

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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LANDMARK WEST! INC., 91 CENTRAL : Index No. 650354/08  
PARK WEST CORPORATION and THOMAS :  
HANSEN, :

*Petitioners,* :

- against - :

CITY OF NEW YORK BOARD OF STANDARDS :  
AND APPEALS, NEW YORK CITY PLANNING :  
COMMISSION, HON. ANDREW CUOMO, as :  
Attorney General of the State of New York, :  
and CONGREGATION SHEARITH ISRAEL, :  
also described as the Trustees of Congregation :  
Shearith Israel, :

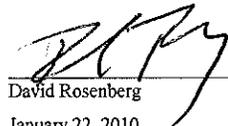
*Respondents.* :

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**PETITIONERS' MEMORANDUM OF LAW IN FURTHER SUPPORT  
OF ITS MOTION FOR LEAVE TO REARGUE**

**MARCUS ROSENBERG & DIAMOND LLP**  
**Attorneys for Petitioners**  
*488 Madison Avenue*  
*17th Floor*  
*New York, New York 10022*  
*(212) 755-7500*

Certified pursuant to § 130-1.1(a)  
of the Rules of the Chief Administrator

By:  \_\_\_\_\_  
David Rosenberg  
Dated: January 22, 2010

SUPREME COURT OF THE STATE OF NEW YORK  
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**PETITIONERS' MEMORANDUM OF LAW IN FURTHER SUPPORT  
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**PRELIMINARY STATEMENT**

This memorandum of law is submitted in further support of the motion by  
Petitioners Landmark West!, Inc., 91 Central Park West Corporation and Thomas Hansen  
(together, "Petitioners"), pursuant to CPLR 2221(d), for leave to reargue this Court's decision  
and order dated August 4, 2009, served with notice of entry dated October 6, 2009 (the

"Decision") [Exhibit A], and upon granting of reargument, withdrawing the Decision and vacating the judgment incorporating the Decision pursuant to CPLR 5015.\*

As set forth in Petitioners' initial papers on this motion, reargument should be granted because the Decision failed to address certain factual and legal issues raised by the Second Amended Verified Petition (the "Petition") [Exhibit B] and misapprehended certain others.

This memorandum will not repeat each of the prior arguments, but will reply to certain claims by Respondents.

## ARGUMENT

### **Point I**

#### **Petitioners Have Raised Matters of Fact and Law Overlooked and Misapprehended By The Court**

CPLR 2221(d)(2) provides for leave to reargue a prior order

based upon matters of fact or law allegedly overlooked or misapprehended by the court in the determining the prior motion. . . .

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\* Lettered exhibits are annexed to the October 23, 2009 affirmation of David Rosenberg submitted with Petitioners' initial moving papers. Numbered exhibits are annexed to the January 22, 2010 affirmation of David Rosenberg. Unless otherwise indicated, all emphasis herein is added and all internal citations are omitted.

Reargument is appropriate upon a showing that the court had "for some reason mistakenly arrived at its earlier decision." *See, Mendez v. Queens Plumbing Supply, Inc.*, 39 A.D.3d 260; 833 N.Y.S.2d 71, 72 (1st Dep't 2007).

The Decision concluded that, other than two jurisdictional issues raised by Petitioners, all other issues were encompassed in the Kettaneh v. Board of Standard and Appeals of the City of New York, Index No. 113227/08 ("*Kettaneh*").

As discussed in Petitioners' prior submission on this motion, the Decision overlooked facts that were raised in the Petition but not raised in the *Kettaneh* decision, and failed to apply legal predicates to the exercise of jurisdiction by Respondent City of New York Board of Standards and Appeals ("BSA" and, together with Respondent New York City Planning Commission, the "City Respondents"). Additionally, the Decision misapplied the standard in reviewing BSA's interpretation of a controlling statute. For these reasons, reargument should be granted.

## Point II

### **Jurisdiction Was Not Established Pursuant To § 666(6)(a) of the New York City Charter And BSA Should Not Be Accorded Deference In This Regard**

#### **DOB's Objections Were Not Issued By One Of The Two Officials Required by the City Charter**

Respondent Congregation Shearith Israel's ("CSI") variance application to BSA sought review of an October 28, 2005 Notice of Objections (the "2005 DOB Notice of Objections") [Exhibit H] issued by the New York City Department of Buildings ("DOB"). Almost two years later, DOB issued an August 24, 2007 Notice of Objections (the "2007 Notice of Objections") [Exhibit I]. Neither Notice was issued by the Commissioner of Buildings or the Manhattan Borough Commissioner as required by § 666(6)(a) of the New York City Charter (the "Charter").

The Charter, Chapter 27, § 666, permits BSA to exercise jurisdiction to entertain an application for a variance solely as an appeal from an initial DOB refusal:

The board shall have power:

\* \* \*

6. To hear and decide appeals from and review,
  - (a) except as otherwise provided by law, any order, requirement, decision or determination the commissioner of buildings or any borough superintendent of buildings acting under written delegation of power

from the commissioner of buildings filed in accordance with the provisions of subdivision (b) of section six hundred forty-five. . . .

In about 1992, DOB began using the titles "Borough Superintendent" and "Borough Commissioner" interchangeably for the official described in the City Charter as the "borough superintendent". *See, e.g.*, Exhibit 1.

Years prior to the filing by CSI with DOB and continuing until the present, DOB has used the term "Borough Commissioner" solely. *See, e.g.*, Exhibit 2.

At the time of the issuance of the 2005 and 2007 DOB Notices of Objections:

- DOB's Commissioner was Patricia J. Lancaster; and
- DOB's Manhattan Borough Commissioner was Christopher Santulli.

The signature on the "Denied" stamp on both DOB Notices did not appear to be that of former Commissioners Lancaster or Santulli. To resolve this issue, Petitioners' attorney served a Freedom of Information Law request on DOB for the identity and authority of the person who signed the DOB Objections [Exhibit 3]. DOB responded with a letter identifying Kenneth Fladen, a "provisional Administrative Borough Superintendent" [Exhibit 4 (*emphasis added*)].

Nor have Respondents presented any evidence that Mr. Fladen, even were he to be considered to be the Borough Commissioner, acted under a written delegation of power from the Commissioner.

When faced with this issue raised by Petitioners, BSA did not contest its lack of jurisdiction pursuant to § 666(6), instead claiming in a footnote, to have jurisdiction pursuant to another provision of the Charter, § 668 [Exhibit C, p. 1, fn 2].

The Decision [Exhibit A, p. 4] gives deference to BSA's novel theory for jurisdiction.

In fact, Charter § 668 states:

**§ 668 Variances and Special Permits**

Community boards and borough boards shall review applications to vary the zoning resolution and applications for special permits within the jurisdiction of the board of standards and appeals under the zoning resolution pursuant to the following procedure. . . .

Section 668 merely sets forth the procedure for review by community boards, borough boards and BSA. BSA does not have original jurisdiction and, as its name implies, is a board of appeals, which may only review determinations from DOB. *See, Kaufman v. City of Glen Cove*, 180 Misc. 349, 357, 45 N.Y.S.2d 53, 59 (Sup. Ct. Nassau Co. 1943), *aff'd*, 266 A.D. 870, 42 N.Y.S.2d 508 (2d Dep't 1943); Brenner v. Sniado, 156 A.D.2d 559, 549

N.Y.S.2d 68 (2d Dep't 1989); Town of Riverhead v. T.S. Haulers, Inc., 275 A.D.2d 774, 775, 713 N.Y.S.2d 740, 741 (2d Dep't 2000) (finding that a Board of Appeals does not have original jurisdiction and its authority is limited to hearing and deciding appeals).

The Zoning Handbook, published by the New York City Department of City Planning (January 2006), in describing BSA's role, states [Exhibit L, p. 101]:

The BSA . . . is empowered to hear and decide requests for variances from property owners whose applications to construct or alter buildings have been denied by the Department of Buildings or another enforcement agency as contrary to the Zoning Resolution or other building ordinances. . . .

BSA claims that this "requirement . . . was implemented administratively as a practical matter, not as a pre-requisite for jurisdiction", but offers no documentary or other evidence to support its claim. *See*, City Respondents' Memorandum in Opposition, at page 13. Petitioners are not claiming that the Zoning Handbook is the authority for BSA's jurisdiction, as this derives solely from § 666(6) of the Charter. However, the Zoning Handbook is an admission and further proof of the City Respondents' own interpretation of BSA's limited jurisdiction.

Most significantly, BSA's disingenuous claims to this Court, which were the basis of the Court's Decision, are disproven by BSA's own rules, which state, at 2 RCNY § 1-06 [Exhibit 5 (*emphasis added*)]:

§ 1-06 The Zoning (BZ) Calendar.

(a) Subject matter. No application for a variance or special permit shall be entertained by the Board except from an order, requirement, decision or determination made in a specific case by the Commissioner of Buildings, any Borough Superintendent of the Department of Buildings, or their authorized representative, or the Commissioner of the Department of Business Services pursuant to the Board's jurisdiction as set forth in the New York City Charter.

Based upon Respondents' misrepresentations to the Court, the Decision deferred to BSA's claim that Charter § 668 provided jurisdiction, rather than procedural steps. As must be clear, Respondents intentionally misled the Court, resulting in the erroneous determination in the Decision.

Respondents should not be rewarded to such misrepresentations.

The 2005 DOB Notice of Objections Was  
Not Issued With Respect To The Plans  
Attached To CSI's Variance Application

CSI's variance application [Exhibit G] was based upon the 2005 DOB Notice of Objections [Exhibit H]. The plans which resulted in the 2005 DOB Notice of Objections were the only ones referred to the Community Board and other required officials. CSI later claimed that it filed an application with "Proposed Plans, dated August 28, 2007" with DOB for reconsideration of the 2005 DOB Notice of Objections which resulted in the 2007 DOB

Notice of Objections. The 2007 plans were not sent to the Community Board or the required officials and no Respondent has claimed that they were.

The Decision found that "[t]he fact that the plans changed is something that should come of no surprise, nor is it a matter that defeats the BSA's jurisdiction" [Exhibit A, p. 6].

In this respect, the Decision ignored BSA's own Rules which require that the plans which are the basis for a variance application first must be sent to [Exhibit 5]:

- (1) The affected Community Board(s) (or Borough Board);
- (2) The affected City Councilmember;
- (3) The affected Borough President;
- (4) The administrative official from whose order or determination the appeal is being made; and
- (5) The City Planning Commission.

Further, BSA's own rules require that it provide 60 days fo the Community Board to review the application. *Id.*

Permitting Respondents to ignore these requirements, and to grant a variance based upon plans never sent to the Community Board and required officials, deprived BSA of

jurisdiction under its own rules. Moreover, it made a farce of the entire statutorily required review procedure.

Deference May Not Be Afforded To  
BSA's Interpretation of Its Jurisdiction

The Decision defers to BSA's claims of jurisdiction, citing Salvati v. Eimicke, 72 N.Y.2d 784, 537 N.Y.S.2d 16 (1988), *rearg. denied*, 73 N.Y.2d 995, 540 N.Y.S.2d 1006 (1989), and N.Y. City Council v. City of New York, 4 A.D.3d 85, 97 770 N.Y.S.2d 346, 355 (1st Dep't 2004), for the proposition that an agency's construction of a statute it administers will be accorded deference, if not unreasonable or irrational, where the statutory language suffers from some "fundamental ambiguity" or requires special knowledge or understanding.

To the contrary, "[w]here . . . the question is one of pure statutory reading and analysis, dependent only on accurate apprehension of legislative intent, there is little basis to rely on any special competence or expertise of the administrative agency. . . ." Kurcsics v. Merchants Mutual Insurance Company, 49 N.Y.2d 451, 459, 426 N.Y.S.2d 454, 458 (1980). *See also*, KSLM Columbus Apts., Inc. v. N.Y.S. Div. of Housing and Community Renewal, 5 N.Y.3d 303, 312, 801 N.Y.S.2d 783, 787 (2005); Teachers Ins. and Ann. Assoc. v. City of New York, 82 N.Y.2d 35, 41-42, 603 N.Y.2d 399, 401 (1993); Raritan Development Corp. v. Silva, 91 N.Y.2d 98, 102, 667 N.Y.S.2d 327, 328-329 (1997).

The jurisdictional issue presented is a pure reading and application of the express terms of the Charter. The Decision should not have deferred to BSA's "interpretation".

### **Point III**

#### **The Decision Overlooked Facts Raised by Petitioners and Not Raised In *Kettaneh***

As discussed in detail in Petitioners' initial moving papers, the Decision reflects a mistaken view of comments of counsel, erroneously stating that Petitioners' issues were raised in *Kettaneh* and decided by the decisions issued therein.

The following issues were raised by Petitioners, but not addressed in either the Decision or the *Kettaneh* decision.

BSA Applied An Unprecedented Standard --  
With No Basis In The Law -- In Granting  
CSI's Application

Neither the *Kettaneh* decision nor the Decision mentions the novel standard applied by BSA for mixed purpose variance applications.

In reviewing the application under ZR § 72-21(b), BSA considered the revenue generating residential condominium units in the proposed development separately from the community facility portion [Exhibit C, p. 3 ("[T]he Board subjected this application to the

standard of review required under ZR § 72-21 for the discrete community facility and residential uses, respectively, . . . notwithstanding [the residential development's sponsorship by a religious institution]").

CSI claims that:

To the extent the BSA strayed from the strict language of Section 72-21 of the Zoning Resolution in granting the Congregation a variance, its deviation only made it *harder* for the Congregation to get a variance, not easier.

*See*, CSI's Memorandum in Opposition, at page 14.

It is irrelevant whether CSI believes the mixed-use test to be harder. BSA admittedly "strayed" from, *i.e.*, violated, the terms of the Zoning Resolution and did not have any statutory, regulatory or decisional basis for this unprecedented standard. *See*, Levy v. Board of Standard and Appeals, 267 N.Y. 347, 353 (1935) (a board of appeals "does not exercise legislative powers" and [i]ts function is primarily administrative").

BSA previously held that a not-for-profit applicant could not avoid the express requirements of ZR § 72-21 when seeking a variance for revenue producing portions of a building unrelated to the applicant's programmatic needs. *See*, Yeshiva Imrei Chaim Viznitz, Calendar No. 290-05-BZ [Exhibit Q, p. 5]; 739 East New York Avenue, Brooklyn, BSA Calendar No. 194-03-BZ [Exhibit R, p. 2].

Neither Respondent has provided authority, much less judicial precedent, for BSA's application of ZR § 72-21 to one portion of a building, while exempting another portion as being related to the applicant's programmatic needs.

Neither Respondent has offered any precedent for this novel -- and statutorily unauthorized -- bifurcated approach inconsistent with BSA's prior determinations.

To the extent that BSA failed to adhere to its prior determinations, its determination was arbitrary and capricious as a matter of law. *See, e.g., Matter of Charles A. Fuld Delivery Service v. Roberts*, 66 N.Y.2d 516, 498 N.Y.S.2d 111 (1985).

BSA Illegally Usurped The Exclusive Jurisdiction  
Of The Landmarks Preservation Commission And The  
City Planning Commission When It Based The Zoning  
Resolution § 72-21(a) Finding On The Presence Of  
CSI's Landmarked Synagogue

Section 72-21(a) of the Zoning Resolution requires BSA to find, as a mandatory prerequisite for a variance, that "there are unique physical conditions in the Zoning Lot which create practical difficulties or unnecessary hardship in strictly complying with the requirements."

Instead of finding "unique physical conditions", BSA claimed that the landmark status of a separate piece of property was the equivalent of a unique physical condition, offering no statutory, judicial or other controlling support [Exhibit C, pp 9-10].

ZR § 74-711 authorizes the City Planning Commission -- not BSA -- to permit modifications of the use and bulk regulations due to the presence of a landmarked structure. No provision of the Zoning Resolution or any other statute, rule or regulation permits BSA to assume this authority and none is cited by Respondents.

The *Kettaneh* decision states [Exhibit D, p. 29] that Petitioners argued that CSI was required to submit an application to the Landmarks Preservation Commission for a special permit, pursuant to ZR § 74-711, prior to seeking a variance from BSA.

That was not Petitioners' position [Exhibit B, pp. 21-22]. Rather, Petitioners argued that BSA lacked any right to consider the landmarked status of the synagogue structure, a right expressly possessed only by the Landmarks Preservation Commission and the City Planning Commission. *See, e.g., Windsor Plaza Co. v. Deutsch*, 110 A.D.2d 531, 487 N.Y.S.2d 773 (1st Dep't), *aff'd*, 66 N.Y.2d 874, 498 N.Y.S.2d 791 (1985).

Respondents have cited to cases where the BSA considered the existence of various structures on a site, but have not addressed Petitioners' argument. Respondents

have offered no authority permitting BSA to consider the landmarked status of a building on a contiguous site as a basis for a variance.

No law, rule or regulation permits BSA to grant a variance due to landmark status of a property.

**CONCLUSION**

Matters of fact and law were overlooked or misapprehended in the Decision. Reargument should be granted, the Decision should be withdrawn and the judgment issued thereon should be vacated.

Dated: New York, New York  
January 22, 2010

MARCUS ROSENBERG & DIAMOND LLP  
*Attorneys for Petitioners*

By:  \_\_\_\_\_  
David Rosenberg  
488 Madison Avenue  
New York, New York 10022  
(212) 755-7500

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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PARK WEST CORPORATION and THOMAS :  
HANSEN, :

*Petitioners,* :

- against - :

CITY OF NEW YORK BOARD OF STANDARDS : AFFIRMATION  
AND APPEALS, NEW YORK CITY PLANNING : IN FURTHER  
COMMISSION, HON. ANDREW CUOMO, as : SUPPORT OF  
Attorney General of the State of New York, : MOTION FOR  
and CONGREGATION SHEARITH ISRAEL, : LEAVE TO  
also described as the Trustees of Congregation : REARGUE  
Shearith Israel, :

*Respondents.* :

- - - - - x

DAVID ROSENBERG, an attorney admitted to practice in the courts of  
New York, under penalty of perjury, affirms:

1. I am a member of Marcus Rosenberg & Diamond LLP, attorneys for  
Petitioners.

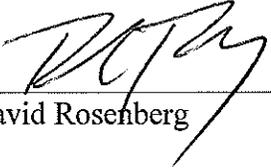
2. I submit this affirmation to present to the Court the following exhibits  
to which reference is made in the memorandum of law submitted herewith in further support  
of Petitioners' motion pursuant to CPLR 2221(d), for leave to reargue this Court's decision

and order dated August 4, 2009, served with notice of entry dated October 6, 2009, and upon granting of reargument, the Court's decision should be withdrawn and the judgment issued thereon vacated pursuant to CPLR 5015:

- Exhibit 1 New York City Department of Buildings ("DOB") Operations Policy and Procedure Notice # 28/92 dated November 25, 1992;
- Exhibit 2 June 5, 2009 DOB Notice of Adoption of Rule (addition of 1 RCNY §§ 101-15 and 101-16);
- Exhibit 3 February 13, 2008 Freedom of Information Law request by Petitioners' attorney to DOB seeking the identity of the signatory on the 2005 and 2007 DOB Notices of Objections;
- Exhibit 4 DOB's March 3, 2008 response to the February 13, 2008 FOIL request; and
- Exhibit 5 2 RCNY § 1-06.

3. For the reasons stated in the memorandum of law submitted herewith and in Petitioners' initial moving papers, reargument should be granted, this Court's decision and order dismissing the proceeding should be withdrawn and the judgment issued thereon should be vacated.

Dated: New York, New York  
January 22, 2010

  
\_\_\_\_\_  
David Rosenberg

# EXHIBIT 1



DEPARTMENT OF BUILDINGS

EXECUTIVE OFFICES  
60 HUDSON STREET, NEW YORK, N.Y. 10011

RUDOLPH J. RINALDI, Commissioner

BARRY G. COX  
Assistant Commissioner  
Borough Operations  
(212) 312-8004

Issuance # 384

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OPERATIONS  
POLICY AND PROCEDURE NOTICE # 28/92

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To: Distribution  
From: Barry G. Cox  
Date: 25 November 1992  
Subject: Withdrawal of jobs

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**Purpose:**

To establish guidelines for the withdrawal of unpermitted jobs in the borough offices.

**Specifics:**

The borough offices shall have the authority to withdraw pre-filed, examined but not approved, and approved but not permitted jobs. (Status A-J).

**EXCEPTION:**

**Legalizations**

In order for a legalization to be withdrawn, the authorization of the Borough Commissioner/Superintendent or Deputy Borough Superintendent, based on an inspector's report, must be obtained. This request, and the original supporting documentation, shall be forwarded to the Assistant Commissioner for Borough Operations who will review it and authorize or reject the withdrawal. If an open violation exists for the work that is now to be legalized, the job may not be withdrawn.

**APPLICANT:**

An applicant who wishes to withdraw a job shall submit the request to the Borough Office.

- He/she shall complete the PW-1, mark Box 16, and request the withdrawal. The form must clearly and succinctly state the reason for the withdrawal.

- . Under all circumstances the form must be signed by the owner. The request shall be automatically denied if the owner's signature is not on the PW-1. If the form is being submitted by the P.E. or R.A. on the job he/she must also sign and seal the withdrawal application.
- . The applicant must produce any and all necessary documentation to support this request.

If an owner is applying for the withdrawal, he/she must produce documentation which identifies them as such. The withdrawal should initially be submitted to the Borough Manager.

#### **BOROUGH OFFICE:**

The borough office shall be responsible for the withdrawal.

Such withdrawals shall only be approved by the Borough Commissioner/Superintendent or Deputy Borough Superintendent.

#### **BOROUGH COMMISSIONER/SUPERINTENDENT'S OFFICE**

The Borough Commissioner/Superintendent or Deputy Borough Superintendent shall review the PW-1 withdrawal request for accuracy and completeness. Based upon the supporting documentation he/she shall determine if the withdrawal is warranted. The approval or disapproval shall be noted on the PW-1 withdrawal application as well as a clear, succinct and appropriate reason for the disposition. The Borough Commissioner/Superintendent or Deputy Borough Superintendent shall sign and date the withdrawal application. He/she shall forward the withdrawal to the Borough Manager for action.

#### **BOROUGH MANAGER'S OFFICE**

The Borough Manager shall personally accept all applications for withdrawal. The Borough Manager shall maintain a log of the withdrawals using the log form (See attachment 1) and upon receipt shall enter the withdrawal information.

The Borough Manager must make certain that the paperwork being submitted corresponds exactly to the information that appears on the BIS system. Any deviation must be resolved and entered onto BIS prior to the withdrawal. This is essential to maintaining the integrity of the BIS system. The Borough Manager must make certain that the owner listed on the PW-1 corresponds to the individual listed on the Finance Screen. In the event that the owner's name on the PW-1 conflicts with the information listed on the Finance Screen, the applicant/owner must submit proof of ownership (i.e.: deed) and name (i.e.: driver's licenses). Such application shall not be accepted without satisfactory

identification which must be noted on the PW-1 form. The actual withdrawal of the job from the BIS System shall be personally done by the Borough Manager. The Borough Manager shall input the reason for the withdrawal, as stated by the Borough Commissioner/Superintendent, on the PW-1 form onto the BIS System.

The disposition, reason for withdrawal or denial, date withdrawn, and initial of the Borough Manager shall be entered onto the withdrawal request log. The log, PW-1 withdrawal request, and the supporting documentation must be maintained for a period of at least 18 months from the date of withdrawal. The reason for both approval and denial shall be written by the Borough Manager on his/her log.



The  
City  
of  
New York

Issuance # 369

DEPARTMENT OF BUILDINGS  
EXECUTIVE OFFICES  
60 HUDSON STREET, NEW YORK, N.Y. 10013  
RUDOLPH J. RINALDI, Commissioner

BARRY G. COX  
Assistant Commissioner  
Borough Operations  
(212) 312-8004

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OPERATIONS  
POLICY AND PROCEDURE NOTICE # 18/92

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TO: Distribution  
FROM: Barry G. Cox  
DATE: September 1, 1992  
SUBJECT: Withdrawals of Licensed Professionals from Their  
Responsibility to Perform Controlled Inspections  
and/or Directive 14 Final Inspections

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Purpose:

To establish a uniform procedure enabling a Professional Engineer (P.E.) or Registered Architect (R.A.) to withdraw from his/her responsibility to file a TR-1 after a work permit has been issued.

Specifics:

Applicant:

The P.E. or R.A. who has agreed to perform a controlled inspection or a Directive 14 final inspection must submit to the Borough Commissioner/Superintendent a signed written statement expressing his/her intention to withdraw from a job at a specific date in the future. The effective date of such withdrawal must be at least 30 days, but not more than 90 days, from the date the P.E. or R.A. notifies Buildings of his/her intention to withdraw.

Satisfactory documentation must accompany such a statement establishing that the P.E. or R.A. has notified the owner of his/her intention to withdraw.

The statement must identify the job, describe the work completed to date, if any, and a clear recognition by the P.E. or R.A. that he/she is responsible for the work so described until the effective date of his/her withdrawal. Photographs documenting the work description should also be provided.

On the effective date of the withdrawal, the statement must be updated to incorporate any work that was undertaken since the initial notification to the Buildings Department of the P.E. or R.A.'s intention to withdraw.

In those cases where a P.E. or R.A. cannot gain access or is prevented from gaining access to the job site, a signed statement to this effect, together with satisfactory documentation notifying the owner, may be accepted by the Borough Commissioner/Superintendent in lieu of the above documentation.

#### Borough Offices:

Upon receipt of the P.E. or R.A.'s statement described above, the Borough Commissioner/Superintendent shall either accept it or reject it for cause.

If the statement is accepted, the Borough Commissioner/Superintendent shall send a copy to the owner of the premises involved informing him/her that work shall cease on the effective date of the withdrawal by the P.E. or R.A. and the work permit will be revoked unless he/she retains a P.E. or R.A. to assume responsibility for the controlled inspection(s) and/or final inspection(s).

The Borough Commissioner/Superintendent may order an inspection to confirm the facts described by the P.E./R.A. in his/her statement and note any discrepancies. A second inspection may be made at the effective date of the P.E. or R.A.'s withdrawal.

The Borough Commissioner/Superintendent shall stop all work and revoke the work permit if a superseding P.E. or R.A. has not filed with the Buildings Department as of the effective date of the initial P.E. or R.A.'s withdrawal.

If the P.E. or R.A.'s statement is an affidavit indicating he/she has been denied access to a job site, the Borough Commissioner/Superintendent will immediately send to the owner a letter stating the job will be stopped in 10 days unless access is made available to the P.E. or R.A. or a new P.E. or R.A. is retained and takes responsibility for the controlled inspection and/or formal inspection.

If the statement of withdrawal lists any work that the withdrawing P.E or R.A. contends deviates from the approved plans or proper construction methods, the Borough Commissioner/Superintendent should order an immediate inspection to determine whether the work has so deviated. If such deviation has been confirmed, then the Borough Commissioner/Superintendent should issue an immediate stop work order or a ten-day letter, depending on the extent of such deviation.

In those cases where the Borough Commissioner rejects the P.E. or R.A.'s statement expressing his/her intention to withdraw from the job because the statement is substantively deficient, work will continue until such time as a statement acceptable to the Buildings Department is submitted.

/sr

EXHIBIT 2

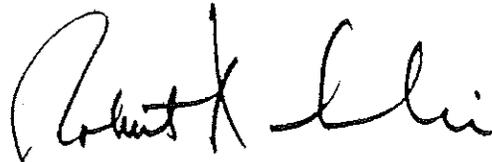
## NOTICE OF ADOPTION OF RULE

NOTICE IS HEREBY GIVEN, pursuant to the authority vested in the Commissioner of the Department of Buildings by Section 643 of the New York City Charter and in accordance with Section 1043 of the Charter, that the Department of Buildings hereby adopts the addition of Sections 101-15 and 101-16 to Chapter 100 of Title 1 of the Official Compilation of the Rules of the City of New York, regarding public challenge of department decisions.

This rule was first published on February 4, 2009 and a public hearing thereon was held on March 6, 2009.

This rule shall take effect on July 13, 2009.

Dated: June 5, 2009  
New York, New York



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Robert D. LiMandri  
Commissioner

Subchapter A of Chapter 100 of Title 1 of the Rules of the City of New York is amended by adding new sections 101-15 and 101-16 to read as follows:

Chapter 100  
Administration

§101-15 Public challenge of department zoning approvals. The following procedure shall be followed only when members of the public wish to challenge a zoning approval issued by the department for a new building ("NB") or an enlargement affecting the exterior envelope of an existing building ("enlargement"). For the purposes of this section, "zoning approval" shall mean the approval of zoning documents filed as part of either a full approval of construction documents pursuant to section 28-104.2.2 or a partial approval of

construction documents pursuant to section 28-104.2.5 of the administrative code, whichever comes first.

(a) Initial zoning challenge. The public shall have forty-five (45) days from the date of posting on the department's website of a zoning diagram filed in connection with an NB or enlargement to challenge the zoning approval, whether or not a permit or full approval for the NB or enlargement application has been issued. Posting of the zoning diagram shall serve as notice of zoning approval. All permits shall state that the zoning diagram can be accessed on the department's website. In addition, such zoning approval and information related to such approval shall be made available upon request at the appropriate borough office. The challenge shall be postmarked by the 45<sup>th</sup> day from the date of posting and shall be sent to the appropriate borough commissioner on forms specified by the department.

(b) Department review and decisions. After the forty-five (45) days for public challenge have elapsed, the department shall provide the challenge(s) to the applicant and the borough commissioner shall begin a review of the challenge(s) received and issue decision(s). The borough commissioner may deny the challenge(s) and/or issue to the applicant a notice of intent to revoke the zoning approval and any other approval and/or permit that relies on the zoning approval, along with a list of objections to the application. The challenge(s) and decision(s) shall be posted on the department's website and made available upon request at the appropriate borough office.

(1) Denial of challenge. The public shall have fifteen (15) days from the date of the posting of the borough commissioner's decision to deny the challenge to appeal to the department's technical affairs unit on forms specified by the department. The appeal shall be postmarked no later than the 15<sup>th</sup> day after the date of the posting.

(2) Notice of intent to revoke. The borough commissioner may issue a notice of intent to revoke the zoning approval and any other approval

and/or permit that relies on the zoning approval, along with a list of objections. Such notice shall be rescinded when all objections are satisfied. The public shall have fifteen (15) days from the date of the posting of the rescission of such notice on the department's website to appeal the rescission to the department's technical affairs unit on forms specified by the department. The appeal shall be postmarked no later than the 15<sup>th</sup> day after the date of the posting.

(3) Final determinations. In addition to the internal appeals procedure provided for in paragraph 2 of this subdivision, rescission of a notice of intent to revoke a permit, issuance of a permit and revocation of a permit are final determinations that may be appealed to the Board of Standards and Appeals (BSA) in accordance with its rules. Where a permit has already been issued, the denial of a challenge by the borough commissioner or by the head of the technical affairs unit pursuant to this rule shall also be considered a final determination that may be appealed to the BSA.

(c) Amendments to zoning approvals.

(1) Resolving objections. An applicant may file to amend a zoning approval solely to resolve the objections stated in the notice of intent to revoke. Rescission of a notice of intent to revoke as a result of the resolution of objections shall constitute a decision that may be appealed pursuant to the provisions of paragraph 2 of subdivision b of this section or to the BSA, pursuant to paragraph 3 of subdivision b of this section.

(2) Amendments to the approved zoning documents. An applicant may also file to amend approved zoning documents for reasons in addition to or other than addressing the zoning objections raised in the notice of intent to revoke approval or permit. Challenges to the department's approval of such amendments shall be subject to the process set forth in subdivisions a and b of this section.

(d) Currently filed jobs. The public challenge process described in this section shall not apply to jobs where the application submission for an NB or enlargement is deemed by the department as ready for initial plan examination and the appropriate fees have been paid prior to the effective date of this rule.

§101-16 Posting of permit. A building permit or copy thereof shall be securely posted at the work site in a conspicuous location readily visible to the general public from a public right of way within three days of issuance but not later than the date of commencement of work and shall remain posted until all work is completed or the permit expires, whichever is later.

#### Statement of Basis and Purpose

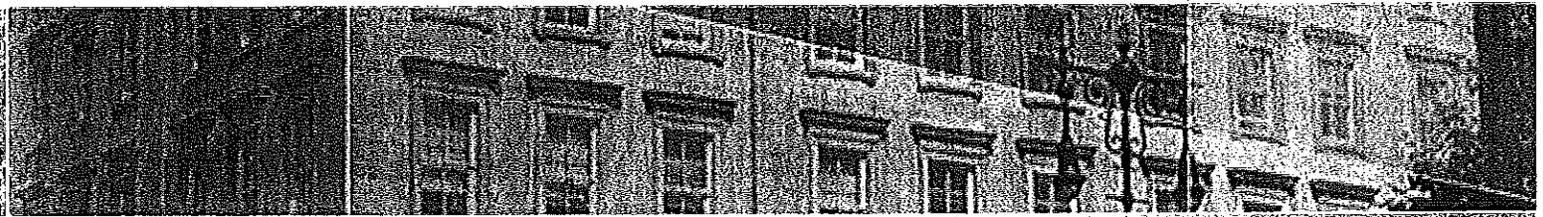
These rules are proposed pursuant to the authority of the Commissioner of Buildings under Sections 643 and 1043(a) of the New York City Charter.

Section 101-15 is proposed to allow for informed public challenges of zoning approvals early in the project approval process. Where a zoning approval is issued in connection with an NB or enlargement, prior to the full approval for the NB or enlargement application, the forty-five days for a challenge shall run from the posting on the department's website of such zoning approval. The posting of the zoning diagram, in particular, adds transparency to proposed projects and will enable the public to challenge a zoning approval early in the application approval process. This will allow such challenges to be examined and decided before the project progresses to the point where a viable solution may be difficult to achieve.

In addition, the proposed rule spells out to whom challenges may be made and sets out time frames for zoning challenges. This furthers the dual goals of clarity

and finality in the process. The public-challenge process set forth in this proposed rule establishes a defined and organized means for the public to challenge decisions by the Department that they believe are incorrect, and will provide clarity for developers about when a project can move forward, and when changes to a proposed development need to be made. The current process, which has no formal timeframe, produces confusion and unnecessary and unintended costs for development in New York City.

Section 28-105.11 of the Administrative Code requires posting of a permit at a work site during construction. Section 101-16 clarifies that the posting of the permit must be no later than three days of issuance in order to further inform the public of such issuance in a reasonably rapid manner.



→ This is the NYC.gov News You Requested For: "Department of Buildings News"

## ***Visit the Department of Buildings Homepage***

### **Borough Office Spotlight**

On April 27, 2006, Christopher M. Santulli, P.E was appointed as the Acting Borough Commissioner for Manhattan. Mr. Santulli is a Professional Engineer with over nineteen years of experience dealing with commercial, industrial and institutional buildings. Mr. Santulli previously served the City as Deputy Manhattan Borough Commissioner, where he utilized his diverse background in consulting and change management to catalyze the Commissioner's reforms in the borough office. Mr. Santulli will be assisted by two deputy commissioners, Deputy Borough Commissioner Dileep Khedekar, P.E and Max S. Lee, P.E. Together, Mr. Khedekar and Mr. Lee have over 30 years of experience in structural engineering and building design.

### **Letter of No Objection (LNO) Status is Now Available on BISWeb**

BISWeb now immediately reflects the status of your LNO. Check BISWeb for the most convenient way to obtain a Letter of No Objection's approval status. This is just another way we are making it easier for you to do business with us. Read the service announcement (95 kb-pdf) for instructions on how to find the status of your LNO.

### **Minor Variations Don't Require a PAA**

The Department of Buildings is unclogging the Post Approval Amendment (PAA) process by allowing minor variations to be made without having to file a revised Schedule B. This overview provides a glimpse of what can be done without filing a PAA. View the service notice (36 kb-pdf) for more information.

### **Buildings Elevator Director Represents United States at International Elevator Safety Conference**

On May 2, 2006, Harry Vyas, the Director of the Department of Buildings Elevator Division, represented the United States at the International Seminar for Elevator Safety Systems in Seoul, Korea. The international seminar was organized by the Korean Elevator Safety Institute. Elevator safety representatives were invited from the United States, Japan, Germany, Canada and Australia to give presentations about their country's elevator safety systems and code enforcement. In New York City, the Buildings Department accomplishes its high standard of

service through different types of inspections and accident investigations. To ensure the integrity of inspections performed, Buildings also implements quality assurance inspections. To view [photos](#) and learn more information about the conference, visit the [News & Services page](#) of the website.

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<https://www.nyc.gov/portal/signin.jsp>

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PLEASE DO NOT REPLY TO THIS MESSAGE!

EXHIBIT 3

MARCUS ROSENBERG & DIAMOND LLP

488 MADISON AVENUE  
NEW YORK, NEW YORK 10022

-----  
Telephone (212) 755-7500  
Telefax (212) 755-8713

February 13, 2008

**Via Facsimile Transmission  
(212-566-3843) and First Class Mail**

Ms. Angela Orridge  
Records Access Officer  
New York City Department of  
Buildings  
280 Broadway, 7th Floor  
New York, New York 10007

Re: Application No. 104250491-NB  
10 West 70th Street, Block 1122,  
Lot 37; Our File No. 89628.003

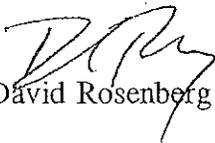
Dear Ms. Orridge:

Pursuant to the Freedom of Information Law ("FOIL"), Article 6 of the Public Officers Law, this is to request copies of, or an appointment to inspect and photocopy the originals of, the following:

Documents identifying the name and title of the person whose signature appears as "Examiner" and "Boro Commissioner" on the attached two documents.

Please call if you have any questions. Thank you for your anticipated cooperation.

Very truly yours,

  
David Rosenberg

DR/pab  
Enclosures  
cc: Landmark West!



Department of Buildings  
 280 Broadway  
 New York, New York 10007  
 (212) 566-5000 | TTY (212) 566-4769  
 nyc.gov/buildings

MANHATTAN (1)  
 280 BROADWAY 3<sup>rd</sup> FLOOR  
 New York, NY 10007

BRONX (2)  
 1932 ARTHUR AVENUE  
 BRONX, NY 10457

BROOKLYN (3)  
 210 JORALEMON STREET  
 BROOKLYN, NY 11201

QUEENS (4)  
 120-55 QUEENS BLVD.  
 QUEENS, NY 11424

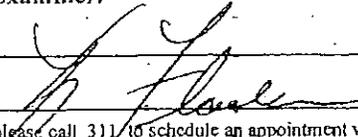
STATEN ISLAND (5)  
 BORO HALL - ST. GEORGE  
 STATEN ISLAND, NY 10301

### Notice of Objections

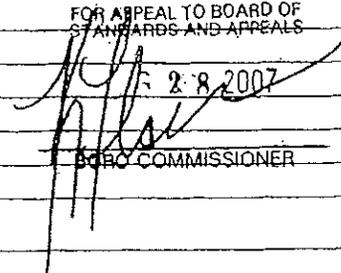
Applicant: Samuel White  
 Platt Byard Dovell White Architects  
 20 West 22<sup>nd</sup> Street  
 New York, NY 10010

Date: 8/24/2007  
 Job Application #: 104250481  
 Application type: NB  
 Premises Address: 10 West 70<sup>th</sup> Street  
 Zoning District: R8B, R10A  
 Block: 1122 Lot: 37 Doc(s): 01

NYC Department of Buildings Examiner:

Examiner's Signature: 

To discuss and resolve these objections, please call 311 to schedule an appointment with the Plan Examiner listed above. You will need the application number and document number found at the top of this objection sheet. To make the best possible use of the plan examiner's and your time, please make sure you are prepared to discuss and resolve these objections before arriving for your scheduled plan examination appointment.

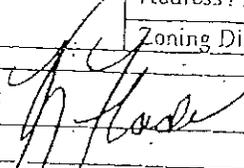
Obj. #	Doc #	Section of Code	Objections	Date Resolved	Comments
1.		24-11/77-24	Proposed lot coverage for the interior portions of R8B & R10A exceeds the maximum allowed. This is contrary to section 24-11/77-24. Proposed interior portion lot coverage is .80.		
2.		24-36	Proposed rear yard in R8B does not comply. 20.00' provided instead of 30.00' contrary to section 24-36.		
3.		24-36	Proposed rear yard in R10A interior portion does not comply. 20.00' provided instead of 30.00' contrary to section 24-36.		
4.		23-633	Proposed initial setback in R8B does not comply. 12.00' provided instead of 15.00' contrary to section 23-633.		
5.		23-633	Proposed base height in R8B does not comply. 94.80' provided instead of 60.00' contrary to section 23-633.		
6.		23-633	Proposed maximum building height in R8B does not comply. 113.70' provided instead of 75.00' contrary to section 23-633.		
7.		23-663	Proposed rear setback in R8B does not comply. 6.67' provided instead of 10.00' contrary to section 23-663.		
8.					
<b>DENIED</b> FOR APPEAL TO BOARD OF STANDARDS AND APPEALS  8/28/2007 BOARD COMMISSIONER					
9.					
10.					
11.					
12.					
13.					
14.					



THE CITY OF NEW YORK  
DEPARTMENT OF BUILDINGS  
http://www.nyc.gov/buildings

X  
 MANHATTAN (1) 280 BROADWAY 3<sup>RD</sup> FLOOR New York, NY 10001  
 BRONX (2) 1932 ARTHUR AVENUE BRONX, NY 10457  
 BROOKLYN (3) 210 JOROLOMON STREET BROOKLYN, NY 11201  
 QUEENS (4) 120-55 QUEENS BLVD. QUEENS, NY 11424  
 STATEN ISLAND (5) BORO HALL- ST. GEORGE STATEN ISLAND, NY 10301

DOB Application #  104250481	Examiner:	Date: 10/28/05
	Application Type: <del>XXX</del> NB	Doc (s):
	Address / Location: 10 West 70th Street	Block: 1122
	Zoning District: R8B; R10A	Lot: 37

Examiners Signature: 

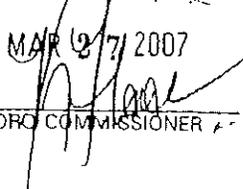
To discuss and resolve these objections, please call 311 to schedule an appointment with the Plan Examiner listed above. You will need the application number and document number found at the top of this objection sheet. To make the best possible use of the plan examiner's and your time, please make sure you are prepared to discuss and resolve these objections before your scheduled plan exam appointment.

Obj. #	Doc #	Section of Zoning/ Code	Objections	Date Resolved	Comments

REQUIRED ACTIONS BY THE BOARD OF STANDARDS & APPEALS

1. PROPOSED LOT COVERAGE FOR THE INTERIOR PORTIONS OF R8B & R10A EXCEEDS THE MAXIMUM ALLOWED. THIS IS CONTRARY TO SECTION 24-11/77-24. PROPOSED INTERIOR PORTION LOT COVERAGE IS .80.
2. PROPOSED REAR YARD IN R8B DOES NOT COMPLY. 20.00' PROVIDED INSTEAD OF 30.00' CONTRARY TO SECTION 24-36.
3. PROPOSED REAR YARD IN R10A INTERIOR PORTION DOES NOT COMPLY. 20.00' PROVIDED INSTEAD OF 30.00' CONTRARY TO SECTION 24-36.
4. PROPOSED INITIAL SETBACK IN R8B DOES NOT COMPLY. 12.00' PROVIDED INSTEAD OF 15.00' CONTRARY TO SECTION 23-633.
5. PROPOSED BASE HEIGHT IN R8B DOES NOT COMPLY. 94.80' PROVIDED INSTEAD OF 60.00' CONTRARY TO SECTION 23-633.
6. PROPOSED MAXIMUM BUILDING HEIGHT IN R8B DOES NOT COMPLY. 113.70' PROVIDED INSTEAD OF 75.00' CONTRARY TO SECTION 23-633.
7. PROPOSED REAR SETBACK IN R8B DOES NOT COMPLY. 6.67' PROVIDED INSTEAD OF 10.00' CONTRARY TO SECTION 23-663.
8. PROPOSED SEPARATION BETWEEN BUILDINGS IN R10A DOES NOT COMPLY. 0.00' PROVIDED INSTEAD OF 40.00' CONTRARY TO SECTION 24-67 AND 23-711.

**DENIED**  
FOR APPEAL TO BOARD OF  
STANDARDS AND APPEALS

MAR 27 2007  
  
BORO COMMISSIONER

C

EXHIBIT 4



NYC Department of Buildings  
280 Broadway, New York, NY 10007

Patricia J. Lancaster, FAIA, Commissioner

March 3, 2008

David Rosenberg  
Marcus Rosenberg & Diamond LLP  
488 Madison Avenue  
New York, New York 10022

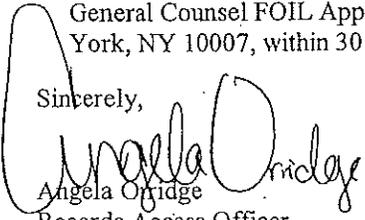
Re: 10 West 70<sup>th</sup> Street, New York, NY  
Your File No.: 89628.003

Dear Madam/Sir:

This responds to your request for information governed by the Freedom of Information Law (FOIL).

- All public records maintained by the Department of Buildings (DOB) are routinely made available for public inspection at the office / division of the New York City Department of Buildings at which said records are maintained. Please contact **<ENTER>** to determine the hours at which the records you have requested are available. Any further questions regarding your request should be directed to the Records Control Officer for the respective office/division of this Department. **The records will not be available at the time you call.**
- The documents you requested are available for inspection at the Municipal Library located at 31 Chambers Street, Suite 112, New York, NY 10007 (212) 788-8590.
- The information you seek is not within the jurisdiction of DOB. Please direct your request to
- A search of DOB files has revealed no such documents.
- Your request is denied under §87(2) of the Public Officer's Law because documents requested are
- ✓ **Other:** Please see attached letter in response to your FOIL request letter dated 2/13/08.
- You have the right to appeal this determination by writing to the Deputy General Counsel FOIL Appeals Officer, 280 Broadway, 7th Floor, New York, NY 10007, within 30 days of this letter.

Sincerely,

  
Angela Orridge  
Records Access Officer

Mona Sehgal  
General Counsel  
212.566.3353  
212.566.3843 fax  
monas@buildings.nyc.gov

Manhattan Borough Office  
280 Broadway, 3<sup>rd</sup> Fl.  
(212) 566-0248

Brooklyn Borough Office  
210 Joralemon Street  
(718) 802-3675

Bronx Borough Office  
1932 Arthur Avenue  
(718) 579-6923

Queens Borough Office  
120-55 Queens Boulevard  
(718) 286-0795

Staten Island Borough Office  
10 Richmond Ave – Borough Hall  
(718) 816-2315

Central Inspections  
280 Broadway, 4<sup>th</sup> Floor  
(212) 566-5475

Elevator Division  
280 Broadway, 4<sup>th</sup> Fl.  
(212) 566-4856

Boiler Division  
280 Broadway, 4<sup>th</sup> Fl.  
(212) 566-4872

Cranes and Derricks  
280 Broadway, 5<sup>th</sup> Fl.  
(212) 566-4698

BEST Squad  
1 Centre Street  
(212) 669-8132

Enforcement Division  
280 Broadway, 5<sup>th</sup> Fl.  
(212) 566-3232



NYC Department of Buildings  
280 Broadway, New York, NY 10007

Patricia J. Lancaster, FAIA, Commissioner

Ida Bohmstein, Director  
Human Resources  
212.566.4104  
212.566.3096 fax  
IdaB@buildings.nyc.gov

July 12, 2004

Mr. Kenneth Fladen  
[REDACTED]  
[REDACTED]

Dear Mr. Fladen:

I am pleased to confirm your appointment as a provisional Administrative Borough Superintendent/Level M-II effective June 21, 2004. [REDACTED]

In accordance with Section 5.1 of the Leave Regulations for Career and Salary Plan Employees, you have been placed on a leave of absence from your permanent title of Architect/Level I.

Your appointment will remain in the Manhattan Borough Office. All appointments are citywide assignments made in accordance with departmental needs.

May I take this opportunity to wish you continued success in your appointment.

Very truly yours,

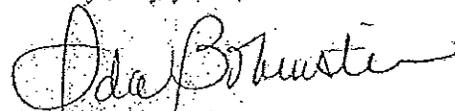
  
Ida Bohmstein

EXHIBIT 5



28 of 161 DOCUMENTS

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\*\*\*\*\* Current through December 31, 2008 \*\*\*\*\*

RULES OF THE CITY OF NEW YORK  
TITLE 2: BOARD OF STANDARDS AND APPEALS  
CHAPTER 1: PRACTICE AND PROCEDURE

2 RCNY § 1-06

§ 1-06 The Zoning (BZ) Calendar.

(a) Subject matter. No application for a variance or special permit shall be entertained by the Board except from an order, requirement, decision, or determination made in a specific case by the Commissioner of Buildings, any Borough Superintendent of the Department of Buildings or their authorized representative, or the Commissioner of the Department of Business Services pursuant to the Board's jurisdiction as set forth in the New York City Charter.

(b) Time to file. Applications shall be filed within thirty (30) days from the date of the action of the Commissioner of Buildings, any Borough Superintendent of the Department of Buildings, or their authorized representative, or the Commissioner of the Department of Business Services which is the subject of the application.

(c) The BZ form. Every application shall be made on Form BZ and shall be accompanied by all the data required by such form and by its accompanying instruction sheets.

(d) Notification. The applicant, within three (3) business days after the application has been filed with the Board, shall forward a copy of all case material to:

- (1) The affected Community Board(s) (or Borough Board);
- (2) The affected City Councilmember;

(3) The affected Borough President;

(4) The administrative official from whose order or determination the appeal is being made; and

(5) The City Planning Commission.

(e) Proof of service. The applicant shall submit proof of service on the individuals or entities listed in this section to the Board within ten (10) days of the initial filing, in accordance with § 1-03(f) of these Rules.

(f) Community Board review. Within sixty (60) days after receipt of notification, the Community Board may hold a public hearing and submit a written recommendation concerning such application to the Board, or may waive in writing the holding of a public hearing. If a borough board is involved, within thirty (30) days after the filing of a recommendation or waiver with it by every community board in which the land involved is located or after expiration of the time allowed for such community boards to act, the borough board may hold a public hearing and submit a written recommendation to this Board or may waive a public hearing.

Upon receipt of a waiver or recommendation from the affected Community Board(s) or Borough Board, or upon the expiration of the time period for their review, the Board may review the application, hold a public hearing, and make a decision. The Board may in its discretion, choose to receive and review Community Board and Borough Board recommendations as evidence in the record even if received after the applicable time period has expired.

(g) Notice of hearing. After examiner(s) have determined the application to be substantially complete, the applicant shall be notified by the Executive Director, on the appropriate form, of the date set for the public hearing, which shall be at least thirty (30) days after the mailing of said notice. With this notice, the applicant shall be supplied with an official copy of the appropriate forms, which he or she is required to send not less than twenty (20) days prior to the date of such hearing to:

(1) The affected Community Board(s) (or Borough Board);

(2) The affected City Councilmember;

(3) The affected Borough President;

(4) The City Planning Commission; and

(5) Affected property owners;

"Affected property owners" shall be defined to include all owners and residential, commercial and industrial tenants of record in the building or premises which is the subject of the application as well as all owners of property within a radius of 400 feet from the center of the lot which is the subject matter of the application, except that for subject lots of 40,000 square feet or more in area or having a frontage of more than 300 feet on any one street, the affected area shall be within a line running parallel to and 200 feet from all site property

lines. A radius of 200 feet shall be taken from corners of the site property having an interior angle of less than 180 degrees. Where property within the area of notification other than the affected building is owned cooperatively or as a high rise condominium, then notice of the public hearing shall be posted in the common areas of the building and given to the business office of the cooperative or the condominium which should then be requested to notify all residents in its customary manner. On all applications for lots containing separately owned one, two or three family dwellings, and on applications for special permits for lots of less than 40,000 square feet, the area of notification to the affected property owners shall be defined as a radius of 200 feet from the center of the lot. Not less than five (5) business days prior to such hearing date, the applicant shall file proof of service that each of the individuals or entities listed in this section has been notified in accordance with § 1-03(f) of these Rules.

(h) Newspaper notice. The applicant shall, in addition to providing notice pursuant to subdivision (g) of this section, publish the contents of the notice of hearing form provided by the Board at his or her own expense in one newspaper of local circulation specified by the Board, or one newspaper of general circulation, except that publication shall not be required for applications involving bulk variances on separately owned one, two and three family dwellings and for applications involving special permits. The publication of the hearing notice shall take place in such newspaper on one day of each week for two (2) of the three (3) weeks prior to the public hearing. The applicant shall be notified by the Board in which newspapers the applicant may place the requisite notice to be published. The applicant shall file with the Board, prior to the hearing date, a copy of the published notice with appropriate proof of publication.

(i) Board publication. Not less than twenty (20) days before the date of the hearing, the Board shall publish notice of the hearing in its bulletin or the City Record.

(j) Additional submissions. If, during the course of review by the Community Board, or Community Boards and Borough Board when applicable, the applicant provides to the Community Board(s) or Borough Board or any other individual or entity required to be notified under these Rules any documents in addition to those provided as part of the application to this Board, the applicant shall within three (3) business days submit copies to this Board, to the City Council Member in whose district the site is located, to the affected Borough President and to the City Planning Commission. If, at any time during or after the 60 day review period, the applicant submits additional documents to this Board or modifies or amends the application, the applicant shall within three (3) days submit a copy of the amended or modified application and supporting documents to the City Planning Commission, to the affected City Council Member, to the Community Board(s) (and Borough Board, if applicable), and to the affected Borough President. All submissions to the Community Board(s), Borough Board, if applicable, City Council Member, and City Planning Commission, as specified above, shall be accompanied by a transmittal letter listing all the documents provided. A copy of this transmittal letter shall be submitted to the Board. Proof

of service shall be provided to the Board in accordance with § 1-03(f) within ten days of the initial filing.

If, subsequent to the 60 day review period the applicant makes a substantial modification of the application, the Board, in its discretion, may return the case to the Community Board, and Borough Board, if applicable, the City Council Member and the affected Borough President for their review.

#### HISTORICAL NOTES:

Section repealed and added City Record Sept. 21, 1994 eff. Oct. 21, 1994.  
Section in original publication July 1, 1991.