247-07-A
APPLICANT – Soho Alliance Community Group, for Bayrock/Sapir Organization, LLC, owner.
SUBJECT – Application October 30, 2007 – Appeal seeking to revoke permits and approvals to construct a residential condominium hotel in an M1-6 zoning district. Applicant argues that the residential use of the premises violates the underlying M1-6 zoning district prohibitions.
PREMISES AFFECTED – 246 Spring Street, between Varick Street and Hudson Street, Block 491, Lot 36, Borough of Manhattan.
COMMUNITY BOARD #2M
APPEARANCES –
For Applicant: Stuart A. Klein, Council Member Tony Avella, Matthew Schnew, Carole DeSarm, Andy Neale, Leah Archibald, Phaedra Thomas, Cassandra Smith, Tobi Berman, Doris Duiter, Andrew Berman, Sezu Sweeney, Kathleen Treat, Magda Aoulfadi, Gary Tomei, Bill Borocer, Jennifer Barrett, Melissa Baldock, Gregg Levine, Katie Kendall, Zaen Winestne, Elizabeth Adam, Lora Tenenbaum, Lorraine Bourie.
For Opposition: Paul Selver.
For Administration: Mark Davis, Department of Buildings.
ACTION OF THE BOARD – Appeal denied.
THE VOTE TO GRANT –
Affirmative: 0
Negative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
THE RESOLUTION:[1]

WHEREAS, the instant appeal comes before the Board in response to a Final Determination letter dated September 28, 2007 by the Manhattan Borough Commissioner of the NYC Department of Buildings (DOB) (the "Final Determination") addressed to Stuart Klein, Esq., with respect to New Building Application No. 104403334; and

WHEREAS, the Final Determination reads, in pertinent part:

> "This letter is to confirm that the permits issued to date by the Department of Buildings to construct a proposed Use Group 5 transient hotel at the above-referenced premises which is located in an M1-6 zoning district are proper.
> "The permits authorize a transient use, a use that is permitted as-of-right in the Manufacturing District. This is my determination"; and

WHEREAS a public hearing was held on this application on February 27, 2008 after due notice by publication in *The City Record*, and then to decision on May 6, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commission Hinkson, Commissioner Montanez and Commissioner Ottley-Brown; and

PARTIES AND SUBMITTED TESTIMONY

WHEREAS, this appeal is brought on behalf of the SoHo Alliance, a membership organization of persons who live and work in the SoHo community (the "Appellant"); the Appellant was represented by counsel in this proceeding; and

WHEREAS, DOB and the owner of 246 Spring Street (the "Sponsor") have been represented by counsel throughout this Appeal; and

WHEREAS, Council Member Tony Avella provided testimony in support of the instant appeal; and

WHEREAS, representatives of Manhattan Community Boards 2 and 5 provided testimony in support of the instant appeal; and

WHEREAS, representatives of several civic and neighborhood associations and a number of neighborhood residents also testified at hearing in support of the instant appeal; and

PROCEDURAL HISTORY

WHEREAS, the instant appeal concerns the construction of a 42-story building with 420 individual units in an M1-6 zoning district (the "Building"); and

WHEREAS, on May 17, 2007, DOB issued New Building Permit No. 104403334 (the "building permit") for a proposed transient hotel (J-1 occupancy) at the subject site; and

WHEREAS, counsel for the Appellant wrote (by undated letter) to the Manhattan Borough Commissioner requesting reconsideration of DOB's approval; and

WHEREAS, on September 28, 2007, the Manhattan Borough Commissioner issued the Final Determination, cited above, that forms the basis of the instant appeal, which was delivered to the Appellant on October 4, 2007; and

WHEREAS, on October 30, 2007, the Appellant filed the instant appeal at the BSA; and

PROPOSED BUILDING

WHEREAS, the premises is located at 246 Spring Street and is proposed to be occupied by a 42-story Use Group 5 building; and

WHEREAS, the owner proposes the Building to be a condominium hotel, pursuant to an offering plan filed with the New York State Attorney General (the "Offering Plan"); and

WHEREAS, the Sponsor proposes for the Building to be occupied by 413 transient hotel units and seven commercial units; and

WHEREAS, of the Building's 413 transient hotel units, the plans reflect 407 furnished units with baths and six furnished units with baths, ranges and dishwashers; and

WHEREAS, the Building is proposed to have a large lobby area with a front desk for registration by unit owners and guests, eating and drinking areas, function and conference facilities and daily maid service; and

WHEREAS, the subject site is within an M1-6 zoning district which permits a Use Group 5 transient

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1 Headings are utilized only in the interests of clarity and organization.

hotel as of right and prohibits residential use; and

RESTRICTIVE DECLARATION

WHEREAS, a Restrictive Declaration was executed by the Sponsor as of April 26, 2007 and recorded against the subject site restricting its use as a transient hotel Class B multiple dwelling as defined by the New York State Multiple Dwelling Law (the "MDL") classified within Occupancy Group J-1 under the New York City Building Code (the "Restrictive Declaration" or "Declaration"); and

WHEREAS, the Restrictive Declaration sets forth restrictions on the occupancy of individual units by unit owners (the "Occupancy Restrictions"); and

WHEREAS, the Occupancy Restrictions state that "[n]o Unit may be occupied by its Unit Owner or by any other individual: (i) for a continuous period of more than 29 days in any 36 day period; or (ii) for a total of more than 120 days in any calendar year" (Declaration ¶ 2.02(a)); and

WHEREAS, the Occupancy Restrictions further provide that when a unit is not occupied by the unit owner, it shall be made available for rental by or on behalf of the management of the Building (Declaration ¶ 2.02(b)); and

WHEREAS, the Restrictive Declaration also sets forth a series of enforcement measures intended to ensure compliance with the Occupancy Restrictions; and

WHEREAS, the Declaration specifically authorizes the levy of financial penalties on unit owners who violate the Occupancy Restrictions, one-half of which must be paid to the City of New York; the financial penalties are added to common charges and become a lien on the unit if unpaid (Declaration ¶¶ 2.07(b) and (c), 2.08); and

WHEREAS, the Declaration also requires the Building to file with DOB annually an occupancy report certified by an independent certified public accountant indicating exceedence of the length of stay restrictions (Declaration ¶ 2.04); and

WHEREAS, these occupancy reports, together with supporting documentation, are to be kept for no less than three years and to be made available for review by DOB or the City on request (Declaration ¶ 2.05); and

WHEREAS, DOB is also authorized by the Restrictive Declaration to conduct audits of the occupancy records of the Building (Declaration ¶ 2.05); and

WHEREAS, DOB or the City may bring an enforcement action for default in the performance of obligations required by the Restrictive Declaration (Declaration ¶ 4.02(a)); and

WHEREAS, if DOB or the City finds that violations in the Occupancy Restrictions meet a certain specified threshold, or if DOB or the City have a reasonable basis to suspect that information in an occupancy report is false or fraudulent, an independent private sector inspector general may be appointed at the Condominium's expense to conduct an investigation (Declaration ¶ 4.10); and

ISSUES PRESENTED

WHEREAS, the Appellant makes the following primary arguments in support of its position that DOB should revoke the permit for the Building: (i) the length of stay permitted to unit owners violates the Zoning Resolution and the New York City Administrative Code (the "Administrative Code"); (ii) individual ownership of units violates the Zoning Resolution; (iii) DOB and the City cannot enforce against illegal residential use of the condominium hotel units; and (iv) that DOB acted inconsistently in approving the permit for the Building; and

WHEREAS, these four arguments are addressed below; and

Length of stay by unit owners

WHEREAS, the Appellant argues that the ability of individuals to regularly occupy their units for as many as 29 consecutive days and up to 120 days within a calendar year is a residential use in violation of the Zoning Resolution; and

WHEREAS, Section 12-10 of the Zoning Resolution defines a transient hotel as a building or part of a building in which: (a) living or sleeping accommodations are used primarily for transient occupancy, and may be rented on a daily basis; (b) one or more common entrances serve all such living or sleeping units; and (c) twenty-four hour desk service is provided, in addition to one or more of the following services: housekeeping, telephone, or bellhop service, or the furnishing or laundering of linens; and

WHEREAS, the Appellant does not dispute that the Building satisfies the requirements of Section 12-10 (b) and (c) of the Zoning Resolution, but contends that DOB erred in issuing the building permit because the phrase "may be rented on a daily basis" in Section 12-10 (a) requires that transient hotels shall be rented only on a daily basis and cannot be occupied for 29 consecutive days; and

WHEREAS, DOB argues, and the Board agrees, that such a construction is contradicted by the ordinary legal construction of the word "may," which "is employed to imply permissive, optional or discretional, and not mandatory action or conduct," (citing Black's Law Dictionary 676 (6th ed. 1991); and GE Capital Corp. v. NYS Div. of Tax Appeals, 2 N.Y.3d 249, 255 (2004) ("[w]e will not presume that the Legislature meant 'shall' when it said may'")); and

WHEREAS, the Appellant also argues that the length of stay provisions of the Restrictive Declaration violate the Administrative Code; and

WHEREAS, the DOB permit application lists the occupancy group of the Building as J-1, which is defined by Section 27-264 of the Administrative Code as including "buildings and spaces that are primarily occupied for the shelter and sleeping accommodations of individuals on a day-to-day or week-to-week basis;" and

WHEREAS, the Appellant states that the ability

of owners to remain in their units for 29 consecutive days allows them to live in them in excess of one month, because they could occupy their units from February 1 until March 1, thereby constituting a month-to-month occupancy which is inconsistent with the J-1 classification of the Building; and

WHEREAS, DOB contends, and the Board agrees, that the ability of an occupant to stay for an entire month is due merely to the calendar system that makes February a uniquely short month and that this fact alone cannot convert a transient occupancy to a month-to-month occupancy when, for the other eleven months of the year, the occupant cannot even remain for a full month at a time; and

WHEREAS, the Appellant also contends that an owner can in fact occupy its unit for 240 days within a 12-month period, because the Restrictive Declaration imposes a 120-day limit on occupancy on a calendar year basis, rather than a 365 day basis; and

WHEREAS, DOB states that measurement by calendar year is the common standard among statutes that measure and determine residency, such as the New York State Rent Stabilization Code ("Rent Stabilization Code") (9 NYCRR § 2520(u)); and

WHEREAS, DOB further states that that the requirement of the Restrictive Declaration that an owner vacate its unit for at least one week during each 36-day period would be unaffected by the fact that the 120-day limit were on a calendar basis, and would operate to ensure that all occupancy were transient; and

WHEREAS, DOB further states that the Occupancy Restrictions are consistent with the common legal meaning of the term "transient," as well as with laws regulating hotel occupancy and construction that define transient versus "permanent occupancy" or "residence;" and

WHEREAS, the Board agrees with DOB that the Restrictive Declaration requires an owner to vacate its unit for at least one week during each 36-day period, irregardless of whether the 120-day limit were on a calendar basis or a 365-day basis, and would operate to ensure that all occupancy was transient; and

WHEREAS, further, the Board agrees that the Occupancy Restrictions are consistent with the common legal meaning of the term "transient," as well as with laws regulating hotel occupancy and construction that define transient versus "permanent occupancy" or "residence" and, therefore, is not persuaded by the Appellant's arguments; and

WHEREAS, in support of its contention that the Building is a transient hotel, DOB cites to the distinction between transient and permanent hotel occupancy in the New York City hotel room occupancy tax law ("hotel occupancy tax law," 19 RCNY §12 et. seq.); and

WHEREAS, the hotel occupancy tax law defines a "permanent resident" who is exempt from the tax as a person who has occupied a hotel room for 180 consecutive days or more (19 RCNY § 12.01); and

WHEREAS, persons who occupy a room for less than 180 consecutive days are referred to by the hotel occupancy tax law as "transient" occupants; and

WHEREAS, DOB notes that under the hotel occupancy tax law, the Building's unit owners, whose continuous occupancy cannot exceed 29 days, would be construed to be transient occupants; and

WHEREAS, DOB also cites to the definition of "transient" in the New York State Multiple Dwelling Law ("MDL") in further support of its claim that the unit owners would qualify as transient occupants of the Building; and

WHEREAS, the MDL groups hotels among class B multiple dwellings, which are defined to be "occupied, as a rule transiently, as the more or less temporary abode of individuals or families who are lodged with or without meals. This class shall include hotels, lodging houses, rooming houses, boarding houses, boarding schools, furnished room houses, lodgings, club houses, colleges and school dormitories . . ." (MDL § 4(9)); and

WHEREAS, DOB notes that dormitories, though defined as transient, are generally occupied for months without a break for the greater portion of a year, a period far in excess of the 29 consecutive days permitted by the Occupancy Restrictions; and

WHEREAS, in further support of its argument that occupancy of the Building would be transient in character, DOB also cites to the definitions of "primary residence" and "permanent [hotel] resident" used in determining the types of occupancies that are subject to rent stabilization laws; and

WHEREAS, according to the Rent Stabilization Code, an occupancy of less than 183 days per calendar year is construed as evidence that a housing accommodation is not a "primary residence" and an individual who occupies a hotel, or has the right to occupy a hotel, for less than six months is not a "permanent tenant" as defined by the code (9 NYCRR §§ 2520.6(j) and 2520(u)); and

WHEREAS, in further support of its interpretation that occupancy of the Building would be transient, DOB also cites to residency definitions in the federal and New York State tax codes; and

WHEREAS, the Appellant argues that reliance on State and federal law to interpret the limit to a "transient" occupancy is "misplaced" and that the Board should look instead only to the "four corners" of the Zoning Resolution for help interpreting the term; and

WHEREAS, the Appellant further argues that Section 11-22 of the Zoning Resolution, concerning selection among overlapping or contradictory regulations, "demands a restrictive interpretation of the word 'transient';" and

WHEREAS, the Board finds that Section 11-22 is unhelpful and irrelevant to the instant case, in which the Zoning Resolution is silent concerning the specific parameters of a transient occupancy, while a range of other regulations are not; and

WHEREAS, the Appellant further states that the Board's decision in BSA Cal. No. 67-07-A (relying on Raritan Dev. Corp. v. Silva, 91 N.Y.2d (1997)) stands for the proposition that when a provision in the Zoning Resolution is ambiguous, reliance on external statutes or sources is erroneous; and

WHEREAS, the Board notes that BSA Cal. No. 67-07-A, involving a penthouse built in violation of the "sliver law," instead concerns whether ambiguous provisions of the Administrative Code can supersede specific provisions of the Zoning Resolution, while Raritan involved a challenged interpretation of the Zoning Resolution which was contrary to its plain meaning; and

WHEREAS, neither case is applicable to an instance in which the Zoning Resolution lacks a definition of a contested term (i.e., "transient"); and

WHEREAS, however, the Board notes that where the meaning of a statutory term is undefined, "resort may be had to any authoritative source of information" to interpret its meaning (McKinney's Statutes § 120); and

WHEREAS, the Board concludes that DOB's determination that the proposed use of the Building is transient is supported by the definition of "transient hotel" in the Zoning Resolution, by the definitions of "transient" found in the NYC hotel occupancy tax law and the MDL, and by the definitions of "residency" in the Rent Stabilization Code, and New York and federal tax codes; and

WHEREAS, the Board further concludes that the length of stay provisions in the Restrictive Declaration violate neither the Zoning Resolution nor the Administrative Code; and

Individual ownership of transient hotel units

WHEREAS, the Appellant argues that the ability of individuals to own their units means that the units are not "used primarily for transient occupancy" and violates the Zoning Resolution; and

WHEREAS, DOB contends, however, that the Zoning Resolution contains neither explicit nor implicit support for this position, and further contends that such a position would be contrary to the fundamental common law principle that "zoning deals basically with land use and not with the person who owns or occupies it" (FGL & L Prop. Corp. v. City of Rye, 66 N.Y.2d 111, 116 (1985)); and

WHEREAS, DOB also states that if ownership alone were sufficient to make a unit residential, the unit would be considered residential even if it were occupied by other transient guests 365 days per year, an outcome that would be illogical; and

WHEREAS, the Board concludes that individual ownership of the Building's units is not, in and of itself, evidence of illegal residential occupancy; and

WHEREAS, in the alternative, the Appellant argues that individual ownership, while perhaps not illegal, may induce illegal residential occupancy of the units and discourage their legal transient use; and

WHEREAS, the Appellant contends that the Sponsor's marketing of the Building evidences its intent to permit residential use; and

WHEREAS, in dispute of the Appellant's claims, the Sponsor submitted materials supporting its claimed transient use of the Building, including a disclaimer from the Building's website indicating its transient nature, and a "Special Risks" section from the Offering Plan highlighting the Occupancy Restrictions; and

WHEREAS, the Sponsor further stated that the Appellant submitted no current materials showing allegedly misleading sales promotions; and

WHEREAS, the Appellant failed to rebut the Sponsor's assertions; and

WHEREAS, the Appellant argues that the Building's permit can be revoked based on a presumption of future illegal use, citing the recent decision in Matter of 9th and 10th St. LLC v. Bd. of Stds. and Appeals, 10 N.Y. 3d 264 (2008); 2008 NY Slip Op. 02678 (upholding DOB's denial of a building permit for a proposed dormitory that lacked an established connection to a school based on reasonable doubt that the building would be used lawfully); and

WHEREAS, at hearing, DOB contended that the agency is prohibited from denying a permit based on a speculative future illegal use (citing Matter of Di Milia v. Bennett, 149 A.D.2d 592, 593 (2d Dep't 1989) ("[t]he standard to be applied herein is the actual use of the building in question, not its possible future use"); and

WHEREAS, the Board finds that the Appellant's reliance on 9th and 10th St. LLC. is misplaced, because in that case, the denial of a permit by DOB was upheld based on the applicant's failure to proffer evidence to DOB establishing an intent to use the building in a manner consistent with the permitted use; and

WHEREAS, in the instant case, the Board agrees that the marketing materials and Offering Plan excerpt submitted by the Sponsor evidence an intent by the Sponsor to use the Building in a manner consistent with the zoning; and

WHEREAS, the Appellant also argues that an "owner's secure closet" shown in the building plans in which owners may store personal items in their units when they are not in occupancy is a "hallmark of residential use" evidencing an intent to contravene the Zoning Resolution; and

WHEREAS, DOB counters that the presence of a locked storage closet in a unit is instead evidence of the transient nature of the unit, contending that no need for a secure storage closet would exist if the unit were indeed used as a permanent residence, because a unit owner who had unrestricted access and control of the unit's occupancy would not require a secure place to store personal effects; and

WHEREAS, according to DOB and the Sponsor, the intent to develop a transient hotel is further demonstrated by the proposed building plans, which include: (i) common areas not found in a typical residence, such as a front desk for check in and check

out, eating and drinking areas, function and conference facilities; (ii) a Class J fire safety system; and (iii) the absence of kitchens, individual mailboxes, or rubbish chutes; and

WHEREAS, DOB additionally asserts that the lack of cooking facilities in all but six of the units makes it impossible to legally use the units for Class A/J-2 residential occupancies and limits their use to Class B/J-1 occupancy; and

WHEREAS, the Sponsor states that additional indicia of transient use is demonstrated by the proposed Building operations set forth in the Restrictive Declaration which include: (1) requirements that unit owners check in and check out at the front desk at the beginning and end of each stay; (2) prohibitions on personal keys and on the installation of personal furnishings and decorations in individual units; and (3) compliance mechanisms and sanctions for violations of the Ownership Restrictions; and

WHEREAS, in the instant case, the Board agrees with DOB that the marketing materials, building plans and proposed mode of operation evidence an intent to the use the Building as a transient hotel; and

Enforceability of the Occupancy Restrictions

WHEREAS, the Appellant additionally argues that DOB cannot enforce the Occupancy Restrictions either because: (i) the Restrictive Declaration is invalid; or (ii) the agency's enforcement powers are limited by the Restrictive Declaration; and

WHEREAS, the Appellant contends that the Restrictive Declaration is invalid because it omits language conditioning the certificate of occupancy on its compliance, as required by Legal Policy and Procedure Notice ("LPPN") #1/05, governing the execution of restrictive declarations by DOB; and

WHEREAS, because approval of the permit was purportedly conditioned on the Sponsor's execution of an invalid restrictive declaration, the Appellant asserts that the approval is consequently invalid and must be revoked; and

WHEREAS, DOB, as a threshold matter, disagrees that the Restrictive Declaration was required and disputes that that the permit was conditioned on its execution; and

WHEREAS, DOB asserts that because the Building complies with the Zoning Resolution and its proposed occupancy is lawful, the Restrictive Declaration was not required to legalize its occupancy; and

WHEREAS, DOB states that, by its terms, LPPN #1/05 applies only to restrictive declarations that are required "for alternate means of compliance with code requirements when such development would otherwise be foreclosed by various statutory restrictions or requirements;" and

WHEREAS, DOB contends and the Board agrees that the Restrictive Declaration simply provides additional assurances by the Sponsor, not required by law, that the Building will be occupied as a transient use and conform to the requirements of the Zoning Resolution; and

WHEREAS, DOB states that because the Restrictive Declaration was not required, its validity has no bearing on the ability of DOB to enforce the Occupancy Restrictions using its existing enforcement powers under the Building Code; and

WHEREAS, the Appellant also asserts that the Restrictive Declaration is invalid because DOB was not granted the authority to enter into it by either Section 643 or Section 645 of the New York City Charter, which enumerate DOB's powers and duties; and

WHEREAS, DOB states that the Restrictive Declaration was executed unilaterally by the Sponsor and, as the agency has no written agreement with the Sponsor, the question of whether it had the power to execute one is irrelevant; and

WHEREAS, the Appellant argues that the Restrictive Declaration constrains DOB's enforcement powers by calling for monetary penalties to the exclusion of other penalties; and

WHEREAS, in response, DOB asserts, as evidence to the contrary, that the Restrictive Declaration categorically states that "nothing in this Declaration precludes DOB or the City from prosecuting an action or proceeding to enforce this Declaration under any law, rule or regulation giving DOB or the City authority to bring such an action or proceeding" (Declaration, section 4.02(c) as evidence that the agency's enforcement powers are unaffected by the Declaration; and

WHEREAS, DOB further states that since the Sponsor executed the Restrictive Declaration unilaterally and DOB is not a signatory, it would therefore be legally impossible for the document to bind the agency or limit its enforcement powers over the Building, even if the Restrictive Declaration were interpreted to contain such language; and

WHEREAS, DOB contends that the Building is therefore subject to the enforcement applicable to all buildings, including revocation of the certificate of occupancy, as well as to the penalty provisions of the Restrictive Declaration, and that any putative limitations on the enforceability of the Restrictive Declaration would therefore have no bearing on the ability of DOB to use the full range of its enforcement powers under the Building Code; and

WHEREAS, the Board concludes that DOB's enforcement powers have not been curtailed by the Restrictive Declaration; and

Consistency with DOB precedent

WHEREAS, the Appellant contends that DOB's approval of the permit for the Building is inconsistent with the agency's prior withdrawal of its approval of 848 Washington Avenue, a proposed mixed-use building in an M1-5 zoning district in which 49 percent of the floor area was proposed for residential use and 51 percent of the floor area was proposed for transient hotel use; and

WHEREAS, because the plans for 848

Washington indicated that more than half the floor area would be devoted to transient hotel use and the Zoning Resolution defines a "transient hotel", in pertinent part, as a "building or part of a building in which living or sleeping accommodations are used primarily for transient occupancy" (Section 12-10), DOB had initially ruled that the plans complied with the definition of a transient hotel; and

WHEREAS, DOB subsequently concluded that to qualify as a transient use, all units had to be available on a transient basis and issued a determination, dated April 19, 2004, stating that "in order to develop a transient hotel in an M1-5 zoning district, units may not be made subject to lease, sale or other arrangements under which they would not be available for transient occupancy," thereby reversing its prior approval; and

WHEREAS, the Appellant contends that DOB's decision to revoke approval of 848 Washington Avenue was based instead on the proposed sale of individual units in a transient hotel, in violation of the Zoning Resolution; and

WHEREAS, as discussed above, DOB contends that the determination as to whether a building is transient, pursuant to the Zoning Resolution, is based on the use of the units in question, rather than on their proposed ownership, and states that the permit for 848 Washington Avenue was revoked, not because units were to be sold but, instead, because 49 percent of the units were proposed for impermissible residential use; and

WHEREAS, the Appellant contends that the instant case similarly involves a proposed residential use which would not be permitted as of right in the subject zoning district, and that DOB should therefore follow its decision in 848 Washington Avenue and revoke the permit for the Building; and

WHEREAS, however, DOB states instead that the permit for 848 Washington Avenue was properly revoked because a portion of the units in that building were to be operated as residential use with no limitation for occupancy; and

WHEREAS, DOB distinguishes the subject building in which all units are proposed to be used for transient occupancy; and

WHEREAS, the Board notes that DOB revoked the permit for 848 Washington Avenue because a percentage of the proposed units were residential, without any restriction on occupancy duration; and

WHEREAS, the Board notes that the facts in 848 Washington Avenue can be clearly distinguished from those respecting the Building, in which the only occupancy permitted by the Occupancy Restrictions is transient; and

WHEREAS, the Board finds DOB's determinations concerning these two buildings to be consistent; and

WHEREAS, the Board notes that the Appellant raised additional issues, but failed to provide case law or Board precedent to support them, so they are not addressed within this resolution; and

WHEREAS, the Board agrees with DOB that the Building, as proposed, complies with all legal requirements for the issuance of a building permit for a transient hotel in an M1-6 zoning district and there is therefore no basis for the revocation of the permit; and

Therefore it is resolved that the instant appeal is denied.

Adopted by the Board of Standards and Appeals, May 6, 2008.

Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 6, 2008.

A true copy of resolution adopted by the Board of Standards and Appeals, May 6, 2008.
Printed in Bulletin Nos. 18-19, Vol. 93.

Copies Sent
To Applicant
Fire Com'r.
Borough Com'r.