

June 22, 2007

Hon. Anthony Avella  
New York City Council  
38-50 Bell Boulevard, Suite C  
Bayside, NY 11361

Dear Councilman Avella:

I am writing in response to your May 30, 2007 letter requesting support for several pieces of legislation. I will respond *seriatim* to each:

Int. 4/2006 Dormitory Sprinklers - QCC supports your Intro.

Int. 12/2006 Stop Sign Repair - QCC supports your Intro.

Int. 262/2006 BSA Voting - QCC supports your Intro. I would note parenthetically for your information that the BSA votes as a block 95% of the time after a decision is made at the executive session, *infra*.

Reso. 42/2006 - QCC supports your resolution.

We also support and urge your restrictive deed covenant enforcement by the city legislation be moved forward with our support.

Int. 261/2006 - Council Review of BSA decisions & Int. 263/2006 BSA membership. The QCC does not support these intros as written because they fail to address the problem while giving false hope.

As a person who has appeared before the BSA more than any other civic or elected official and having won all of our cases, I feel I understand the problems at BSA. Therefore, we recommend the following reforms instead of 261 and 263.

- Instead of increasing at great expense the number of commissioners, who will still be controlled by the political system, 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 detail to determine the economics of the 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 financial report 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.
- We win many cases before BSA, but we do not have any precedence for the site under consideration leaving us to completely reargue 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, because the record is gone! We ask that you legislate 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 use.

- The appeals process is attractive but I believe is legally flawed. BSA exists as a panel of experts in the field to make limited exceptions. If the Council can override, then it engages 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 do not support. 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). I assume your legislation will still allow an appeal to the courts. If so you must then 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 politics, we do not want to lose our ability to go court while the Council fiddles as Rome burns.

If you can put our reform package forward, we will have gotten to the core of the problem at BSA and will see fewer cases needing to go to an appeal. We ask you to support the QCC platform as I have outlined above. Thank you for your support.

Very truly yours,

SEAN M. WALSH  
President