126-13-A
APPLICANT – Sheldon Lobel, PC, for Woodmere Development LLC, owner.
SUBJECT – Application April 30, 2013 – Appeal of NYC Department of Buildings' determination that a rear yard is required at the boundary of a block coinciding with a railroad right-of-way. R7B Zoning District.
PREMISES AFFECTED – 65-70 Austin Street, 65th Road and 66th Avenue, Block 3104, Lot 101, Borough of Queens.
COMMUNITY BOARD # 6Q
ACTION OF THE BOARD – Appeal Denied.
THE VOTE TO GRANT –
Affirmative: 0
Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
THE RESOLUTION –

WHEREAS, this is an appeal of a Department of Buildings ("DOB") final determination dated April 19, 2013, issued by the First Deputy Commissioner (the "Final Determination"); and

WHEREAS, the Final Determination reads in pertinent part:

> The request to confirm that the Long Island Railroad right-of-way that runs parallel to Austin Street meets the definition of a "street," as per the zoning definition in ZR 12-10, is hereby denied.
>
> Contrary to the ZR 12-10 "street" definition, the existing railroad right-of-way is not shown as a mapped street on the City Map, zoning maps, or the Department of Finance's tax maps. Therefore, the zoning lot for the proposed new building cannot be considered a "through lot," as per the definition in ZR 12-10, and requires a 30'-0" rear yard, as per ZR 23-47; and

WHEREAS, the appeal was brought on behalf of the owners of 65-70 Austin Street (the "Appellant"); and

WHEREAS, a public hearing was held on this application on August 20, 2013 after due notice by publication in *The City Record*, with a continued hearing on October 8, 2013, and then to decision on November 26, 2013; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, DOB appeared and made submissions in opposition to this appeal; and

WHEREAS, the subject site is located on the south side of Austin Street between 65th Road and 66th Avenue, within an R7B zoning district and is currently occupied by a one-story commercial building; the site abuts a railroad right-of-way for the Long Island Railroad ("LIRR ROW"); and

WHEREAS, the Appellant seeks to build a six-story residential building at the site with a rear yard with a depth of less than 30 feet; and

WHEREAS, the site has an average depth of approximately 80 feet and, based on the premise that the lot is a through lot, the Appellant proposes a yard with a depth of approximately 19 feet at the rear of the building adjacent to the LIRR ROW abutting the site; and

Relevant Zoning Resolution Provisions

WHEREAS, the following provisions read in pertinent part:

Street (ZR § 12-10 Definitions)
A "street" is:
(a) a way established on the City Map; or
(b) a way designed or intended for general public use, connecting two ways established on the City Map, that:
  (1) performs the functions usually associated with a way established on the City Map;
  (2) is at least 50 feet in width throughout its entire length; and
  (3) is covenanted by its owner to remain open and unobstructed throughout the life of any #building# or #use# that depends thereon to satisfy any requirement of this Resolution; or
(c) any other open area intended for general public use and providing a principal means of approach for vehicles or pedestrians from a way established on the City Map to a #building or other structure#, that:
  (1) performs the functions usually associated with a way established on the City Map;
  (2) is at least 50 feet in width throughout its entirelength;
  (3) is approved by the City Planning Commission as a "street" to satisfy any requirement of this Resolution; and
  (4) is covenanted by its owner to remain open and unobstructed throughout the life of any #building# or #use# that depends thereon to satisfy any requirement of this Resolution; or
(d) any other public way that on December 15, 1961, was performing the functions usually associated with a way established on the City Map; or . . .

* * *

Lot, through (ZR § 12-10 Definitions)
A "through lot" is any zoning lot, not a corner lot, which adjoins two street lines opposite to each other and parallel or within

45 degrees of being parallel to each other. Any portion of a through lot which is not or could not be bounded by two such opposite street lines and two straight lines intersecting such street lines shall be subject to the regulations for an interior lot; and

* * *

ZR § 23-531
Excepted through lots
R1 R2 R3 R4 R5 R6 R7 R8 R9 R10

(a) In all districts, as indicated, no #rear yard# regulations shall apply to any #through lots# that extend less than 110 feet in maximum depth from #street# to #street#; and

The Appellant's Position

WHEREAS, the Appellant seeks for DOB to consider the site a "through lot" because it adjoins two "street lines" opposite to each other and parallel - Austin Street and the LIRR ROW; and

WHEREAS, the subject R7A zoning district regulations do not require a front yard and, thus, the Appellant proposes to construct its building to the front lot line and, based on the premise that it is a through lot with a depth less than 80 feet, the Appellant does not propose a rear yard, but proposes a building setback from the rear lot line of between approximately 19'-3 ½" and 38'-5 ¾"; and

WHEREAS, in support of its position, the Appellant makes the following primary arguments: (1) the LIRR ROW meets the ZR § 12-10 definition of street; (2) even if the LIRR ROW is not a "street," it functions like a street and should be viewed as such; and (3) the principles of Equal Protection and fairness require that the application be approved; and

WHEREAS, the Appellant asserts that the LIRR ROW is a street either pursuant to the ZR § 12-10(a) or § 12-10(d) definitions of "street" as it is "a way established on the City Map" and "any other public way that on December 15, 1961 was performing the functions usually associated with a way established on the City Map"; and

WHEREAS, additionally, the Appellant cites to Webster's Dictionary definition of "street" as "a public way, with buildings on one or both sides, in a city, town or village" and lists "road" as a synonym; and

WHEREAS, the Appellant posits that the inclusion of the word "road" as part of the term "railroad" by definition implies that the LIRR ROW is in effect a "street" for trains; and

WHEREAS, the Appellant notes that the ZR § 12-10(a) provision was changed by the February 2, 2011 Key Terms Text Amendment from the prior "a way shown on the City Map" to the current "a way established on the City Map"; and

WHEREAS, the Appellant asserts that the LIRR ROW is both a way *shown* and a way *established* on the City Map, so the revision to the text does not implicate its analysis; and

WHEREAS, additionally, the Appellant states that neither DOB nor the Board have limited the application of the definition of street to ways shown (or established) on the City Map; and

WHEREAS, specifically, the Appellant notes that the Corporation Counsel has declared streets not shown on the City May as Prescriptive Streets and the Board has waived the requirement for compliance with GCL § 36 for unmapped streets to facilitate construction fronting on such streets; and

WHEREAS, the Appellant notes that pursuant to BSA Cal. No. 229-06-A (Bayside Drive, Queens), the Board determined that a private service road entirely on private property was a street for purposes of application of zoning yard requirements; and

WHEREAS, during the hearing process, the Appellant adopted the alternate approach that if the LIRR ROW did not meet the definition of street, it functions like a street and should, thus, be treated as one; and

WHEREAS, the Appellant states that DOB's formerly followed a reasonable interpretation that it recognized that the LIRR ROW could be "considered to be a street" for the purposes of applying ZR § 23-531(a) to other lots abutting the LIRR ROW; and

WHEREAS, the Appellant revised its position to assert that it is a technicality that the LIRR ROW does not meet the strict definition of "street" in ZR § 12-10; and

WHEREAS, the Appellant asserts that the LIRR ROW serves the purpose of a street in that it provides access to light and air for the benefit of the site similar to an established street for automobile traffic on the City Map, but which cannot be developed as-of-right; and

WHEREAS, as to DOB's history of approvals, the Appellant states that DOB issued approvals for the construction of two buildings adjacent to the site, which similarly abut the LIRR ROW; and

WHEREAS, the Appellant asserts that the first approval arose from DOB's Borough Commissioner Technical Meeting (BCTM) No. 168 on February 11, 1993 (the "1993 BCTM") in which DOB determined that the LIRR ROW can be considered a street with reference to 69-40 Austin Street; and

WHEREAS, second, the Appellant states that on July 26, 2006, the Borough Commissioner accepted the 1993 precedent for the adjacent property at 65-60 Austin Street, a decision that was upheld by the Borough Commissioner in Queens during an audit two years later; and

WHEREAS, the Appellant further notes that DOB approved the construction of two other multiple dwellings within the last two decades with rear yards with depths less than 30 feet at 65-84 and 66-08 Austin Street; and

WHEREAS, the Appellant notes that all four of the

noted buildings on Austin Street have obtained certificates of occupancy; and

WHEREAS, as to the Constitutional arguments, the Appellant asserts that DOB's actions have limited the property owner's use and enjoyment of his property and caused financial hardship, in conflict with the U.S. Constitution's Fifth and Fourteenth Amendments; and

WHEREAS, specifically, the Appellant states that recent U.S. Supreme Court cases (including Koontz v. St. Johns River Waste Management District, 570 U.S. ___(2013)) uphold the Fifth Amendment's fundamental right to property and directs that land use agencies may not exercise unbridled discretion during decision-making processes; and

WHEREAS, additionally, the Appellant asserts that DOB has been arbitrary and inconsistent and that such practices raise a Constitutional issue under the Equal Protection Clause of the Fourteenth Amendment which provides that state government will not "deny to any person within its jurisdiction the equal protection of the laws" and provides protection to every person "against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by improper execution through duly constituted agents"; and

WHEREAS, the Appellant asserts that principles of Equal Protection require that the owner of the subject 65-70 Austin Street be afforded the same approval as the owners of the other four Austin Street sites; and

WHEREAS, further, the Appellant cites to Village of Willowbrook v. Olech, 528 U.S. 1071 (2000) (quoting Sioux City Bridge Co. v. Dakota County, 260 U.S. 441, 441 (1923)) to support its position and for the point that the local government's action cannot have been "irrational and wholly arbitrary"; and

WHEREAS, the Appellant states that it does not have any knowledge of intentional discrimination against it but it contends that DOB has been arbitrary in denying to approve the subject building yet choosing to remedy its mistake on the four approvals on similarly-situated properties; and

WHEREAS, the Appellant asserts that DOB has singled its building out and has selectively enforced against it; and

WHEREAS, finally, the Appellant asserts that in the event the appeal is denied, the Board has an obligation to conduct hearings pursuant to ZR § 72-11 and NYC Charter § 645 to consider revocation of the Certificates of Occupancy issued for the adjacent sites and that DOB is obliged to pursue appropriate actions as it cannot be estopped from correcting its erroneous issuance of Certificates of Occupancy for the other Austin Street sites; and

DOB's Position

WHEREAS, DOB states that the site is not a through lot because: (1) the LIRR ROW is not a street, as defined by ZR § 12-10; (2) there is no basis to approve the application even if the LIRR ROW functions as a street; and (3) the Constitutional claims are meritless; and

WHEREAS, DOB states that because the LIRR ROW is not a "street," and the site does not adjoin two "street lines," a rear yard of 30 feet is required; and

WHEREAS, DOB states that the "through lot" definition requires the lot to be between "street lines," not between something that is not a "street" but may have some similarities to a street (i.e. a railroad right-of-way) and the definition specifically states that if a lot is not bounded by street lines, the lot is an interior lot; and

WHEREAS, DOB states that while the LIRR ROW is depicted on the City Map, it does not meet the ZR § 12-10(a) definition of "street" because it is not "a way shown" or "established" on the City Map; and

WHEREAS, DOB acknowledges that on February 2, 2011, through its Key Terms Text Amendment, the Department of City Planning (DCP) amended the ZR § 12-10(a) definition of street to replace the word "shown" with "established;" and

WHEREAS, DOB and DCP, by separate letter, state that the change in text was a clarification and not a substantive change in that the wording was modified to be consistent with the terminology for streets on the City Map; prior to the text change and now, the LIRR ROW would not satisfy the definition of street because it is not a way *shown* or *established* on the City Map; and

WHEREAS, DOB states that although the change in wording is subtle, this clarification was necessary in order to address confusion that may have been occurring from seeing certain depictions, such as railroads, on the City Map; and

WHEREAS, DOB notes that, according to DCP, the purpose of the change was to clarify the intent of the "street" definition by emphasizing that, while there are some features shown on the City Map for informational purposes, only specific map elements, such as streets, are "established" on the City Map; and

WHEREAS, DOB states that Chapter 1 of Title 25 of the Administrative Code of the City of New York governing DCP specifically defines what features are required to be "established" on the City Map; Administrative Code § 25-102 entitled "City map; what to include", states that "[t]here shall be located and laid out on the city map all parks, playgrounds, streets, courtyards abutting streets, bridges, tunnels and approaches to bridges and tunnels, and improvements of navigation in accordance with bulkhead and pierhead lines established pursuant to section seven hundred five of the charter…"; and

WHEREAS, DOB asserts that this list of legally established map elements that must be included on the City Map includes ways, such as streets, bridges, tunnels and approaches to bridges and tunnels, but does not include railroads; and

WHEREAS, DOB states that the legend on the City Map, indicates that streets and railroad rights of way are treated differently; specifically, the straight line indicates a street and the City Map legend states "street line heretofore established" or "street line hereby "established", while a broken line specifically identifies the "LIRR Right of Way" but leaves out the language "heretofore established" or "hereby established"; and

WHEREAS, DOB states that while streets are "established" on the City Map, railroads are not and are only included for informational purposes; and

WHEREAS, DOB also states that if a railroad right-of-way is a "street," other inconsistencies arise in the zoning such as the definition of "block" including "streets" and "railroad rights-of-way" as separate items; and

WHEREAS, in response to the Appellant's reliance on the 1993 BCTM which noted that the LIRR ROW did meet the ZR § 12-10 definition of "street" for construction of 69-40 Austin Street, the 2006 determination from Terrence Lin (then-Technical Compliance Unit Auditor in the Queens Borough Office), which accepted the LIRR ROW as a ZR § 12-10 "street" for construction at 65-60 Austin Street and the addresses for three other buildings with rear lot lines abutting the LIRR, DOB states that those permits were issued in error and cannot be relied on to support the Appellant's case; and

WHEREAS, DOB states that it is unclear whether the attendees at the 1993 BCTM thought that the LIRR ROW met the ZR § 12-10 definition of "street" or whether they thought the LIRR ROW was something similar to a "street" when adopting their conclusion; and

WHEREAS, DOB notes that the one sentence used in the 1993 BCTM notes stating "[t]he applicants request to consider the Rail Road right-of-way a street is granted per Section 12-10 (definition of Block and Street)" is not convincing one way or the other and more importantly, even if the 1993 BCTM decision was made on the basis that they thought the LIRR ROW was something similar to a "street," such a decision was erroneous and is not supported by the ZR § 12-10 definition of "street"; and

WHEREAS, accordingly, DOB states that it is irrelevant which rationale the 1993 BCTM used to come to their conclusion since their conclusion was erroneous and not supported by the text of the Zoning Resolution; and

WHEREAS, DOB states that it has described the reasons for reaching a different result in this case in that the LIRR ROW does not satisfy the definition of "street" and that any prior decision made by DOB finding that the LIRR is a "street" was erroneous, as it is not supported by the text of the Zoning Resolution; and

WHEREAS, DOB asserts that the statutory language is unambiguous and no interpretation is required; and

WHEREAS, in response to the Appellant's claims that DOB's application of the ZR § 12-10 definition of "street" in this case violates the Fourteenth Amendment, DOB states that it did not issue the Final Determination irrationally, arbitrarily or capriciously, nor is DOB denying the Appellant equal protection of the law; and

WHEREAS, further, DOB notes that the Appellant asserts that it "demonstrated inconsistent and unrestrained discretion in the granting of variances due to its inconsistent interpretation of relevant land use terms and definitions", citing to Koontz v. St. Johns River Waste Management District, 570 U.S. __ (2013), Nollan v. California Coastal Commission, 483 U.S. 825 (1987) and Dolan v. City of Tigard, 512 U.S. 374 (1994); and

WHEREAS, however, DOB finds that the Appellant fails to explain how these Fifth Amendment regulatory takings cases are relevant to the present case; in the three cited cases, the plaintiffs were deprived of use of their land because the government was essentially taking the plaintiff's property – by creating public easements on the property – without a legitimate state interest; and

WHEREAS, DOB asserts that there has been no such "taking" of Appellant's property; therefore discussion of these cases is irrelevant to the issues at hand; and

WHEREAS, DOB responds to the Appellant's invocation of Village of Willowbrook v. Olech, which states that an "irrational and wholly arbitrary" decision where "the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment" is a violation of the Fourteenth Amendment's Equal Protection Clause and to Burt v. City of New York, for the claim that the DOB has not offered a rational distinction for treating the Appellant differently from the prior erroneous approvals; and

WHEREAS, DOB asserts that the Appellant does not include the fact that Burt v. City of New York also held that "unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of *intentional or purposeful discrimination*." Burt v. City of New York, 156 F.2d 791, 792 (2d Cir. 1946) (emphasis added) (holding that discrimination occurs when city officials deliberately misinterpret and abuse their statutory power in order to deny plaintiff's architectural applications or impose upon him unlawful conditions) referring to Snowden v. Hughes, 64 S.Ct. 397 (1944); and

WHEREAS, DOB asserts that it has thoroughly explained its reasoning and that the Appellant has not demonstrated any evidence of intentional or purposeful discrimination against the Appellant because none exists; and

WHEREAS, further, DOB states that if applicants file plans today or in the future to develop a zoning lot as

a "through lot" that adjoins a "street" and a railroad right-of-way, DOB would disapprove the plans for the same reasons set forth in the Final Determination and throughout the appeal process; and

WHEREAS, DOB states that such treatment would act to treat similarly-situated properties in the same manner; and

WHEREAS, DOB states that therefore, in contrast to Willowbrook, its Final Determination has not been made to *intentionally* treat the Appellant differently from others similarly situated nor has DOB violated the Equal Protection Clause in issuing this Final Determination; and

WHEREAS, finally, DOB states that In The Matter of Charles A. Field Delivery Service, Inc., states that an agency is "free [like courts] to correct a prior erroneous interpretation of the law by modifying or overruling a past decision" Field Delivery Service, Inc., 66 N.Y.2d 516, 519 (1985) and that "when an agency determines to alter its prior stated course it must set forth its reasons for doing so." Id., at 520; and

WHEREAS, accordingly, DOB states that an agency only acts arbitrarily and irrationally if the agency "fails to adhere to its own prior precedent nor indicates its reason for reaching a different result." Id., at 516; and

WHEREAS, DOB contends that in this case, it has admitted to prior erroneous interpretations of the ZR § 12-10 definition of "street" and has provided sufficient explanation for doing so; therefore, DOB maintains that it has not acted arbitrarily or capriciously; and

The Department of City Planning's Letter

WHEREAS, DCP's counsel submitted a letter into the record on appeal, which states that the meaning of the term "way" in the ZR § 12-10(a) definition considered in the context of ZR § 12-10 as a whole, clearly refers to a thoroughfare which provides public vehicular and/or pedestrian passage, not railroad transportation use, consistent with the common understanding of a "street"; and

WHEREAS, DCP cites to the repeated reference to the concept of streets being "designed or intended for general public use" in the sections of the ZR § 12-10 definition and that private roads or driveways that provide only limited vehicular access are, under the final paragraph of the ZR § 12-10 definition, not considered a street; and

WHEREAS, DCP states that taken as a whole, the definition's framework makes clear that a railroad right of way that is not accessible to the public for vehicular or pedestrian use is not a "street"; and

WHEREAS, DCP also states that the Zoning Resolution treats railroad rights-of-way as distinct from streets in numerous provisions; and

WHEREAS, DCP adds that the LIRR ROW is not established on the City Map but is among the items noted for informational purposes only; and

Conclusion

WHEREAS, the Board agrees with DOB and DCP's position that the LIRR ROW is not a "street" as defined at ZR § 12-10 and, thus, the subject lot is not a through lot exempt from the rear yard requirement; and

WHEREAS, the Board does not find that the LIRR ROW satisfies the ZR § 12-10(a) requirement of "a way established on the City Map" as the LIRR ROW is included on the map for informational purposes but is not established there, nor is it a "way" in the sense that it is "designed or intended for general public use" consistent with the framework of the provision; and

WHEREAS, further, the Board does not find that the LIRR ROW satisfies the ZR § 12-10(d) condition of being "any other public way that on December 15, 1961, was performing the functions usually associated with a way established on the City Map" as the LIRR ROW is not a "public way" and does not function similarly to one of the limited kinds of "ways" that are established by law on the City Map; and

WHEREAS, the Board notes that railroad rights-of-way are not among the contents of the City Map listed in Administrative Code § 25-102 and are therefore intended to be for informational purposes only; and

WHEREAS, as far as the Appellant's Constitutional claims, the Board agrees with DOB's reading of the cited case law and notes that the Appellant is neither being deprived of its use of its property nor being treated un-equally in the sense contemplated by the noted Supreme Court decisions; and

WHEREAS, the Board does not find any basis to support a claim that DOB intentionally or purposefully discriminated against the Appellant as required by Burt v. City of New York to establish a claim for Equal Protection; and

WHEREAS, the Board acknowledges that DOB has failed to explain the reason for the four approvals on Austin Street, which are contrary to zoning, but none of the submissions have provided a legal or procedural basis for issuing an approval now that DOB (the permit-issuing body) and DCP (the drafters of the text) agree would be contrary to zoning regulations; and

WHEREAS, the Board continues to support DOB's position that it is not estopped from correcting its errors as per Matter of Charles A. Field Delivery Serv., Inc.; the case law requires that the agency explain its correction and does require the rationale for the disavowed erroneous approval in order to correct itself; and

WHEREAS, the Board notes that DOB states that it will not grant any approvals for similarly-situated sites along the LIRR ROW that include rear yards with depths of less than 30 feet; and

WHEREAS, the Board also notes that the Appellant has not begun construction at the site and that it may be possible to redesign the project to include a rear yard with a depth of 30 feet and allow for a productive use of the site; however, the Board notes that no such

plans have been proposed or reviewed by the Board or DOB; and

WHEREAS, the Board notes that the Appellant's current proposal reflects a setback from the rear lot line/LIRR ROW of depths ranging from approximately 19'-3 ½" to 38'-5 ¾"; and

WHEREAS, as to the Appellant's reliance on the summary of the 1993 BCTM, the Board notes that at the time of the other Austin Street approvals, the definition of street included ZR § 12-10(a) "a way shown on the City Map" and based on the BCTM summary – "the applicant's request to consider the Rail Road right-of-way a street is granted as per Section 12-10 (definition of Block and Street)" - it is unclear whether there was reliance on the concept of "*shown*" or if the meeting attendees understood "shown on the City Map" to mean "established on the City Map"; and

WHEREAS, accordingly, it is possible that the outcome of the BCTM would have been different if the 2011 Key Terms Text Amendment and the provision "established on the City Map" had been in effect; and

WHEREAS, the Board recognizes that DOB and DCP consider the Key Terms Text Amendment change from "shown" to "established" to be a clarification and not a substantive change; however, the Board finds that whether it was clarification or substantive change, there may be a more reasonable argument for the prior version of the text to be seen as ambiguous and thus prone to misreading that led to the four prior erroneous approvals; and

WHEREAS, the Board finds that to the extent that ambiguity may have existed under the pre-2011 text, such ambiguity no longer exists and the text is clear on its face that a way must be *established* on the City Map in order to satisfy the ZR § 12-10(a) definition of "street"; and

WHEREAS, the Board rejects the Appellant's revised argument that DOB's approval was based on the fact that the LIRR ROW functioned as a street or that being *like* a street would be a sufficient substitute to satisfy the Zoning Resolution definition; and

WHEREAS, the Board notes that the Appellant's remaining arguments, including a citation to a prior Board decision involving the ZR § 12-10(d) definition of "street" as "any other public way that on December 15, 1961, was performing the functions usually associated with a way established on the City Map," are without merit and do not address the issue of whether a railroad right-of-way is a street per the ZR § 12-10(a) definition of a "street" as a "way established on the City Map"; and

WHEREAS, as to the Board's duty to direct DOB to revoke the certificates of occupancy for the four other Austin Street buildings, the Board notes that the four other buildings and their certificates of occupancy have not been reviewed or considered within the appeal; and

WHEREVER, the Board also notes that DOB approved the construction of those buildings when the definition of "street" was less clear and finds that the change in the text may provide an explanation for the errors, notwithstanding DOB and DCP's position that there was not a substantive change; and

WHEREAS, accordingly, the Board does not see any basis to direct DOB to revoke the certificates of occupancy for the four other Austin Street buildings and notes that the current unambiguous text will ensure that there will be no other such erroneous approvals; and

WHEREAS, based on the above, the Board has determined, the Final Determination must be upheld and this appeal must be denied; and

Therefore it is Resolved that this appeal, which challenges a Department of Buildings final determination dated April 19, 2013, is denied.

Adopted by the Board of Standards and Appeals, November 26, 2013.

A true copy of resolution adopted by the Board of Standards and Appeals, November 26, 2013.
Printed in Bulletin No. 48, Vol. 98.

Copies Sent
To Applicant
Fire Com'r.
Borough Com'r.