Date of Issuance: October 14, 1987

To: Borough Superintendents and Executive Staff

From: Charles R. Foy, General Counsel

Subject: Owner's Authorization -- Condominiums and Cooperatives

A recent application to the Board of Standards and Appeals raised the issue of under what circumstances a condominium unit owner is authorized to file applications with this Department.

Because the circumstances raised in that application (a copy of the B.S.A. resolution is annexed) may reoccur, the following procedures are to be followed:

1. A condominium unit owner or a cooperative shareholder may file an application for approval or issuance of a permit pursuant to Sections 27-142 and 27-151 of the Building Code. Where an application indicates that a condominium unit owner or a cooperative shareholder is the applicant, the application must include a statement by the applicant that the condominium board of managers or the cooperative board of directors has authorized the filing of the application.
2. If the condominium board of managers or cooperative board of directors of a premises notifies the Department in writing that it did not authorize the filing of the application, the processing of the application shall immediately cease and the condominium unit owner or cooperative shareholder be notified of the action. If any approval or permit had been issued, such approval or permit shall be revoked. The above steps shall be taken regardless of the status of the application or the work.

3. No condominium unit owner or cooperative shareholder may file in the capacity as a condominium unit owner or cooperative shareholder for a certificate of occupancy or temporary certificate of occupancy. A condominium unit owner or cooperative shareholder may file such application when he or she is acting on behalf of the condominium board of managers or the cooperative board of directors.

MINUTES

1048-86-A
APPLICANT—Brown and Wood, for 35 East 38th Street
Associates, owner.

SUBJECT—Application, November 26, 1986—appeal from a
decision of the Department of Buildings which refused to
reinstate a Building Notice permit revoked on the basis that
the owner of the property has not authorized the work.

PREMISES AFFECTED—35 East 38th Street, north side, 80
feet west of Park Avenue, Block 868, Lot 32, Borough of
Manhattan.

APPEARANCES—
For Applicant: Robert S. Cook, Jr.
For Administration: Jon Bosse, Department of Buildings

ACTION OF BOARD—Appeal denied.

THE VOTE TO GRANT—
Affirmative: Chairman Bennett, Commissioner Irrera,
Commissioner Lawrie and Commissioner O’Keefe........ 4
Negative: .............................................. 0
Not Voting: Commissioner O’Sullivan....................... 1
Absent: Vice-Chairperson Bookman................................ 1

WHEREAS, the decision of the Department of Buildings as
expressed in the General Counsel's letter to the applicant dated
November 25, 1986, acting on B.N. 1802/1986 states:

"Please be advised that I have found the Manhattan Borough
Superintendent's revocation of June 30, 1986 to be correct and
appropriate and consistent with this Department's policies and
practice in dealing with controverted claims of an owner's au-
thorization. This policy and practice provides that if a fee owner
of premises or a party that claims total fee ownership of the
premises denies authorization to file applications and do certain
proposed work, then this Department will either not grant a per-
mit or revoke any permit that has been granted. This action
does not in any way shape or form constitute a determination
by this Department as to whether authorization has been prop-
erly or improperly denied, or of any other rights or obligations
that the parties may have pursuant to leases or contractual ar-
rangements. Certainly, in this case we make no finding as to the
applicability of the condominium by laws or any other private
agreement to the issue of ownership authorization.

and

WHEREAS, pursuant to Administrative Code §27-142 an ap-
plicant for a building permit must have proper authorization to
file such application; and

WHEREAS, pursuant to Administrative Code §27-151, said ap-
plicant must attest to the Department of Buildings that the ap-
plicant is the "owner" of the premises or authorized by the own-
er to file such application; and

WHEREAS, Administrative Code §27-252 defines "owner" as
the person having legal title to the premises; a mortgagee or ven-
dee in possession; a trustee in bankruptcy; a receiver or any
other person having legal ownership or control of the premises;
and

WHEREAS, the premises located at 35 East 38th Street consists
of an apartment and garage condominium development man-
aged by a Board of Managers; and

WHEREAS, the building permit application at issue in this ap-
peal reveals that the condominium unit owner of the garage re-
presented therein that it is the owner of the building and, further,
that the architect filing the application, represented to the De-
partment of Buildings that he was authorized by the owner of
the premises to file the application for the work specified therein
and, based thereon, the permit was issued; and

WHEREAS, following issuance of the permit the Department of
Buildings received notice of a dispute between the Board of
Managers and the individual condominium garage owner appli-
cant as to whether it had proper authorization to file the permit
application; and

WHEREAS, the alteration filed for involves the removal of a
concrete wall in order to create a new opening and a new ramp
in the building; and

WHEREAS, recognizing this dispute and cognizant of the chal-
lenge by the condominium Board of Managers, the Department
of Buildings revoked the permit; and

WHEREAS, all parties in this proceeding agree that a judicial
determination of the respective rights of the Board of Managers
and the individual condominium unit owner under the condo-
minium by laws is required; and

WHEREAS, the Board has previously ruled and been sustained
by the courts, that the Department of Buildings may properly
revoke a building permit when there is a dispute over the right
to execute alteration work and that the Department should defer
to the courts for an adjudication of the rights of the respective
parties; and

WHEREAS, while the definition of an owner under §27-232
does not precisely fit the circumstances of a condominium,
where a party with legal title to a condominium unit, may still
require the consent of the condominium Board of Managers to
perform certain work; the Department properly concluded that
a dispute existed between the condominium Board of Managers
and the unit owner warranting the revocation of the permit until
there is a judicial determination of each party's rights.

Therefore, Be It Resolved, that the determination of the De-
partment of Buildings as expressed by the General Counsel in a
letter dated November 25, 1986, acting on B.N. Application
#1802/1986 is hereby affirmed and the appeal is denied.

Adopted by the Board of Standards and Appeals, September