

MINUTES OF PUBLIC MEETING
New York City Loft Board Public Meeting
Held at 22 Reade Street, Main Floor
Spector Hall

July 19, 2018

The meeting began at: 2:30 pm

Attendees: Robert Carver, Esq., Owners' Representative; Elliott Barowitz, Public Member; Richard Roche, Fire Department ex officio; Charles DeLaney, Tenants' Representative; Julie Torres-Moskovitz, Public Member; Renaldo Hylton, Chairperson Designee; and Helaine Balsam, Loft Board, Executive Director .

INTRODUCTION:

Chairperson Hylton welcomed those present to the July 19, 2018, public meeting of the New York City Loft Board. He then briefly summarized Section 282 of the New York State Multiple Dwelling Law, which establishes the New York City Loft Board; and described the general operation of the Board as consistent with Article 7-C of the New York State Multiple Dwelling Law.

Vote on May 10, 2018 Meeting Minutes:

Mr. Hylton asked if there were any comments or questions; then for a motion to accept, and a second.

Mr. Carver moved to accept; **Ms. Torres-Moskovitz** seconded the motion.

Members concurring: Mr. Carver, Mr. Barowitz, Mr. Roche, Mr. DeLaney, Ms. Torres-Moskovitz, Chairperson Hylton

Members abstaining: 0

Members absent: Mr. Hernandez, Mr. Schachter

Vote on June 7, 2018 Meeting Minutes:

Mr. Hylton asked if there were any comments or questions; then for a motion to accept, and a second.

Mr. DeLaney requested an explanation of the last three sentences at the bottom of page 23, concerning the interpretation of the extension rule: "As the Executive Director, I've taken that very literally. They get one. But usually we give them for all of the ones they ask for. We don't make them come back each time."

Ms. Balsam stated that the rule appears to contemplate that owners have to apply for each extension separately. So if someone is at the beginning of the process, and they want an extension of time to get the permit, comply with 7B, and get the C of O, the way it's set up now, which is how it was when I came in, they could apply for extensions for all three at one time, and we would grant all three, instead of granting one for the permit, then having them come back and apply again for 7B, and again for the C of O.

Mr. Hylton asked if there were any other comments on the minutes; then for a motion to accept; and a second. **Mr. Carver** moved to accept; **Mr. Barowitz** seconded the motion.

Members concurring: Mr. Carver, Mr. Barowitz, Mr. Roche, Mr. DeLaney, Ms. Torres-Moskovitz, Chairperson Hylton

Members abstaining: 0

Members absent: Mr. Hernandez, Mr. Schachter

Vote on June 21, 2018 Meeting Minutes:

Mr. Hylton then asked asked for comments on the June 21st minutes.

Mr. DeLaney: Just to note that Mr. Barowitz is marked as here, but he wasn't.

Mr. Hylton: With that correction, is there a motion to accept?

Mr. Carver moved to accept; **Ms. Torres-Moskovitz** seconded the motion.

Members concurring: Mr. Carver, Mr. Roche, Mr. DeLaney, Ms. Torres-Moskovitz, Chairperson Hylton

Members abstaining: Mr. Barowitz

Members absent: Mr. Hernandez, Mr. Schachter

Draft Resolution for Chief Spadafora:

Mr. Hylton: As you may know, Chief Ronald Spadafora, the Fire Department's designee to the Loft Board, passed away from 9/11-related injuries. We are saddened by his passing, and a few weeks ago, Mr. DeLaney had circulated an email, suggesting we pass a resolution in his honor, which we thought was a good idea; so we have a draft resolution to consider. I will read that resolution into the record, and if approved by the Board after any changes, next month we'll try to do something in terms of presenting it to a family member of Chief Spadafora.

(Copy is attached)

Mr. Hylton asked if are any comments; then for a motion to accept; and a second.

Mr. Roche moved to accept; **Mr. DeLaney** seconded the motion.

Members concurring: Mr. Carver, Mr. Barowitz, Mr. Roche, Mr. DeLaney, Ms. Torres-Moskovitz, Chairperson Hylton

Members abstaining: 0

Members absent: Mr. Hernandez, Mr. Schachter

Report of the Executive Director:

Legalization statistics and registration: I put in your packages and sent you a report based on a report Mr. DeLaney had sent me regarding the milestone statistics. The one I gave you today was updated, because we added a building. Currently, we have 339 buildings. 213 are registered under 281(1) or 281(4); 125 are registered under 281(5). I'm very happy to say that of the 339, 247 have already registered for fiscal year 2019; so the registrations are going very well. We have a couple of more weeks before the late fees will start to accrue, so hopefully.... We have checks coming in every day.

Revenue: For June, we've unofficially collected over \$325,000.

Litigation: No new cases came in. And in the bankruptcy case talked about last month, we had a favorable decision from the Court. The debtor, who owns a building under the Board's jurisdiction, had moved to sell the property free and clear of all encumbrances, which would include the duty to legalize under the Loft Law. The Court denied the motion, finding that, contrary to the debtor's argument, the interests of the IMD tenants were not subject to a *bona fide* dispute; the IMD tenants are not hold-over tenants and have the right to remain in the building, as long as it is their primary residence; and that the IMD tenants could not be compelled to accept a monetary settlement of their interests, even if MDL § 286 (12) allows the tenants to sell.

The next case is *1099 Flushing Avenue vs City of New York and Dorina Realty*. Tenants asked the Court to annul a Loft Board certification of a narrative statement and require Owner to file new alteration plans and a new narrative statement. The tenants argued that the Loft Board sent the notices for the narrative statement to an incorrect address (we didn't). The Court found the claims were time-barred, because even if the Loft Board had mailed the notices to an incorrect address, the tenants should have known that the Loft Board had issued a certification, because the owner had imposed a three-percent rent increase on the tenants in August of 2015, but the petition was not filed until two years later.

Finally, the last case is *517-525 West 45th Street LLC vs The Loft Board*. The owner asked the Court to reverse and annul a Loft Board order which denied an extension of code-compliance deadlines. After oral argument, the Court denied petition from the bench, finding that the Loft Board was rational and reasonable in denying the extension.

I've given you copies of the two cases for which we have decisions from the judge. The other will just be a transcript.

Mr. DeLaney: Can you please repeat the last case?

Ms. Balsam: The last case was a denial of an extension of code-compliance deadlines. The owner filed an Article 78, and the judge ruled, from the bench, that the petition should be dismissed and that the Loft Board was rational and reasonable in denying the extension.

Mr. DeLaney/ Mr. Carver: And the address/ case name again?

Ms. Balsam: 517-525 West 45th Street LLC vs The Loft Board. I will be receiving a copy of the transcript from the Law Department, so if you want that, I can send it.

Mr. Carver:Was that the first time the Bankruptcy Court ruled....?

Ms. Balsam: Yes. It was a case of first impression, and he says that in the decision.

Mr. Hylton: Any other questions for Ms. Balsam?

Mr. DeLaney: I'd just like to thank you for having put together that table. I think it's very helpful, and goes to show that the Loft Law is working reasonably effectively. Compared with the 2014 sheet of exactly four years ago, which I'll pass around, the number of buildings covered under the original law continues to diminish. And the buildings covered under 281(5) have increased to 125. The good news is that we have a lot of buildings – over 100 of 339 -- that appear to be either 7B or have received a C of O. We only have a total of 26 buildings that don't seem to have gotten started yet and haven't filed an Alt-1, and only 2 of those are from the original 281(1). It would be nice to know who they are and encourage them to get out onto the track – to leave the dressing room and start the event.

Ms. Balsam: Ms. Leveille is actually going to talk about that, but I do want to say that, just because a building is covered under 281(1) and/or (4), doesn't necessarily mean that it dates from a long time ago. We had one recently that had happened to have filed under 281(1), and the Board found coverage, so even though they were going back to a really early window period, they were still able to prove that people were living there in 1982.

Mr. Hylton: Any other questions for Ms. Balsam? Thank you, Ms. Balsam. For the next presentation, the Enforcement Plan was put together by our Assistant General Counsel, Cynthia Leveille, and our legal intern, Trishawn Raffington. Thank you both for that.

Enforcement Plan Overview Presentation

Ms. Leveille's introductory comments: As was previously discussed, while there are buildings making good progress toward legalization, there is always room to provide more assistance to owners -- to help them move quickly through the process. So the staff was tasked with the assignment of devising an enforcement plan to help achieve this. Because the plan we were considering was quite comprehensive, we decided to break the proposal into two parts. Part One will focus on available tools and current practices. Available tools are the potential measures available under the existing Loft Law, the Board rules, and also the current practices cover what we generally do in enforcement. Due to time constraints, I ask that you hold your questions until the end. (19:13)

[\(PowerPoint presentation is attached\)](#)

Ms. Raffington: This is a breakdown of all the buildings currently under the Loft Board's jurisdiction, broken down by categories based on the milestones:

26	No Alt 1	Registered buildings with IMD numbers, but have not begun the process
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28	Alt App filed	Application requesting DOB to issue a permit authorizing performance of certain construction work in IMD buildings, filed by architect or engineer
42	Open NS	Occupants get a chance to review and comment on owner’s construction plans
5	LB cert	LB certifies that the NS process is complete in order for DOB to issue permit
132	Alt 1 permit	Permit to begin the work, further broken down into which buildings have active permits and which have expired
31	7B compliance	Certifies that the building is in compliance with the fire and safety standards of Article 7B of the Multiple Dwelling Unit law. Certified by architect or engineer
31	TCO	Is the equivalent of 7-B compliance
20	FC of O w/o app pending for renewal	Finished the process, but have not filed for removal from Loft Board jurisdiction
24	FC of O w/ app Pending	Finished the process and filed for removal, awaiting Board’s approval

Ms. Leveille: To summarize, again, Part One of this plan was to give you a general overview of the different legalization measures we’re proposing for the Board to consider, and then Part Two will get into the specific aspects and recommendations; and we plan on presenting that at the September meeting. We’re also looking for the Board’s input or suggestions in terms of measures, or where we should start, or the buildings we should focus on. So, are there any questions?

Mr. Carver: So the standard of “reasonable and necessary” action, is that phrase coming out of the statute, or our rules, or both?

Ms. Balsam: The statute... Both.

Mr. Carver: Are there any cases that say what that means – reasonable and necessary?

Ms. Leveille: It’s defined in the rules as deliberate, diligent and consistent action.

Mr. Carver: So there isn’t actually a case that uses that standard to ample effects?

Ms. Leveille: No, I didn’t say that. We just haven’t researched it yet. The goal was just to figure out what the rules allow as potential measures, and then to further investigate.

Mr. Carver: If there are cases, they would be quite old at this point, if it’s not something that comes to mind easily. Secondly, the monthly filing that the owners are doing -- and I know that’s the subject of some of our cases today – do you really need that filing every month?

Ms. Balsam: We actually talked about this with the rule-making, and I think the recommendation was to make it quarterly; but that suggestion didn't make it into this rule-making.

Mr. DeLaney: I'd certainly support a change to quarterly. I don't think monthly is really necessary. It's a lot of work and expense for owners. On the question of permits active vs expired, I think you said we have some numbers on that?

Ms. Leveille: 45 active, 57 expired alteration permits, 9 with multiple alteration numbers, 4 buildings in-process.

Mr. DeLaney: So the take-away is slightly more than half the buildings have permits that have expired.

Ms. Leveille: Yes, that's correct.

Mr. DeLaney: And I gather the timetable you contemplate is that the Board would give this more discussion at our next meeting, which is scheduled for September. My question is what's required to implement the new portions of this?

Ms. Balsam: In terms of staff's perspective?

Mr. DeLaney: Yes.

Ms. Balsam: We'd have to have the basics in place. IT needs to set up the notice of violation in the system. We'd need to set up the docket to track it, so that the fines appear on the invoices. We'd have to establish standard operating procedures, as to how we're going to issue and what the consequences are. There's a certain amount of implementation, but I don't know that it's extremely burdensome. It's the tracking that will be the hardest part, after we get going.

Mr. DeLaney: It seems to me that what we've heard are all good ideas. On the informational side, in terms of the informational meetings for the owners -- which certainly can't hurt, and might help -- Is that something you feel you have the resources for?

Ms. Balsam: Yes.

Ms. Leveille: In terms of cooperative measures, that is something that would not be too taxing on staff to implement.

Mr. DeLaney: It is clear that something that has not happened over the past 30 plus years the notion of the Board bringing a case for specific performance, the law is quite clear that that requires a prior finding. I certainly have some candidates, so I'd appreciate your adding that to the mix. The other question is regarding the failure to update our contact information, where we're going to issue a notice of violation. My question is, how do we know?

Ms. Leveille: The best way to deal with that would be during the annual registration renewals, as the form includes on the bottom "date of change." For changes in ownership, we can look it up and verify by ACRIS. But in terms of a change of address, we would know from returned mail.

Mr. DeLaney: So if I renew the registration in July, and I note that I'm a new owner, and I purchased the building in February, a notice should have been filed then. But now we picked that up. How do I cure that?

Ms. Balsam: Whether or not it's curable is on the penalty schedule, so some of the provisions have cure provisions, but others don't.

Mr. Hylton: Can you define "cure" for me?

Ms. Leveille: When you've been issued a violation, cure means you have the opportunity to fix the condition without penalty.

Ms. Torres-Moskovitz: I just wanted to say thank you so much. Between the milestone statistics and this, it's so much clearer for me, as a new member. I had one question about the failure to timely file an article 7C, sales filing, is that something that's been imposed and enforced in the past?

Ms. Balsam: We've just started doing this, recently.

Ms. Leveille: Over the past six months we've been reviewing the sales filings to see if they are timely or not. And then I believe we issued about four notices, and three owners have responded. One owner tried to withdraw the filing, and then actually paid the fine. So we issued a determination that, your paying the fine is an admission of your violation; and we also advised that trying to withdraw the filing does not remedy or mitigate the imposition of the fine.

Ms. Torres-Moskovitz: Are you allowed to keep a list of statistics on sales, including dollar amounts?

Ms. Balsam: We don't know the dollar amounts all the time. We changed the form. There's nothing in the rules about sales filings that says they must disclose the sale price. The former form said the owners could redact the sale price. We changed the form and removed that, but we can't compel them to tell us the sale price, unless we have a rule. So now we're no longer encouraging them to redact; but we can't compel them.

And I would like to reiterate, we are soliciting the Board's input, in terms of where you think we should start. So if you could think about that between now and September—the best places to start -- because there are a lot of different options. Do we want to move people who are close to the end of the process along, or do we want to start with people who've done nothing for years and years? What do you feel the priorities should be?

Mr. DeLaney: Maybe we could devote a few minutes to that right now, because I feel strongly that the people who've done nothing have created a baseline of disrespect for the Board's mission. I think taking a couple of high-profile cases, of people who are really lagging behind.....We have people who haven't filed anything; who haven't even bothered to renew their registration for four or five years. In my opinion, the way to keep everyone moving forward is to start with the most egregious offenders.

Ms. Balsam: Mr. Carver?

Mr. Carver: I'm somewhat concerned about staff being pulled in so many directions, and I know that the timing of moving our cases through the pipeline is very slow. Sometimes parties bring *mandamus* proceedings in court to make us rule on something. I'm not saying we shouldn't do things along these lines, but I'm actually

very worried that putting resources here will cause the pipeline of cases to suffer. And I think everyone agrees that the pipeline right now is too slow, and I see this as making it even slower.

Mr. Barowitz: What is our backlog right now?

Ms. Balsam: I don't know the current backlog. We did give statistics in April or May. 60 cases.

Ms. Cruz: We have 14 Master Calendar cases on the list for presentation to the Board. 46 of the 60 are Summary cases. So on the Master List, re coverage... it's not a huge number.

Mr. Carver: Yes, but I point out that looking at number 3 on the calendar today – that took over a year to be decided, I think. It says June 23, 2017. So over a year for an issue that's not all that complicated.

Mr. Barowitz: So what would it take to solve this problem? Would it be possible to contact the Mayor's office to say that you need additional staff? A lot of things in the city have been dragging. While I agree with what you say, the fact is that staff is limited. I'm sure they're working very hard, full time, to get this presented to us, but I don't know that there's a solution outside of saying that it will take even longer. And we have to follow our own rules and procedures as best we can. Unless you can come up with another series of circumstances to make all of this simpler.... Stop me if I'm wrong, but it looks like things have become far more complicated since 2010.

Mr. DeLaney: More complicated? Bigger buildings. And a lot of the complication is due to the Legislature.

Ms. Balsam: Addressing Mr. Carver's initial point, I think it's a legitimate concern, but I do think we need to try to do some enforcement. What we can do is keep an eye on it, and if we feel the backlog is growing in a way that it shouldn't, in terms of time or in terms of numbers, then we can cut back on enforcement. But I do think we need to try, because there are buildings that are just stalled. And we do want to try and move them.

Mr. Carver: Ok, so then it makes sense to be careful about what we're selecting. Maybe that's the solution.

Ms. Balsam: Right.

Ms. Torres-Moskovitz: I have another question about the content. Under "failure to take all reasonable and necessary action," it's \$1000 to \$17,500 per day. How do you suggest....

Mr. Hylton: It's a \$1000 per day. But there's a statutory limitation. That doesn't mean the violation doesn't continue past that, it just can't go above \$17,500.

Mr. Hylton: I have a question for Ms. Leveille, re active, temp C of O? Does that mean it's expired?

Ms. Leveille: Yes, that means it's expired.

Mr. Hylton: When they reach the maximum, can they reissue the violation?

Ms. Balsam: Yes. For those that require hearings, they can only be issued every three months. But I don't think there's a limitation for the others.

Mr. DeLaney: The three-month limitation....

Ms. Balsam: It's in the rule. (She reads it). I'm not sure what the rationale was, but it says that, so we're bound by that.

Mr. Hylton: So I think it's a matter of balance. We have to try to balance. And we can return to the matter of staffing if necessary, but we have to start somewhere before we do that. We couldn't just go to the city and say we need ten people to do something we haven't even tried to start doing yet. So, I first want to thank Cynthia and Trishawn for their work on this. As you can see, it was quite detailed. And thank the Board for its comments on this. We'll reconvene on this in September, and see what you've got, so we can do something. The bottom line is, we can't let folks make a mockery of the system. A law is a law, and it has to be followed.

(General agreement)

Mr. Hylton: Ok, we now turn to a vote on this month's cases. We start with the Appeals and Reconsideration calendar. There are three cases. The first is (listed below), and Mr. Winters will present this case.

	Applicant(s)	Address	Docket No
1	Dellis Realty Corp	83 Leonard Street, Manhattan	AD-0089

Mr. Winters presented the case for the Board's consideration.

Mr. Hylton asked if the Board members had any comments about this case; and then asked for a motion to accept this case.

Mr. Barowitz moved to accept; **Ms. Torres-Moskovitz** seconded the motion.

Members concurring: Mr. Carver, Mr. Barowitz, Mr. Roche, Mr. DeLaney Ms. Torres, Chairperson Hylton

Members abstaining: 0

Members absent: Mr. Hernandez, Mr. Schachter

Mr. Hylton introduced the next case (below), presented by Ms. Raffington.

	Applicant(s)	Address	Docket No
2	George Wachtel	24 Bond Street, Manhattan	AD-0094

Ms. Raffington presented the case for the Board's consideration.

Mr. Hylton asked if the Board members had any comments about this case; and then asked for a motion to accept this case.

Mr. DeLaney moved to accept; **Mr. Roche** seconded the motion.

Members concurring: Mr. Barowitz, Mr. Roche, Mr. DeLaney Ms. Torres, Chairperson Hylton

Members dissenting: Mr. Carver

Members abstaining: 0

Members absent: Mr. Hernandez, Mr. Schachter

Mr. Hylton introduced the last case on the Appeals and Reconsideration Calendar (below), presented by Mr. Clark.

	Applicant(s)	Address	Docket No
3	James Gubelmann	442 Broadway, Manhattan	R-0385

Mr. Clarke presented the case for the Board's consideration.

Mr. Hylton asked if the Board members had any comments about this case; and then asked for a motion to accept this case.

Mr. Carver moved to accept; **Mr. Barowitz** seconded the motion.

Members concurring: Mr. Carver, Mr. Barowitz, Mr. Roche, Chairperson Hylton

Members dissenting: Mr. DeLaney, Ms. Torres

Members abstaining: 0

Members absent: Mr. Hernandez, Mr. Schachter

Mr. Hylton: The motion is not passed

Mr. Barowitz: That's because of the two absentees. In some ways, it's a terrible rule...that the majority of those present doesn't rule.

Ms. Balsam: It's a state law.

Mr. Barowitz: I know, but it's really terrible. I just want to go on record. I think I've said this before.

Mr. Hylton: Yes, you have. So, this will be re-calendared for September. Now, there are six cases on the Summary Calendar, which are voted on as a group; however, at the request of a member, we're going to consider number 7 separately. In fact, I should do that first.

Mr. Hylton introduced the case (below), and asked if there were any comments or questions.

	Applicant(s)	Address	Docket No
7	Tenants of 50-17 Fifth Street	50-17 Fifth Street, Queens	TR-1291

Mr. Hylton: Is there a motion, then, to accept this case, Tenants of 50-17 Fifth Street?

Mr. Carver moved to accept; **Mr. Barowitz** seconded the motion.

Members concurring: Mr. Carver, Mr. Barowitz, Mr. Roche, Chairperson Hylton

Members dissenting: Mr. DeLaney, Ms. Torres

Members abstaining: 0

Members absent: Mr. Hernandez, Mr. Schachter

Mr. Hylton: The motion did not pass, due to the same circumstances as the preceding, so will be re-calendared for next month (September). Therefore, let me read the other cases on the Summary Calendar. These five cases will be voted on as a group. They are (below)

	Applicant(s)	Address	Docket No
4	Jon Thorson, Kimberly Thorson and Ted Tyler Hays	442 Broadway, Manhattan	TR-1089
5	Adam Snyder and Cecelia Cutler	73-77 Third Street, Brooklyn	TR-1238
6	Gabriel Phipps, Annie Salsich, Sarah Marie Young and Ashlee Williams	73-77 Third Street, Brooklyn	TR-1264
8	Heather Mary Jackson, Brendan Blank and James Walrod	302-306 Grand Street, Manhattan	TR-1319
9	Elizabeth Santeix and Karen Casamassino	36-40 West 29 th Street, Manhattan	TR-1356

Mr. Hylton asked if there were any questions/comments re these cases (none). Is there a motion, then, to accept these cases?

Mr. Carver moved to accept; **Mr. Roche** seconded the motion.

Members concurring: Mr. Carver, Mr. Barowitz, Mr. Roche, Mr. DeLaney, Ms. Torres (who also noted, for the record, that she knows the deceased, from case number 8) Chairperson Hylton

Members dissenting: 0

Members abstaining: 0

Members absent: Mr. Hernandez, Mr. Schachter

Mr. Hylton: There are three cases on the Master Calendar (below). They're all removal cases, and they're voted on as a group. Before we do that, though, our staff attorney, Stephan Clarke, will present changes to case number 10, as discussed in our private session.

	Applicant(s)	Address	Docket No
10	SS 133 West 21, LLC	133 West 21 Street, Manhattan	LE-0595
11	Citiwindows, LLC	135-141 Kent Avenue, Brooklyn	LE-0657
12	111 Mercer Condominium	111 Mercer Street, Manhattan	LE-0678

Mr. Clarke: I'll be reading into the record changes to case number 10, LE-0595. First, on page three of the proposed order, in the fourth paragraph, the very last date, March 20, 2026, will be changed to February 20, 2026. Again, on page three, the very last paragraph, the last date, March 2021, will be changed to February

2021. Additionally, in the conclusion of the proposed order, we'll add an additional column to the chart with the total cost of code compliance, and we'll add a footnote to that addition, which reads that "code compliance costs are not part of the initial, legal, regulated rent. Any further RGB increases shall be based on the initial legal, regulated rent only."

Mr. Hylton asked if the Board members had any comments about these cases and then asked for a motion to accept these case.

Mr. Carver moved to accept; **Mr. Barowitz** seconded the motion.

Members concurring: Mr. Carver, Mr. Barowitz, Mr. Roche, Mr. DeLaney, Ms. Torres, Chairperson Hylton

Members dissenting: 0

Members abstaining: 0

Members absent: Mr. Hernandez, Mr. Schachter

Mr. Hylton stated that a half an hour remained for discussion, which Ms. Balsam will lead, but before starting, he wanted to acknowledge the contribution of the two interns, Trishawn Raffington, from Hofstra, and Ben Winters, from Benjamin Cardozo, as by the time of the next meeting, in September, they will have departed. He thanked them for their service; hoped they learned a lot and that they would bring that knowledge back to their classmates and professors. The Board members added their best wishes, as well. He then introduced Ms. Balsam.

Cross-References

Ms. Balsam: I have a couple of preliminary matters before picking up where we left off. First, I bring to the Board's attention an issue regarding cross-references which, as you know, is not one of my favorite things. We are renumbering Chapter 1, and it occurred to me that we have a lot of cross-references in Chapter 2 to Chapter 1, all of which will have to be changed. So before we go to publication, I'm going to insert the changes to the cross-references into the proposed rule. But since there are 38 of them, I don't want to do it now, because this document is already pretty unwieldy. Just so you know that it's coming down the pike.

Protocol for Considering Proposed Changes to Rules

Ms. Balsam: Next I wanted to talk about the discussion of a protocol for considering rules, which the Board had raised last time. Two Board members had sent me suggestions, and based on them – I gave you a document – this is what we think would work. The proposed changes would be sent to the Executive Director, and sometimes staff may also have changes. The Executive Director would then send these to the Board members at least two weeks prior to the next Board meeting. At the meeting, the members would vote on whether they would consider the proposal, and if the Board votes yes, then the matter would be placed on the agenda for the following Board meeting. Does anyone have any comments or suggestions?

Mr. Carver: I think our current rules have a process for putting something on the agenda, and it's less than a full vote of the Board, right?

Ms. Balsam: Three members.

Mr. Carver: As a practical matter, why would we want to put something on the agenda that lacks the support of the Board? But, nonetheless, in the process of talking about it, the three members who are interested in it might get more votes. I imagine we would want to stay with voting as the rules say, in terms of putting something on the agenda.

Ms. Balsam: So you would suggest changing it to, at the Board meeting, if three members want to go ahead, then we would go ahead?

Mr. Carver: I think we have to. It's consistent with the rule. We don't have a choice.

Mr. DeLaney: The current rule in Chapter 1, if I recall correctly, says matters can be placed on the agenda at the request of three Board members, but that the Chairman determines when it goes on the agenda. It doesn't go on the agenda then. I don't think this has ever happened, so to that extent, there's not....

Mr. Carver: I'm thinking that if three members think something's a good idea, they should have the opportunity to have the matter fleshed-out at a meeting, as opposed to needing a majority, as proposed in your memo.

Ms. Balsam: I'm fine with that. At least three members, with the Chair determining when such matters will be decided. OK, so we'll change that.

Ms. Torres-Moskovitz: Is there an end to when we can keep adding new topics?

Mr. Carver: It seems to never end.

Mr. Roche: That's at the discretion of the Chair, I think.

Ms. Torres-Moskovitz: So, it doesn't have to be written into the document? I like the idea that we're moving forward.

Mr. Hylton: I think we can share responses. We don't want to be pinned down.

Ms. Torres-Moskovitz: So if this goes into effect, it could be on the September agenda?

Mr. Barowitz: It's at the discretion of the Chair. He's like the Senate Majority Leader. We could hold off, and not do it, is that correct?

Mr. Carver: Well, hopefully not. Hopefully.....

Mr. Hylton: Yes, that's true, I think.

Ms. Balsam: What we could do is say, if the Board votes yes, at the discretion of the Chair, it would be a matter placed on the agenda for the next Board meeting.

Mr. Carver: Well no, why are we imposing that extra obstacle, that's not currently in the memo?

Ms. Balsam (and others): Because that's what the rules say.

Mr. Carver: Well, the Chair can waive that now.

Mr. Barowitz: The Chair can waive that at the time, but not now.

Mr. Hylton: So where are we here?

Ms. Balsam: So proposed changes go to the Executive Director. We all agree with that. The Executive Director sends the proposed changes to the Board members at least two weeks before the next Board meeting. At that Board meeting, the Board will vote on whether or not to consider the proposal, and if at least three members want to consider it, it will go forward. And, if three members want to consider it, at the discretion of the Chair, the matter will be placed on the agenda for the following Board meeting. That's where we are.

Mr. Hylton: So the matter would be placed at the earliest (possible meeting).

Ms. Balsam: Yes.

Mr. DeLaney: Now this more or less comports with what's currently in the rules.

Ms. Balsam: Yes.

Mr. DeLaney: Which leaves us with two separate in-roads. This fleshing-out what's in Chapter 1, and also the...

Ms. Balsam: ...petitions from the public

Mr. Carver: When does the petition from the public go onto the agenda? Is it required to go right on? How does that work?

Ms. Balsam: I have to look it. I don't remember.

Mr. Carver: I'm asking, because that overrides the Chair's ability to delay.

Ms. Balsam reads: "The petition is received from the public; it's forwarded to the Chair, who may, at his/her discretion, reject the petition or present the petition for consideration to the Board. If the Chair rejects the petition, he/she must do so by written notice, stating the reasons for the denial. Copies of the rejection, together with a copy of the petition are presented to the Board at the next regularly scheduled session, after which any Board member may present the petition for consideration by the Board."

Mr. Carver: So any one Board member can override the Chair by bringing his own petition?

Ms. Balsam: Well, the petition would have to be sent by someone from the public first...

Mr. Barowitz: And it says that any member of the Board can re-present that?

Ms. Balsam re-reads "...after which any Board member may present the petition for consideration by the Board." But, let me just say, it would be really good to finish this rule-making. I'm not saying that the points everyone is raising are not valid or important, but it would be really nice to get something through. Particularly because it involves the changes to not being on paper any more.

Mr. Barowitz: I agree with you. But I think making this clear is really important. And if the Chair doesn't have that discretion, the meeting could turn into chaos. That's why it's designated that way.

Request to Extend Milestone Extensions

Ms. Balsam: The next issue is the extension request. The Board had asked for some statistics on extension requests, and we agreed to go back to September of 2016, which is when I started as Executive Director. Mr. Winter has those stats.

Mr. Winters: We went back to when Ms. Balsam started, in September of 2016, and if you look at the chart below, there have been 29 total extension applications decided; 17 of which were denied in full; 8 of which were granted in part – that means that they requested a time, and Ms. Balsam gave them a reduced amount of time -- and 4 were granted in full. The reasons for the denials included asking for additional extensions beyond the one allowed; filing the application in an untimely manner; and failing to meet the statutory standards.

Ms. Balsam: With those statistics in mind, we should return to a discussion of Mr. Carver's proposal to change the extension rule. We discussed the concerns that were expressed by the Board last time, and staff actually has a proposal for the Board in terms of what we think it should be. There was a huge discussion about whether the extensions should be unlimited, or limited to 1, or 2, or 3. We're proposing that the Executive Director would have the authority to decide two extension requests, and if an owner needed an additional extension, the Board would have to decide that request. It would be presented to the Board for decision.

Mr. Hylton: That would mean any additional extensions?

Ms. Balsam: Yes, correct. Obviously, we'd have to expedite those, but we could do that. The corollary that goes along with that is -- at this point in time, assuming that everyone who was granted an extension in the past couple of years is still in compliance – there are 12 owners at the moment who could, theoretically, apply for another extension, because you have to apply for an extension before your current code-compliance deadline expires. For everyone else, the deadlines have already expired. So, if we really want to make this work and get things moving, the other part of this would be to give a one-time amnesty to allow owners to apply for extensions even if the code-compliance deadline has passed. One time, apply within 30 days of the rule. After that, you'd have to apply before your code-compliance deadline passed. That's just allowing them to apply. In terms of granting, no extensions would be granted unless the owner met the statutory standards, which are good-faith efforts and circumstances beyond their control. Plus the fact that you couldn't comply. That would always be in the mix. So that is our proposal.

Ms. Torres-Moskovitz: You had mentioned that there are three separate times when extensions can be granted?

Ms. Balsam: Right. There are different code-compliance deadlines. So someone could file an extension request and say, I want an extension on my time to get a permit. We could consider that, and grant that. And

then they would have to come back and say, OK, I've got my permit, but now I need an extension of the deadline for 7B compliance. Let's assume they meet statutory standards, then they would have to come back a third time for the C of O. Now, we don't do it that way. Now, they apply, and we give them whatever time they would be entitled to, based on the date they applied. If they apply for all three, we give them all three. Most people apply for whatever code-compliance deadlines are left. It's just easier that way. Administratively, it's a lot less paperwork. That being said, we're not wedded to that, if you're concerned about that.

Mr. Hylton: So the big change here is that the Board would be in the mix after two extensions per code-compliance deadline, which the Executive Director has already approved. And the Board would have to approve any additional extensions, correct?

Ms. Balsam: That, and allowing people who have already-expired deadlines to be able to apply. But again, it's just an application; it doesn't mean it's going to be granted.

Ms. Torres-Moskovitz: Is it a thirty-day extension?

Ms. Balsam: We can make it any time frame we want. I think a reasonable time frame is 30 days from the effective date of the rule. If you're entitled to another extension, even though your deadline has already passed, we're going to give you a thirty-day chance. Apply now, and we'll consider it. Whereas now, they wouldn't be able to apply at all. So again, if the idea is to try to get these buildings moving, I think that's one way to do that.

Mr. Carver: It seems like a fair package to me. And I'd like to move this issue along, so we can get on to other things.

Mr. Hylton: Does anyone have additional comments?

Mr. DeLaney: I'm perhaps laboring under a misconception. I've been looking at the protected occupant rules, because I thought that's where we were going next. We had a pretty lengthy discussion last time, and it was left with no real conclusion.

Ms. Balsam: The Board asked for the data.

Mr. DeLaney: Yes, and I find the data very helpful in that, not only have there been a very small number of extension requests, but I also gather there are no pending requests?

Ms. Balsam: Yes, at the moment, there are no pending requests. I did have a conversation with an attorney who said he was going to file, but...

Mr. DeLaney: And we have that case where the tenants agreed not to object to an extension request filed by that owner....

Ms. Balsam: But that doesn't mean that the owner is going to automatically get the extension.

Mr. DeLaney: Yes, I understand, but what I'm saying is that sometimes there's talk of something that doesn't happen. So, that's a 21-22 month period in which we saw 29 extension requests. I was expecting a much higher number.

Mr. Bobick: You have to keep in mind that you can only apply if you're in compliance, or if you're a new owner, or a new IMD. So the buildings that can apply are probably less than 5. Unless you're a new owner of a building.

Ms. Balsam: And also, the rule currently states that you can only get one. So there might have been owners who would have considered applying for a second, but didn't bother, because they knew they could only get one. So all of those things would put a damper on the number of applications.

Ms. Balsam: I guess if three members want to go forward with this, we can draft something and send it more than two weeks before the next meeting, if the Chair, at his discretion, wants to put it on the calendar for September.

Various: It's already on the agenda.

Ms. Torres-Moskovitz: The 30 days – it starts from when they come to you?

Ms. Balsam: The way I'm envisioning this – and again, we can change it – is that they would have 30 days from the effective date of the rule to file an application. And then, the Executive Director is going to determine whether or not they meet the statutory standards, as extensions are granted or denied based on that. So the amount of time they get in the extension may vary from building to building, but the time they have to *apply* for it would be 30 days from the effective date of the rule, whatever that is.

Ms. Torres-Moskovitz: So conceivably, you're going to have many applications.

Ms. Balsam: Yes, we may. But that's OK. We'll do it.

Mr. Hylton: Are there any other comments about this? So we can then move this along by having at least three members show support? Mr. Carver moved to support. Someone needs to second Mr. Carver.

Mr. Roche: Chuck, I'd like to hear your thoughts about this.

Mr. DeLaney: Well, normally, we looking at language, when we're talking about whether to accept or not accept.

Mr. Hylton: This is just a motion to move it along.

Ms. Balsam: Do you want me to draft something, is really the question. Are you OK with me drafting something? Then you'll have the language to consider more than two weeks before the meeting.

Mr. DeLaney: Right. I'm just trying to... As I said, I've been thinking about protected occupancy for the past month. So I can't say that I have a reaction to this at the moment.

Mr. Barowitz: I don't think we need to vote on it. I think the Chair can just do it.

Mr. Roche: I'm in support of it.

Mr. Hylton: OK, that's a second.

Ms. Balsam asks Mr. Hylton if he's in favor. So that's three.

Mr. DeLaney: But wait a second. In terms of three and five (votes), on other things we've been doing, as we've gone through these rules, the Board has voted a few times....

Ms. Balsam: But this involves *adding* something, and we have a rule that says, if you want to add something, three members can ask to have something added to the agenda. Right? So the question I'm raising is, do we have three members who want this added to the agenda for consideration?

Mr. Hylton: It's not a rule yet.

Mr. DeLaney: That's my next question. And we'll get to that after this.

Mr. Hylton: So the answer then is yes, it will be added to the agenda. A draft rule will be sent out prior to the September meeting, at which point the Board will have a chance to debate this rule. There's nothing binding until the Board takes a vote on the rule. Alright? Thank you.

Ms. Balsam: So we have ten minutes. (To Mr. DeLaney) Do you want to start?

The Board's Work-load

Mr. DeLaney: Actually what I want to do at this point is question.....No, this is very serious. Over the last month, I separated all this material, and in 2017, we had what I now call "Chapter 2 of 2017." We had a much broader proposal for Chapter 2 modifications to the rules, which now appears to be shelved. The work we started to do on Chapter 1 is now joined by what I'm calling "Chapter 2 of 2018," which is a much slimmer collection of ideas. In the middle, we also had, what I think of as "the DeBlasio suggestions," which were drafted, and then fell by the wayside in the latter part of 2017. And to Mr. Carver's concern about how does the Board get things done, clearly, a lot of time over the past 18 months has been taken up with consideration of drafting and dealing with rules. In fact, the rules seem to be of such urgency, that there were several months where we had two meetings. Now we're about to take a two-month break to come back and further consider these. I guess we're going to wind up with a body of the Chapter 1 material that's survived all this time, the new somewhat more abridged version of Chapter 2. It still has to be finally voted out by the Board, and then go to the Law Department, and the Mayor's "plain-English police," to come back for us to then publish, and then there'll be a hearing. So by this point, it seems to me, it's winter of 2019, there's snow outside, and we'll almost have a new group of interns before we get anywhere. *And*, last month, a rather significant question came up that has yet to be addressed about the retroactivity in the applications.

Ms. Balsam: We're doing the research, but haven't finished it yet.

Mr. DeLaney: So, I'm just thinking that it might make sense for us to see if we even really understand what we're doing here.

Mr. Hylton: I think we do. It's the debates that slow things down, right? If Board members are open to it, let's have an extra meeting again in September, so we can discuss the protected occupant rule, maybe even before or after the regularly scheduled meeting, so we can move things along.

Ms. Torres-Moskovitz: And our two week rule doesn't apply?

Ms. Balsam: No, there is a draft of the protected occupancy rule.

Ms. Torres-Moskovitz: I just mean for adding to the agenda, if we need one week for that, and then two weeks later....

Ms. Balsam: No, no, that's why it would be just to discuss protected occupancy.

Ms. Torres-Moskovitz: That would be good, because I could prepare for that, if we know what it is.

Mr. Hylton: It is frustrating, but we want to be as free as possible in granting the members the opportunity to discuss these rules and debate them.

Mr. Roche: Just to get my thoughts on the record, which support what different folks have said: With the exception of August, during which we won't have any meetings -- I think I've said this before so am just clarifying again for the record -- I think we need to have two meetings a month until we get this thing put to bed, and stick to that. Because I think Mr. DeLaney raises some valid points, and I know from my own standpoint, too much of a lapse in between....

Mr. Hylton: I think it's important not to do that.

Mr. Barowitz: But it's also important that we somehow reach consensus on these things and not constantly debate. We've been over some of these rules already, and they keep coming back and bugging all of us.

Mr. Roche: I think if we stick to this (schedule), stop some of the gaps, and keep it fresh in our minds, I feel we can push through some of those walls.

Ms. Balsam: I see three things left to discuss: The extension issue, which just came up. The protected occupancy rule, and the part about the penalties, which I don't think will be very controversial. I think protected occupancy will be very controversial. I think we might have reached consensus on the extension? So after that, there are a few house-keeping issues to go back and discuss, but I think we're close; much closer than we've been since the beginning.

Mr. Barowitz: So you're optimistic about this?

Ms. Balsam: Yes, I am.

Mr. DeLaney: It seems that, in addition to that list.... I'm not clear, and I meant to go back and re-read the minutes, but didn't have time to do it in the past week. I think there are still some open questions on the narrative statement comments section as well. We asked staff about the cut-off at 50 for the expanded period.

Ms. Balsam: Ok, we can go back to that. I thought we had decided it...but we'll go back and review, to make sure.

Ms. Torres-Moskovitz: And it sounds like in September staff will also have information on....what were you researching?

Ms. Balsam: Whether the rules apply retroactively. We are researching that. It looks like the answer is no, but I want to make sure.

Ms. Torres-Moskovitz: So you'll have that prior to our September meeting?

Ms. Balsam: Yes, because one of our interns is doing the research, and she'll have it done before she leaves.

Mr. Hytton: This will conclude our July 19, 2018, Loft Board meeting. Our next public meeting will be held at 22 Reade St, first floor, on September 20, 2018, at 2:00PM.

The End