregation of two or more zoning lots declared to be a tract of land to be treated as one zoning lot pursuant to paragraph (d) of the definition of “zoning lot” in section 12-10 of the New York city zoning resolution.

b. The department of city planning shall be authorized to secure such information from the department of buildings, board of standards and appeals, and the city register as the department of city planning determines to be necessary to comply with subdivision a of this section, and such agencies shall provide any requested information in a timely fashion. The department of city planning shall be authorized to secure such information from other government or private organizations as it determines to be necessary to comply with subdivision a of this section.

§ 2. This local law takes effect 1 year after it becomes law.

DFC

LS # 11421

08/23/19, 6:55 p.m.

Int. No. 1701

By Council Members Kallos, Rosenthal, Reynoso, Levine and Powers (in conjunction with the Manhattan Borough President)

..Title

A Local Law to amend the administrative code of the city of New York, in relation to community notification requirements for transfers of development rights

..Body

Be it enacted by the Council as follows:

Section 1. Chapter 6 of title 7 of the administrative code of the city of New York is amended by adding a new section 7-628 to read as follows:

§ 7-628. Notice of development rights transfers. a. Definitions. For the purposes of this section, the following terms have the following meanings:

Deed. The term “deed” has the same meaning ascribed to such term in section 11-2101.

Development. The term “development” has the same meaning ascribed to such term in section 12-10 of the zoning resolution.

Development rights. The term “development rights” means the floor area permitted on a zoning lot pursuant to the zoning resolution.

Enlargement. The term “enlargement” has the same meaning ascribed to such term in section 12-10 of the zoning resolution.

Floor area. The term “floor area” has the same meaning ascribed to such term in section 12-10 of the zoning resolution.

Transfer of development rights. The term “transfer of development rights” means the transfer of unused development rights from one zoning lot to another zoning lot or between a grantor and a grantee on two or more zoning lots declared to be a tract of land to be treated as one zoning lot pursuant to the provisions of paragraph (d) of the definition of the term “zoning lot” in section 12-10 of the zoning resolution.

Zoning lot. The term “zoning lot” has the same meaning as is ascribed to such term in section 12-10 of the zoning resolution.

Zoning lot description. The term “zoning lot description” means a description of the complete metes and bounds of a zoning lot, the tax lot number, the block number and the ownership of such zoning lot required to be recorded prior to the issuance of any permit for a development or enlargement on such zoning lot pursuant to the definition of the term “zoning lot” in section 12-10 of the zoning resolution.

b. Within five days of recording any of the following documents after the effective date of the local law that added this section, the register shall forward a copy of each such document or documents to the applicable community board, borough president, council member, and the speaker of the council:

1. a deed memorializing a transfer of development rights; or

2. a zoning lot description recorded by an applicant for a department of buildings permit for a development or enlargement.

§ 2. This local law takes effect 90 days after it becomes law.

JHC

LS #2216

10/19/2017

1. Among other statutory requirements, the DCP serves as technical support to the City Planning Commission in its annual review of approximately 450 land use applications. [↑](#footnote-ref-2)
2. Pursuant to Charter § 197-d(b), the Council must review and act on zoning text changes pursuant to Charter §§ 200 or 201. [↑](#footnote-ref-3)
3. The CPC, established by the 1936 City Charter, began operating in 1938 with seven members appointed by the Mayor. The 1989 Charter expanded the Commission to thirteen members. The Mayor appoints the Chair who is also the Director of City Planning. The Mayor also appoints six other members, each Borough President appoints one member, and the Public Advocate appoints one member. The Chair serves at the Mayor’s pleasure while the other 12 commissioners each serve for staggered terms of 5 years. The Commission is responsible for the conduct of planning relating to the orderly growth and development of the City, including adequate and appropriate resources for the housing, business, industry, transportation, distribution, recreation, culture, comfort, convenience, health and welfare of its population. The Commission meets regularly to hold hearings and vote on applications concerning the use, development and improvement of real property subject to City regulation. Its consideration of these applications includes an assessment of their environmental impacts where required by law. [↑](#footnote-ref-4)
4. Modifications must be in “scope” pursuant to Charter § 197-d. [↑](#footnote-ref-5)
5. *See* NYC Charter § 643. [↑](#footnote-ref-6)
6. About BSA, Board of Standards and Appeals, <https://www1.nyc.gov/site/bsa/about/about.page> (last visited August 27, 2019). The 1916 zoning resolution stated, “Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the provisions of this resolution the Board of Appeals shall have power in a specific case to vary any such provision in harmony with its general purpose and intent, so that the public health, safety and general welfare may be secured and substantial justice done.” City of New York, Building Zone Resolution, adopted July 25, 1916, Art. 5 §20, *available at* <https://www1.nyc.gov/assets/planning/download/pdf/about/city-planning-history/zr1916.pdf>. [↑](#footnote-ref-7)
7. NYC Charter § 659(a). [↑](#footnote-ref-8)
8. NYC Charter § 659(b). [↑](#footnote-ref-9)
9. *Id.* [↑](#footnote-ref-10)
10. *Id.* [↑](#footnote-ref-11)
11. NYC Charter § 666; About BSA, supra note 6. [↑](#footnote-ref-12)
12. *See* NYC Charter § 666. [↑](#footnote-ref-13)
13. *See* About BSA, supra note 6. [↑](#footnote-ref-14)
14. *New York City Hous. Auth. v. Foley*, 32 Misc. 2d 41, 47 (Sup. Ct. Kings Co. 1961). [↑](#footnote-ref-15)
15. In order to grant such a variance the BSA must make five specific findings:

(a) that there are unique physical conditions, including irregularity, narrowness or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to and inherent in the particular zoning lot; and that, as a result of such unique physical conditions, practical difficulties or unnecessary hardship arise in complying strictly with the use or bulk provisions of the Resolution; and that the alleged practical difficulties or unnecessary hardship are not due to circumstances created generally by the strict application of such provisions in the neighborhood or district in which the zoning lot is located;

(b) that because of such physical conditions there is no reasonable possibility that a development, enlargement, extension, alteration or change of use on the zoning lot in strict conformity with the provisions of this Resolution will bring a reasonable return, and that the grant of a variance is therefore necessary to enable the owner to realize a reasonable return from such zoning lot; this finding shall not be required for the granting of a variance to a non-profit organization;

(c) that the variance, if granted, will not alter the essential character of the neighborhood or district in which the zoning lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare;

(d) that the practical difficulties or unnecessary hardship claimed as a ground for a variance have not been created by the owner or by a predecessor in title; however, where all other required findings are made, the purchase of a zoning lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship; and

(e) that within the intent and purposes of this Resolution, the variance, if granted, is the minimum variance necessary to afford relief; and to this end, the Board may permit a lesser variance than that applied for.

NYC Zoning Resolution § 72-21, *available at* <https://zr.planning.nyc.gov>. [↑](#footnote-ref-16)
16. *Id*. All determinations approving a variance must set forth each of the required findings and all determinations disapproving a variance must set forth which of the findings were not satisfied, and each finding must be “supported by substantial evidence or other data considered by the Board in reaching its decision.” *Id*. [↑](#footnote-ref-17)
17. “Bulk regulations are the combination of controls (lot size, floor area ratio, lot coverage, open space, yards, height and setback) that determine the maximum size and placement of a building on a zoning lot.” Glossary of Planning Terms, About Zoning, Department of City Planning, <https://www1.nyc.gov/site/planning/zoning/glossary.page> (last visited September 3, 2019). *See also* NYC Zoning Resolution § 12-10 (defining “bulk”). [↑](#footnote-ref-18)
18. NYC Charter § 666(10). [↑](#footnote-ref-19)
19. NYC Zoning Resolution § 73-211. [↑](#footnote-ref-20)
20. NYC Zoning Resolution § 73-14. [↑](#footnote-ref-21)
21. *See* NYC Zoning Resolution § 73-01. [↑](#footnote-ref-22)
22. *See* NYC Zoning Resolution § 73-60. [↑](#footnote-ref-23)
23. *See* NYC Zoning Resolution § 11-40. [↑](#footnote-ref-24)
24. *See* NYC Zoning Resolution § 11-30 *et seq*. *See also* BZY and Common Law Cases, Frequently Asked Questions, Board of Standards and Appeals, <https://www1.nyc.gov/site/bsa/about/frequently-asked-questions.page> (last visited September 3, 2019). [↑](#footnote-ref-25)
25. N.Y. Gen. City Law § 35. [↑](#footnote-ref-26)
26. N.Y. Gen. City Law § 36(2). [↑](#footnote-ref-27)
27. *See* N.Y. Multiple Dwelling Law §§ 277 and 310. [↑](#footnote-ref-28)
28. NYC Charter § 666(6)(a); NYC Zoning Resolution § 72-11. [↑](#footnote-ref-29)
29. NYC Charter § 668(c). This process begins with the BSA forwarding a copy of the application to the affected CB, and to the Borough Board if the application involves land in multiple districts in a borough, which then must either conduct a public hearing, submit a recommendation to the BSA, or waive the right to do so. *Id*. [↑](#footnote-ref-30)
30. NYC Charter § 666(9). These written decisions are filed with the CPC and with the affected CB or borough board, and are made available on the BSA’s website. NYC Charter § 668(e); BSA Decisions, Board of Standards and Appeals, <https://www1.nyc.gov/site/bsa/applications/bsa-decisions.page> (last visited September 17, 2019). [↑](#footnote-ref-31)
31. NYC Charter § 668(h). [↑](#footnote-ref-32)
32. NYC Charter § 191(b)(10). The BSA must post a link to such testimony on its website. Charter § 668(j). [↑](#footnote-ref-33)
33. *See* NYC Charter §666; NYC Zoning Resolution § 72-11; About BSA, supra note 6. [↑](#footnote-ref-34)
34. 2 RCNY § 1-11.7-.8. [↑](#footnote-ref-35)
35. NYC Charter § 663. [↑](#footnote-ref-36)
36. NYC Charter § 668(d). [↑](#footnote-ref-37)
37. NYC Charter § 663. [↑](#footnote-ref-38)
38. NYC Charter § 670. [↑](#footnote-ref-39)
39. NYC Charter § 668(a). [↑](#footnote-ref-40)
40. NYC Charter § 668(g). [↑](#footnote-ref-41)
41. 2 RCNY § 1-11.8. [↑](#footnote-ref-42)
42. *See* Zoning Handbook, *infra* note 43 at 208 (defining “Tax Lot” to mean “A parcel of land identified with a unique borough, block and lot number for property tax purposes. A zoning lot typically comprises one or more adjacent tax lots within a block”). [↑](#footnote-ref-43)
43. NYC Charter § 200; NYC Zoning Resolution § 11-01. *See also* NYC Dep’t of City Planning, Zoning Handbook, 18 (2018), *available at*  <https://www1.nyc.gov/assets/planning/download/pdf/about/publications/zoning-handbook.pdf>. [↑](#footnote-ref-44)
44. *Id.* at 210; NYC Zoning Resolution § 12-10. [↑](#footnote-ref-45)
45. *Id.* at 210; NYC Zoning Resolution § 12-10. [↑](#footnote-ref-46)
46. Another example: a multi-family building on a single zoning lot may contain separate condominium units, each constituting of a separate tax lot. These examples via Zoning Handbook, *supra* note 43 at 14. *See also* Bytes of the Big Apple Property Address Directory (PAD), Department of City Planning, 7, *available at* <https://www1.nyc.gov/assets/planning/download/pdf/data-maps/open-data/padgui.pdf?r=16d> (“. . . each condominium unit is a separate tax lot and has its own BBL.”). [↑](#footnote-ref-47)
47. Zoning Handbook, *supra* note 43 at 18 (“Floor area ratio (FAR) is one of the principal bulk regulations controlling the size of buildings, determining how much floor area can be located on a zoning lot. . . .”). *See also* NYC Zoning Resolution § 12-10 (defining “floor area ratio”). [↑](#footnote-ref-48)
48. *See* NYC Zoning Resolution § 12-10 (defining zoning lot, at subdivision (d));Zoning Handbook, *supra* note 43 at 14, 26-27. *See also generally* Vicki Been, John Infranca, *Transferable Development Rights Programs: "Post-Zoning"?*, 78 Brook. L. Rev. 435 (2013). [↑](#footnote-ref-49)
49. NYC Zoning Resolution § 12-10 (defining zoning lot at subdivision (d)); Vicki Been, John Infranca & Josiah Madar, The Market for TDRs in New York City (Nov.1, 2012) (draft manuscript) at page 17, *available at* <https://appam.confex.com/appam/2012/webprogram/ExtendedAbstract/Paper3329/APPAM_Draft_Market%20for%20TDRs%20in%20New%20York%20City%2011%201%2012%20-1.doc>. Scanned document images dating back to 1966 are found online on the City’s Automated City Register Information System (“ACRIS”) at <https://www1.nyc.gov/site/finance/taxes/acris.page>. [↑](#footnote-ref-50)
50. Been, Infranca & Madar, *supra* note 49 at 17-18; James Powers, *Floor Area Transfer by Zoning Lot Merger*, N.Y. Law Journal (July 22, 2019), <https://www.law.com/newyorklawjournal/2019/07/22/floor-area-transfer-by-zoning-lot-merger>; Francisco Augspach, *Development Rights Purchases by Zoning Lot*

*Merger in New York City*, 37 N.Y. Real Property Law Journal 18, 24-25 (2009), *available at* <https://www.hmylaw.com/wp-content/uploads/2012/05/Development-Rights-Purchases-by-ZLM-in-NYC-NYSBA-Summer-2009.pdf>. [↑](#footnote-ref-51)
51. NYC Admin. Code § 11-2102(a); Been, Infranca & Madar, *supra* note 49 at 18. [↑](#footnote-ref-52)
52. *Id*. [↑](#footnote-ref-53)
53. *Id*. [↑](#footnote-ref-54)
54. *See generally* NYC Zoning Resolution § 74-79. [↑](#footnote-ref-55)
55. NYC Zoning Resolution §§ 91-60; 81-70; and 98-30, respectively. [↑](#footnote-ref-56)
56. *See generally* NYC Zoning Resolution §§ 74-79, 81-70; 91-60; and 98-30. *See also generally* Been & Infranca , *supra* note 48 (describing program requirements, reporting on underuse of landmark transfers, and critiquing current TDR programs). [↑](#footnote-ref-57)
57. Zoning Handbook, *supra* note 43 at 27. [↑](#footnote-ref-58)
58. *See* NYC Zoning Resolution § 12-10 (defining zoning lot at subdivision (d)). Applicants for building permits must provide the DOB with documents clearly defining the zoning lot on which new construction will take place. NYC Zoning Resolution § 12-10 (subdivision (f)(1), defining zoning lot, and requiring that DOB “be furnished with a certificate issued to the applicant therefor by a title insurance company . . . showing that each part in interest . . . has executed the Declaration [required by § 12-10 at subdivision (d) that has] been duly recorded. . .”); Been, Infranca & Madar, *supra* note 49 at 17. In the case of a zoning lot subdivision, the DOB must certify that a proposed subdivision will not result in any violation of the zoning laws, and to that end, applicants must submit a subdivision map of the entire original zoning lot and a statement assuring compliance with applicable zoning laws. Charter § 645(c). [↑](#footnote-ref-59)
59. Been, Infranca & Madar, *supra* note 49 at 1. [↑](#footnote-ref-60)
60. Been, Infranca & Madar, *supra* note 49 at 1, 18; *See also Committee for Envtl. Sound Dev., infra* note 63 at 14 (testimony of planner George Janes that “there is insufficient data on zoning lots”). [↑](#footnote-ref-61)
61. Been, Infranca & Madar, *supra* note 49 at 1-2, 18-20. [↑](#footnote-ref-62)
62. *Id*. at n.71. [↑](#footnote-ref-63)
63. *Committee for Envtl. Sound Dev., et al. v. Amsterdam Ave. Redev. Associates LLC, et al.*, Index No. 153819/2018 (Sup.Ct. N.Y. Cnty. March 14, 2019), available at <https://iapps.courts.state.ny.us/fbem/DocumentDisplayServlet?documentId=P2W3gxPtLhWP7G6uD4B9Kw==&system=prod>. *See also* Zoe Rosenberg, *Planned Upper West Side skyscraper abuses zoning rules, opponents allege (again),* Curbed New York (March 27, 2018), <https://ny.curbed.com/2018/3/27/17168022/200-amsterdam-avenue-zoning-bsa-new-york>; Ameena Walker, *Contested Upper West Side skyscraper does not skirt zoning rules, says city,* Curbed New York (July 17, 2018), <https://ny.curbed.com/2018/7/17/17582504/200-amsterdam-construction-zoning-challenge-decision>; Caroline Spivack, *Contested Upper West Side tower earns city board’s approval—again*, Curbed New York (June 25, 2019), <https://ny.curbed.com/2019/6/25/18758604/contested-200-amsterdam-upper-west-side-board-approval>. [↑](#footnote-ref-64)
64. *Committee for Envtl. Sound Dev., supra* note 63 at 2, 7. [↑](#footnote-ref-65)
65. *Id*. at 2, 7-9. Image courtesy of May 29, 2018 PowerPoint by George M. Janes & Associates, on file with Committee on Governmental Operations staff. *See also* map at Joe Anuta, *Rare tower set to rise on Upper West Side*, Crain’s New York (April 11, 2017), <https://www.crainsnewyork.com/article/20170411/REAL_ESTATE/170419967/developers-of-200-amsterdam-avenue-set-to-build-rare-tower-on-upper-west-side>. [↑](#footnote-ref-66)
66. *Committee for Envtl. Sound Dev., supra* note 63 at 1-2. [↑](#footnote-ref-67)
67. Including Manhattan Borough President Gale Brewer, Manhattan Community Board 7, New York City Comptroller Scott Stringer, City Council Member Helen Rosenthal and a majority of the City Council, New York State Senator Brad Hoylman and Assembly members Richard Gottfried and Linda Rosenthal, and organizations Landmark West!, the Committee for Environmentally Sound Development, the Municipal Arts Society of New York, the Sierra Club New York City Group, the West 68th Street Block Association, Inc., and the West End Preservation Society. *Committee for Envtl. Sound Dev., supra* note 63 at 1, 9, 12-14. Supporters of the development included the American Institute of Architects New York Chapter, The Real Estate Board of New York, the New York Building Congress, and the Association for a Better New York. *Id*. at 14-16. [↑](#footnote-ref-68)
68. *Committee for Envtl. Sound Dev., supra* note 63 at 10. [↑](#footnote-ref-69)
69. NYC Charter § 666(6)(a). NYC Zoning Resolution § 72-11. [↑](#footnote-ref-70)
70. *Committee for Envtl. Sound Dev., supra* note 63 at 1-2, 16. [↑](#footnote-ref-71)
71. Opponents also argued that the proposed tower’s size was inappropriate with the surrounding neighborhood, that the development inappropriately counted inaccessible and unusable areas as open space, and that the development would have negative impacts on neighborhood quality of life elements like light, air, and infrastructure. *See generally id*. at 12-14. [↑](#footnote-ref-72)
72. *Id*. at 2. [↑](#footnote-ref-73)
73. *See e.g.* Spivack, *supra* note 63; Anuta, *supra* note 65. [↑](#footnote-ref-74)
74. NYC Zoning Resolution § 12-10 (emphasis in original, denoting other terms defined in § 12-10). A “block” is a tract of land bounded by streets or other boundaries. *Id*. [↑](#footnote-ref-75)
75. *Committee for Envtl’y Sound Dev., supra* note 63 at 10-11; Board of Standards and Appeals resolution, calendar no. 2017-285-A*, infra* note 90 at 9. [↑](#footnote-ref-76)
76. *Id*. [↑](#footnote-ref-77)
77. *Id*. [↑](#footnote-ref-78)
78. *Id*. [↑](#footnote-ref-79)
79. *Committee for Envtl’y Sound Dev., supra* note 63 at 11 (emphasis in original). [↑](#footnote-ref-80)
80. *Id*. at 2, 11. [↑](#footnote-ref-81)
81. *Id*. at 11 (emphasis in original). [↑](#footnote-ref-82)
82. Board of Standards and Appeals resolution, calendar no. 2017-285-A*, infra* note 90 at 9. [↑](#footnote-ref-83)
83. *Committee for Envtl’y Sound Dev., supra* note 63 at 12, 19. [↑](#footnote-ref-84)
84. *Id*. at 18. [↑](#footnote-ref-85)
85. *Id*. at 19-21. [↑](#footnote-ref-86)
86. *Id*. at 17-18. [↑](#footnote-ref-87)
87. *Id*. at 19. [↑](#footnote-ref-88)
88. *Id*. [↑](#footnote-ref-89)
89. *Id*. at 21. [↑](#footnote-ref-90)
90. Board of Standards and Appeals resolution, calendar no. 2017-285-AII (June 25, 2019) (amending its earlier July 17, 2018 resolution), *available at* <https://www1.nyc.gov/assets/bsa/downloads/pdf/decisions/2017-285-AII.pdf>. Spivack, *supra* note 63. [↑](#footnote-ref-91)
91. *See generally* Board of Standards and Appeals resolution, calendar no. 2017-285-A at 11-18 (June 25, 2019), *available at* <https://www1.nyc.gov/assets/bsa/downloads/pdf/decisions/2017-285-A.pdf>. A minority of the BSA concluded that “lot of record” under § 12-10 (d) means tax lots, that the 200 Amsterdam Avenue development site does not meet the definition of “zoning lot” because it consists of partial tax lots (*i.e.* is not “unsubdivided” under § 12-10 (d)), and that the Minkin memo should no longer be followed. *Id*. at 17-18. [↑](#footnote-ref-92)
92. *Id*. at 12. [↑](#footnote-ref-93)
93. *Id*. [↑](#footnote-ref-94)
94. *Id*. at 12-15 (emphasis in original). [↑](#footnote-ref-95)
95. *Id*. at 14. [↑](#footnote-ref-96)
96. *Id*. [↑](#footnote-ref-97)
97. *Id*. at 15. [↑](#footnote-ref-98)
98. *Id*. [↑](#footnote-ref-99)
99. *Id*. (internal quotation makes omitted). [↑](#footnote-ref-100)
100. *Id*. at 16. [↑](#footnote-ref-101)
101. *Id*. at 9. [↑](#footnote-ref-102)
102. *Id*. at 11. [↑](#footnote-ref-103)
103. *Id*. at 8. [↑](#footnote-ref-104)
104. *Id*. at 17. [↑](#footnote-ref-105)
105. *Id*. at 8. [↑](#footnote-ref-106)
106. *Id*. at 14, 17. [↑](#footnote-ref-107)
107. *Id*. at 8. [↑](#footnote-ref-108)
108. *Id*. (emphasis added). [↑](#footnote-ref-109)
109. *Id*. [↑](#footnote-ref-110)
110. *Id*. at 8, 11. [↑](#footnote-ref-111)
111. *Id*. [↑](#footnote-ref-112)
112. *See* Charter § 668(d). [↑](#footnote-ref-113)