

September 18, 2007

Open Letter to Councilman Avella and the City Council Members

Dear City Council Members:

The current proposed reforms Intros: 261 and 263 do not really address the problems communities find in the BSA process. We need something that is effective! The Queens Civic Congress provides the following commentary and recommendations as meaningful reforms to eliminate even the need for any appeal:

- Instead of increasing at great expense the number of commissioners, who will still be controlled by the political process, we suggest that the Council mandate the hiring of financial analysts to examine the basis of each applicant's figures establishing economic hardship. Currently the BSA can not get down into sufficient detail to determine the economics of an application. Most civic groups can not afford to hire accountants and real estate experts to do this work. This analysis is where cases are won and lost or the size of the variance is reduced or facts from which appeals may be successfully argued. Require a detailed neutral financial report submitted to each side before the hearing is closed.
- Legislatively outlaw the common argument made by developers "obsolete zoning." This argument is a common argument made by developers who have a weak financial case for hardship but then say the block or neighborhood needs to change. This is a question for DCP. The DCP should have a seat on the BSA.
- Communities win cases before BSA, but the developer withdraws sensing a negative vote. This leaves the community without any precedence for the site under consideration leaving them to completely re-argue the same site over and over again at great expense. If you note there are very few negative votes at BSA. The reason is that the lawyer for the developer goes to the Monday executive session which is open to the public and hears the preliminary decision of the BSA which is announced the following day, Tuesday. The lawyer calls his client and tells him if he is going to loss, and then he withdraws the application to avoid any negative decision on the record. This has tremendous repercussions for the civic community who beat the applicant, but the record is now gone! We ask for legislation to stop this by denying the applicant from withdrawing the applicant once the evidentiary hearing is closed. This will enable a body of negative decisions to exist on the record for future reference.
- The appeals process is attractive but we believe is legally flawed. BSA exists as a panel of experts in the field to make limited exceptions to the Zoning Resolution. If the Council can override a technical decision of a non political body, then it engages as a political arm of the government (unlike the old Board of Estimate which was an Executive function) over a land use function, something the courts have not supported. Aside from this and more important for civics is the statute of limitations to bring an appeal. It is currently 30 days from the filing of the BSA decision (which is difficult to discover if you do not go down there every day). The proposed legislation does not toll an appeal to the courts. Therefore, the Council must either extend the time to appeal to the standard Article 78 time frame of 120 days and or toll it until the

Council renders a written decision to override, sustain, or decline to hear the matter. We know the Council will rarely hear these cases due to political considerations, but communities will not want to lose our ability to go court while the Council fiddles as Rome burns. Furthermore, any tolling of an appeals process will not likely be supported by the development community.

Very truly yours,

SEAN M. WALSH
President

September 18, 2007

Ross Sandler
Executive Editor & Director
Center for New York City Law
57 Worth Street
New York, NY 10013-2960

Dear Mr. Sandler:

In a recent City Land, you published an article on BSA reform in which it was stated that there was no opposing testimony on BSA reform. Sorry to say that is not true, the following comments were submitted to the City Council and represent the views of the Queens Civic Congress. The current proposed reforms do not really address the problems communities find in the BSA process. We provide the following commentary and recommended the following reforms instead of Intros: 261 and 263.

- Instead of increasing at great expense the number of commissioners, who will still be controlled by the political process, we suggest that the Council mandate the hiring of financial analysts to examine the basis of each applicant's figures establishing economic hardship. Currently the BSA can not get down into sufficient detail to determine the economics of an application. Most civic groups can not afford to hire accountants and real estate experts to do this work. This analysis is where cases are won and lost or the size of the variance is reduced or facts from which appeals may be successfully argued. Require a detailed neutral financial report submitted to each side before the hearing is closed.
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