

DRAFT

MINUTES OF PUBLIC MEETING  
New York City Loft Board Public Meeting

May 19, 2022

The meeting began at 2:10 PM

**Attendees:** Elliott Barowitz, Public Member; Charles DeLaney, Tenants' Representative; Christian Hylton, Owners' Representative; Samira Rajan, Public Member; Richard Roche, Fire Department's *ex officio*; Renaldo Hylton, Chairperson Designee;

**INTRODUCTION:**

**Chairperson Hylton** welcomed those present to the May 19, 2022, public meeting of the New York City Loft Board and explained that the meeting was being held via teleconference due to the corona virus emergency, pursuant to legislation S.50001/ A.40001 signed by Governor Hochul. 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.

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**VOTE ON MEETING MINUTES:**

**April 28, 2022, Meeting Minutes**

**Chairperson Hylton** asked if there were any comments on or corrections to the April 28, 2022 minutes.

**Mr. Barowitz** noted that the font size was so small, he could hardly read it, and asked that it be adjusted going forward. He also pointed out a typo on the bottom of page 11 (it's instead of its).

**Mr. Roche** asked for clarification regarding the difference between abstaining and recusing, as his vote was noted in the minutes as abstaining, when he had, in fact, recused himself. There was some

discussion of this, with **Mr. Barowitz and Mr. DeLaney** providing explanations, and it was agreed that Mr. Roche's vote status in the April 28, 2022, minutes would be changed from abstain to recuse.

**Chairperson Hylton** asked if there were any additional comments (none); then for a motion to accept the April 28, 2022, meeting minutes with those two changes (its and recused) and for a second.

**Mr. Roche** moved to accept the April 28, 2022, meeting minutes, and **Mr. Hylton** seconded.

### The vote

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

**Members dissenting:** 0

**Members abstaining:** 0

**Members absent:** Ms. Oddo, Ms. Roslund

**Members recused:** 0

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## EXECUTIVE DIRECTOR'S REPORT

### Enforcement

In April, the staff issued:

- 10 Violations against owners pursuant to section 2-01.1 of the Loft Board's rules
  - 4 Violations for failure to file an Alteration Application to do the legalization work
  - 2 Violations for failing to renew permits for the legalization work
  - 4 Violations for failing to renew Temporary Certificates of Occupancy

Last day to file a response to those violations: May 19, 2022 (today)

- So far, we received 3 responses that are under review. We granted two extensions to file an answer. There has been no response from 5 building owners. If there is no cure, the staff will issue administrative determinations and the fine of \$1,000 per day up to \$17,500 will be imposed.

Statistics:

Excluding the enforcement dockets, there are 321 pending cases. Some of the major categories are:

- Coverage: 88
- Protected occupant status applications: 5
- Tenant-initiated, rent-dispute applications: 32
- Diminution-of-services applications: 13
- Extension applications: 21

The breakdown of the cases by status:

- 208 Cases are in the hearings process (208 of the 321 applications)
  - 203 Cases at OATH
  - 5 Cases that are pending pre-OATH -- they are either in the answer period, or the application of filing is deficient in some way, and the applicants have been contacted.
- 24 Cases are post-hearing or post-settlement.
  - 17 Summary Calendar Cases (settled)
  - 7 Master Calendar cases
    - Coverage: 3
    - Protected-occupant-status applications: 3
    - Non-compliance with the legalization timetable: 1
- 23 Cases are involved in a staff conference. Most of these cases are coverage applications for one building. The owner filed a registration application for the building. Staff is currently reviewing the registration filing and working with attorneys from both sides for proof of residential occupancy during the Window Period to process the registration application: 23
- 12 Cases on the May agenda
- 54 Cases are non-OATH cases.
  - 13 Reconsideration applications/ administrative appeals
  - 19 Removal cases
  - 21 Extension cases
  - 1 Application for a Rent Adjustment Based on Code Compliance Costs

Legalization Statistics: Given staffing issues and the high volume of the court litigation at the present, it is not clear when these statistics will be available. However, staff does recognize that these numbers are important, and providing them is a priority.

Litigation:

Since the April meeting, staff has received one court decision and two Article 78 petitions. The one decision dismissed an Article 78 petition filed by the tenants of 72 Warren Street. The tenants sought a stay of the certification issued for an amended Narrative Statement. The tenants have refiled the Article 78, and that is one of the new cases that we received this month. The second Article 78 is a mandamus filed by the owner of 163 North 6<sup>th</sup> Street. The owner seeks an Order directing the Loft Board to issue certification of the Narrative Statement process. The staff had a virtual meeting with the attorneys this week, and discussions will continue to try to resolve the matter.

Narrative Statement Review Meeting:

Last year, staff scheduled an informational meeting for June 21, 2022, with architects from both sides who specialize in Loft Law conversions. The purpose of this meeting is to obtain feedback about the process and identify areas where improvements can be made. Staff is working on changes to the Narrative Statement form, and a draft of it will be provided to the meeting attendees for their feedback.

**Mr. DeLaney:** Thank you for all the statistics. It was very helpful. Going back to your discussion of enforcement, one of the other enforcement issues I have asked about in the past is the language in the Loft Law that contemplates the Board or group of tenants bringing an action for specific performance, which is something that has not happened to my knowledge, ever. And as the Loft Law is about to enter its fortieth year, I'm curious if the staff has had any time to have any discussion about that.

**Ms. Cruz:** Considering the litigation currently pending, no, we have not discussed it.

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**THE CASES**

Appeal and Reconsideration Calendar

	Applicant(s)	Address	Docket No.
1	105 Broadway, LLC	105 Broadway, Brooklyn	AD-0113
<i>The Loft Board granted the Owner's appeal of an administrative determination. The determination rejected a 2018 sale of rights because it predated the 2019 amendments to MDL § 281(5). The Loft Board found that as the 2018 sale occurred after June 21, 2010, the effective date of MDL § 281(5), the date of the 2018 sale does not bar acceptance of the sales filing.</i>			

Mr. Clarke presented this case.

Chairperson Hylton thanked Mr. Clarke and asked for a motion to accept this case and for a second.

Mr. Barowitz moved to accept this case, and Mr. Hylton seconded.

Chairperson Hylton asked if there were any comments on this case (none).

The vote

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

Members dissenting: 0

Members abstaining: 0

Members absent: Ms. Oddo, Ms. Roslund

Members recused: 0

Chairperson Hylton introduced the second case on the Appeals and Reconsideration Calendar is

	Applicant(s)	Address	Docket No.
2	Triad Capital, LLC	13 East 17 Street, Manhattan	R-0382
<i>Owner's reconsideration application is granted solely to the extent of the seventh-floor unit. The findings concerning the rent regulatory status and the initial legal regulated rent for the seventh-floor unit are vacated. Loft Board Order No. 4938 is also modified to the extent that the initial legal regulated rents for the third- and fifth-floor units are recalculated to include the correct legalization milestone increases.</i>			

Ms. Lee presented this case.

Chairperson Hylton: Thanked Ms. Lee and asked for a motion to accept this case and for a second.

Ms. Rajan moved to accept this case, and Mr. Hylton seconded.

Chairperson Hylton asked if there were any comments on this case (none).

The vote

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

**Members dissenting:** 0

**Members abstaining:** 0

**Members absent:** Ms. Oddo, Ms. Roslund

**Members recused:** 0

**Summary Calendar**

**Chairperson Hylton** introduced the five cases on the Summery Calendar, which are voted on as a block.

	<b>Applicant(s)</b>	<b>Address</b>	<b>Docket No.</b>
3	470 Manhattan Ave LLC	18-20 Eckford Street, Brooklyn	LN-0028
<i>Owner withdrew its decoverage application without prejudice. Owner's application is deemed resolved.</i>			
4	Joshua Greenberg	187 Duane Street, Manhattan	LB-0197
<i>Owner withdrew its abandonment application without prejudice. Owner's application is deemed resolved.</i>			
5	MZBJ Holdings, LLC	250 Moore Street, Brooklyn	LS-0277
<i>Owner confirmed that access was granted. Owner withdrew its access application without prejudice. Owner's application is deemed resolved.</i>			
6	Oliver Stumm	135-137 Grand Street, Manhattan	TR-1329
<i>The coverage application was withdrawn with prejudice. The application is deemed resolved.</i>			
7	Hervin Danilo Lopez	143-153 Roebling Street, Brooklyn	TR-1428, PO-0169
<i>The coverage and protected occupancy applications were withdrawn. The applications are deemed resolved.</i>			

**Chairperson Hylton** asked for a motion to accept these cases and for a second.

**Mr. Barowitz** moved to accept this case, and **Ms. Rajan** seconded.

**Chairperson Hylton** asked if there were any comments on this case (none).

**The vote**

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

**Members dissenting:** 0

Members abstaining: 0

Members absent: Ms. Oddo, Ms. Roslund

Members recused: 0

The Master Calendar

Chairperson Hylton introduced the first of three cases on the Master Calendar

	Applicant(s)	Address	Docket No.
8	Lorae Russo	83-91 Meserole Street, Brooklyn	PO-0077
The Loft Board dismissed the protected occupancy application based on the doctrine of collateral estoppel.			

Ms. Cruz presented this case.

Chairperson Hylton thanked Ms. Cruz and asked for a motion to accept this case and for a second.

Mr. Hylton moved to accept this case, and Mr. Barowitz seconded.

Chairperson Hylton asked if there were any comments on this case (none).

The vote

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

Members dissenting: 0

Members abstaining: 0

Members absent: Ms. Oddo, Ms. Roslund

Members recused: 0

Chairperson Hylton introduced the second case on the Master Calendar.

	Applicant(s)	Address	Docket No.
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9	Opera House Lofts, LLC	11-27 Arion Place, Brooklyn	TR-1403, PO-0132
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**Mr. Clarke** presented this case.

**Chairperson Hylton** thanked Mr. Clarke and asked for a motion to accept this case and for a second.

**Mr. Barowitz** moved to accept this case, and **Mr. Hylton** seconded.

**Chairperson Hylton** asked if there were any comments on this case.

**Mr. DeLaney:** I voted no on this case last month, and I intend to vote no on this case this month, and I encourage other Board members to join me. As I stated last month, I understand the argument for the landlord, but I find the argument by the tenants equally compelling. And as stated in in the post-hearing—memorandum of law not the post-hearing because there was never a hearing--basically stated in detail below, “The building is not exempt because the building lacked a final residential Certificate of Occupancy on the base dates applicable to MDL 281(5) and (6). Rather, the building was covered by a commercial Certificate of Occupancy until September 21<sup>st</sup>, 2020, when the New York City Department of Buildings issued a new Certificate of Occupancy, certifying the building for residential use. Moreover, to the extent that the DOB issued a residential Certificate of Occupancy for the vacant lot adjacent to the building, said Certificate of Occupancy plainly states it is applicable only to the vacant lot, and neither this tribunal nor the New York City Loft Board possess the jurisdiction to modify or correct the Certificate of Occupancy.” We can go back and forth as to whether this is a typographical error or an incorrect Certificate of Occupancy. I find the latter to be more precise, so I plan to vote no.

**Mr. Hylton:** This case hinges on whether we are going to negate the legal standards that have been set down by the court and whether we are in a position to do so. This case is about an incorrect Certificate of Occupancy -- an error made by DOB (Department of Buildings). And when that error was corrected, as directed by the court, the property no longer fell under Loft Board’s standards for that time period. It is really nothing beyond that, and if we make decisions that seem to go against the legal standard and the law, then we are going to be in the position of having our decisions easily overturned by a higher court. I would just want everyone to keep that in mind.



**Chairperson Hylton** thanked Mr. Hylton and proceeded with his own comments: This Board wants to grant Loft Law coverage wherever it can. That's the intent of the Law. While we want to be able to grant coverage where we can, the Loft Board is also bound by the law. And the law clearly states that you cannot have a residential Certificate of Occupancy at the time you are applying for Loft Law coverage. Now, if there is no C of O, obviously, this would be a serious application. Apparently, there are issues with this building, and if there is a case to be made for revocation of the C of O, that is beyond the purview of the Loft Board. That application must be made to the Department of Buildings, and then subsequently to the Board of Standards and Appeals or a court of competent jurisdiction. If the C of O is vacated, there is no statute of limitations stopping anyone from filing a coverage application with the Loft Board.

The right way to do this is to request that the Department of Buildings revoke the C of O. Then the Department of Buildings may take that to the Board of Standards and Appeals.

**Chairperson Hylton** asked if there were any further comments or questions (none).

**The vote**

**Members concurring:** Mr. Barowitz, Mr. Hylton, Ms. Rajan, Chairperson Hylton

**Members dissenting:** Mr. DeLaney

**Members abstaining:** 0

**Members absent:** Ms. Oddo, Ms. Roslund

**Members recused:** Mr. Roche

**Chairperson Hylton** declared that the case did not pass, then introduced the last case on the Master Calendar. As it is a removal case, there is no presentation.

	Applicant(s)	Address	Docket No.
10	Dezer Properties II LLC	18-22 West 20 Street, Manhattan	LE-0534
The Loft Board granted the removal application.			

He then asked for motion to accept this case and for a second.

**Mr. Barowitz** moved to accept this case, and **Ms. Rajan** seconded.

The vote

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

**Members dissenting:** 0

**Members abstaining:** 0

**Members absent:** Ms. Oddo, Ms. Roslund

**Members recused:** 0

Soho-Noho-Chinatown

**Mr. Barowitz** provided an update: The Soho-Noho- Chinatown Alliance held a Zoom meeting on Tuesday. The alliance is suing the city of New York, Department of Buildings. They kept referring to a 1968 law governing- covering I don't know what apartments. They have never mentioned the Loft Law, despite my wife's repeated efforts to ask them to address that as well. They also claimed that they never heard from members of the Chinatown community, when that is also not correct. A number of people that have called asking questions have no idea what the legalization of the lofts may be in Soho and Noho, and I have just basically thrown up my arms trying to figure out if there's any way we can make anyone understand what the law was, and is, and how, for example, the Loft Law is, in certain respects, in conflict with the original meeting of Soho-Noho.

**Chairperson Hylton** thanked Mr. Barowitz and ask if there were any additional comments or questions on any topic.

**Mr. DeLaney** asked the Chair if he would email him the answer to the question he asked in the quasi-judicial legal briefing.

**Chairperson Hylton** said he could email it or answer it now in public, if Mr. DeLaney approved. And if so, would he pose the question again, in public, which he did.

**Mr. DeLaney:** It is my understanding that in front of the Board of Standards and Appeals, the only way to initiate a proceeding to revoke a residential Certificate of Occupancy is a motion made by, or petition filed by, the Department of Buildings. And my question was, is that also the case in court? And I presume it is the Supreme Court rather than the Civil Court that would entertain such a motion.

**Chairperson Hylton:** It is the position of the Department of Buildings that if any kind of motion or petition to revoke a Certificate of Occupancy should be made, the request for such should be made to the Department of Buildings, which is the entity that would bring such a matter to the Board of Standards and Appeals. Obviously, there can be no stopping anyone from filing in a court, but Department of Buildings would likely intervene and exert its position that it must be the one to bring any revocation of its own C of O that was issued.

**Mr. DeLaney:** Thank you.

**Chairperson Hylton:** Absent any other comments, this will conclude our May 19, 2022, Loft Board meeting. Our next public meeting is scheduled to be held on June 16, 2022. At this time, we do not know if future meetings will be held in person or virtually. Information will be updated on the Loft Board's website and email updates through the Loft Board Listserv. Board members, please sign and email your attendance sheets today. I appreciate everyone and your attention during this meeting. Thank you so much. Have a good day everyone.