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BOARD OF STANDARDS AND APPEALS

MEETING OF: September 20, 2022

Proposed resolution authorizing the Board of Standards and Appeals to hold public hearings and public meetings via videoconferencing, including authorizing participation by some Board Commissioners, applicants and the public by videoconference, in conformance with recently enacted amendments to the New York State Open Meetings Law (Part WW of chapter 56 of the Laws of 2022).”

ACTION OF BOARD — Resolution adopted.

THE VOTE —

**Affirmative: Vice-Chair Chanda, Commissioner Ottley-Brown,
 Commissioner Sheta, and Commissioner Scibetta,
 Commissioner Yoon.....5
Negative:.....0**

THE RESOLUTION —

The Board of Standards and Appeals (the “Board”) has been holding its review sessions and public hearings remotely since April 2020, with the exception of the meeting held on June 30, 2021, as a consequence of the COVID-19 pandemic and the resulting states of emergency declared by the Governor of New York and the Mayor of the City of New York, and as authorized by Governor Cuomo’s Executive Order 202.1, dated March 7, 2020, and subsequent extensions; Part E of Chapter 417 of the Laws of 2021, effective September 2, 2021; Governor Hochul’s Executive Order 11.1, dated December 26, 2021, and subsequent extensions; Chapter 1 of the Laws of 2022, effective January 14, 2022; and Part WW of Chapter 56 of the Laws of 2022, effective April 9, 2022, all of which suspended the requirement of the New York State Open Meetings Law (the “OML”) that members of the public be allowed to be present at any location from which a member of a public body subject to the OML participates in the public body’s meetings (“the in-person meeting requirement”).

During the suspension of the in-person meeting requirement of the OML, Commissioners participated in Board meetings by videoconference and enabled the public, including applicants, to participate in Board meetings by videoconference or telephone, to

observe Board meetings by webcast over the internet, and to listen to Board meetings by telephone.

It is the position of the Board that the ability of the public to testify at, observe, and listen to Board meetings remotely has benefited the public by providing greater flexibility to the public, and increased public access to and participation in Board meetings, and has resulted in a greater number of people attending and testifying at public hearings.

The ability of Commissioners to participate remotely in Board meetings has enabled Commissioners to attend meetings, hear presentations and testimony, ask questions, and vote on occasions when a Commissioner would not have been able to attend a Board meeting in person.

New York State has extended the suspension of the in-person meeting requirement of the OML through at least September 12, 2022. In Emergency Executive Order 83, dated April 28, 2022, Mayor Eric Adams continued the city state of emergency for an additional 30 days, and through subsequent extensions through September 22, 2022.

New York State has adopted legislation, Part WW of Chapter 56 of the Laws of 2022, authorizing a public body subject to the OML, such as the Board, to adopt a resolution, after public hearing, authorizing the use of videoconferencing to conduct that public body's meetings after expiration of the suspension of the in-person meeting requirement of the OML, subject to the following conditions:

1. that at least a quorum of the public body be present in one or more physical locations where members of the public may attend in person; and
2. that members of the public body beyond those required to constitute a quorum may attend remotely by videoconference, from any location and without providing access by members of the public, under extraordinary circumstances, which include disability, illness, caregiving responsibilities, or any other significant or unexpected event that prevents the member from being able to attend the meeting in person; and
3. that if the public body allows members to attend remotely by videoconferencing at any location not accessible to members of the public, the public must also be allowed to attend, and where applicable, participate in the meeting remotely to the same extent as the public who attend in person; and
4. that the public body establish and post on its website procedures for remote attendance by its members and by the public.

The New York State legislation authorizing the use of videoconferencing to conduct meetings subject to the OML will expire on July 1, 2024, unless renewed.

The Board held a public hearing on this Resolution on September 20, 2022.

Based on its experience with videoconferencing during the COVID-19 emergency, the Board's position is that remote participation in Board meetings would offer flexibility to Commissioners and benefit the public by enabling greater participation in the hearing process.

Therefore, it is Resolved, by the Board of Standards and Appeals, that the use of videoconferencing to conduct Board meetings is hereby authorized in conformance with the requirements of the New York State Open Meetings Law, including the following:

THAT for all Board meetings, a minimum of Commissioners, sufficient to constitute a quorum of the Board shall be present in a physical location or locations where the public can attend in person;

THAT if a quorum of Commissioners is physically present at a Board meeting where the public can attend in person, a Commissioner may attend and participate in a Board meeting by videoconference from any location and without providing access to members of the public to such location if such Commissioner is unable to attend the meeting in person due to extraordinary circumstances, which include but are not limited to, disability, illness, caregiving responsibilities, or any other significant or unexpected event which precludes the Commissioner's physical attendance at the meeting;

THAT members of the public may view Board meetings by video and may attend and, where public comment is authorized, participate in Board meetings in person, by videoconference, or by any other remote means established by the Board;

THAT the procedures for remote participation and attendance by the Board and members of the public shall be posted on the Board's website; and

THAT this Resolution shall take effect on September 23, 2022.

Adopted by the Board of Standards and Appeals, September 20, 2022.

CERTIFICATION

**This copy of the resolution
dated September 20, 2022,
is hereby filed by the
Board of Standards and Appeals
on September 20, 2022.**



**Carlo Costanza
Executive Director**