

243-13-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Henry II Thames LP c/o of Fisher Brothers, owners. SUBJECT – Application August 21, 2013 – Variance (§72-21) to permit construction of a mixed use building, contrary to setback requirements (§91-32). C5-5 (LM) zoning district.

PREMISES AFFECTED – 22 Thames Street, 125-129 Greenwich Street, southeast corner of Greenwich Street and Thames Street, Block 51, Lot 13, 14, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Executive Zoning Specialist, dated July 22, 2013, acting on Department of Buildings Application No. 121183799, reads, in pertinent part:

Proposed mixed building portion above the maximum base height does not comply with setback regulations; contrary to ZR 91-32; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within a C5-5 zoning district within the Special Lower Manhattan District (LM), a 70-story mixed-use commercial/residential building, with 439 dwelling units, and commercial use on the first and second floors, which is contrary to the setback regulations set forth at ZR § 91-32; and

WHEREAS, a public hearing was held on this application on November 26, 2013, after due notice by publication in the *City Record*, with continued hearings on January 14, 2014, and then to decision on February 4, 2014; and

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

WHEREAS, Community Board 1, Manhattan, recommends approval of the application; and

WHEREAS, the subject site is located on the southeast corner of Greenwich Street and Thames Street and comprises Lot 13 and Lot 14; and

WHEREAS, Lots 13 and 14 form a single zoning lot (the “Zoning Lot”) with a combined lot area of 35,813.70 sq. ft.; Lot 13 has a lot area of 26,727.37 sq. ft., which represents approximately 75 percent of the Zoning Lot’s total lot area and Lot 14 has a lot area of 9,086.33 sq. ft., which represents approximately 25 percent of the Zoning Lot; and

WHEREAS, Lot 13 is improved with a now vacant building constructed in two phases – a 6-story

structure completed in 1921 and a 14-story addition completed in 1931; it is an individual New York City Landmark (the “Landmark Building”), the former American Stock Exchange building, which will remain; Lot 14 is occupied by a vacant ten-story commercial building (the “Lot 14 Building”) which was constructed as a factory in the late 1800’s and which will be demolished; and

WHEREAS, in 1957, pursuant to BSA Cal. No. 847-56-A, the Board granted a variance of Section 271 of the Labor Law which allowed a fire escape located on the north side of the Lot 14 Building to serve as the building’s required second means of egress; and

WHEREAS, the applicant states that the proposed building will include approximately 359,000 sq. ft. of floor area, including unused floor area attributable to Lot 13, and up to 440 residential units; and

WHEREAS, the applicant states that subject to Landmarks Preservation Committee (LPC) approval, the owner of Lot 13 is planning to convert the Landmark Building to a hotel with retail uses on the lower floors at a future date; since the Lot 14 Building is not a designated landmark, the applicant asserts that LPC approval is not required for the proposal; and

WHEREAS, the applicant states that sites within the Special Lower Manhattan District are subject to special street wall and setback regulations, which are set forth at ZR §§ 91-31 and 91-32 and provide that all portions of a building located above a specified maximum base height must set back a specified distance from the street line; and

WHEREAS, ZR § 91-31 states that, except as otherwise provided in that section, the maximum base height will be 85 feet or 1.5 times the width of the street upon which the building fronts and it designates six classes or “types” of streets on which new development is subject to different minimum and/or maximum base heights; and

WHEREAS, ZR § 91-31 further provides that, when a building fronts on two intersecting streets that are subject to different maximum base heights, the higher maximum base height may wrap around to the street with the lower maximum base height for a distance of 100 feet; and

WHEREAS, the applicant states that ZR § 91-32 specifies the required building setback above the applicable maximum base height, which is based on the lot area of the relevant zoning lot; for zoning lots of less than 15,000 sq. ft., a minimum setback of ten feet is required; for zoning lots of between 15,001 and 30,000 sq. ft., a minimum setback of 15 feet is required; and for zoning lots greater than 30,000 sq. ft., a minimum setback of 20 feet is required; and

WHEREAS, the applicant notes that the Lot 14 portion of the Zoning Lot has 82’-8” of frontage on Greenwich Street and 119’-3½” of frontage along Thames Street; and

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WHEREAS, the applicant notes that Appendix A, Map 2 of the Special District regulations designates Lot 14's Greenwich Street frontage as a Type 3 street and its Thames Street frontage as an unclassified street; under ZR § 91-31, along a Type 3 street, the base height of a building will be at least 60 feet or five stories, whichever is less, and may not exceed 85 feet or 1.5 times the width of the street, whichever is greater; and

WHEREAS, the applicant notes that Greenwich Street has a width of 65 feet and, thus, along Greenwich Street, the base height of a new building constructed on Lot 14 may not exceed 97.5 feet; due to ZR § 91-31's "wrap" provision, all but a small segment of the new building's Thames Street frontage may likewise have a base height of up to 97.5 feet; and

WHEREAS, the applicant notes that although Lot 14 has a lot area of only 9,086.33 sq. ft., the Zoning Lot, including the site of the Landmark Building, has a total lot area of 35,813.7 sq. ft., thus ZR § 91-32 requires that, above the applicable maximum base height of 97.5 feet, a new building constructed on Lot 14 must set back at least 20 feet along Greenwich Street and along Thames Street; and

WHEREAS, because the proposal reflects a building with a setback of 10 feet on Greenwich Street and a setback of 13 feet on Thames Street, above a height of 76 feet, rather than setbacks of 20 feet on each frontage, waiver of the Special Lower Manhattan District's setback provision is required; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are unique physical conditions which create an unnecessary hardship in developing the in conformance with applicable regulations: (1) existence of the Landmark Building on the Zoning Lot and (2) the configuration of the Zoning Lot with the historic interconnectedness of the buildings; and

WHEREAS, the applicant states the Zoning Lot is unique because most of it is occupied by a designated New York City landmark which was physically and functionally connected to the existing Lot 14 Building for many years and severely constrains any new development on the Zoning Lot; and

WHEREAS, the applicant states that for many years, the building housed the American Stock Exchange and in 2013, the LPC designated the building an individual New York City landmark; and

WHEREAS, the applicant asserts that as a consequence of its landmark status, it is extremely unlikely that the Landmark Building could ever be demolished and replaced with a new building or significantly enlarged so as to permit all or most of the allowable floor area attributable to Lot 13 to be utilized on that parcel, which has a lot area of approximately 9,000 sq. ft.; and

WHEREAS, additionally, the applicant asserts

that there are not any sites in proximity to the Zoning Lot that are both eligible under the Zoning Resolution to receive Lot 13's unused floor area and practically capable of utilizing that floor area; and

WHEREAS, thus, the applicant asserts that the only option for the utilization of most of Lot 13's unused floor area is to transfer that floor area to Lot 14 and use it in a new development on that parcel, which is what the applicant proposes; and

WHEREAS, as to the uniqueness of the circumstances that affect the site, the applicant provided a map which reflects the nine other designated New York City landmarks located within a 400-ft. radius of the site; and

WHEREAS, the analysis identifies these landmarks and shows the maximum amount of floor area permitted on the landmark site, the amount of floor area in the landmark building, and the available development rights on the landmark site; and

WHEREAS, the applicant's analysis concludes that six of the nine landmarks are currently overbuilt and therefore do not have any excess floor area that can be transferred to a potential development site; although two of the landmark sites - St. George's Syrian Catholic Church and 94 Greenwich Street - have excess development rights, they have already undergone a zoning lot merger with the larger parcel located at 99 Washington Street and their excess development rights are being used in a new hotel that is presently under construction on that parcel; and

WHEREAS, the applicant distinguishes the other merger scenario from its own where a development on the smaller non-landmark portion of the site is severely constrained by the landmark status of approximately 75 percent of the lot area; and

WHEREAS, the applicant states that the last of the nine landmarks shown on is Trinity Church and Graveyard, which contains a large amount of excess development rights and the only other parcel located on the same block is also occupied by a landmark, - the adjacent Trinity Building; therefore, none of the Church's excess development rights can be utilized on that block pursuant to a conventional zoning lot merger; and

WHEREAS, the applicant asserts that the mechanism available for a transfer of the Church's development rights is a City Planning Commission special permit pursuant to ZR § 74-79 and thus it is highly unlikely that a Board variance would be requested in connection with a utilization of Trinity Church's excess development rights; and

WHEREAS, the applicant concludes that there are no other landmark sites in proximity to the site that are affected by the same sort of unique circumstances that create practical difficulties and unnecessary hardship and support the granting of a variance in this case; and

WHEREAS, the applicant notes, that due to the

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configuration of the zoning lot, there are practical difficulties in utilizing most of the Zoning Lot's available floor area in a new development on Lot 14 in compliance with the Zoning Resolution's applicable setback requirements; and

WHEREAS, as to the interconnectedness of the buildings, the applicant asserts that in 1930, the American Stock Exchange's predecessor (the New York Curb Exchange) purchased the Lot 14 Building and incorporated it into its stock exchange operations; until the exchange closed, the Landmark Building and the Lot 14 Building operated as a unified complex, with the Lot 14 Building containing exchange offices, trading floors and support facilities; and

WHEREAS, the applicant states that the two buildings were connected on floors 2, 8 and 10 of the Lot 14 Building, which correspond to the basement and floors 6 and 8 of the Landmark Building; additionally, the two buildings shared a number of services and systems; primary and secondary access to both buildings was provided by entrances in the Landmark Building located on Trinity Place and Greenwich Street; and the Lot 14 Building did not have its own accessible at-grade entrance; and

WHEREAS, the applicant asserts that the two tax lots – Lots 13 and 14 – were under the control of the American Stock Exchange and functioned as a unified commercial complex for many years; and

WHEREAS, in support of this contention, the applicant submitted a copy of a New York Times article dated January 5, 1930, which announces that the Hamilton Building, as the Lot 14 Building was then known, had been purchased by the New York Curb Exchange (later the American Stock Exchange) as part of the of its expanded exchange complex; and

WHEREAS, the applicant states that in 2009, the American Stock Exchange ceased trading and in 2011 it sold the entire site to entities related to the current owner of Lot 13; these two entities thereafter merged Lots 13 and 14 into the Zoning Lot and executed a Zoning Lot Development Agreement which allows a specified amount of the unused development rights attributable to Lot 13 to be incorporated into a new development on Lot 14; and

WHEREAS, the applicant states that it is not possible to construct an efficient residential building on Lot 14 that complies with the applicable setback requirements of ZR § 91-32, which are based on the lot area of the much larger combined Zoning Lot; and

WHEREAS, the applicant reiterates that Lot 14 has a lot area of only slightly more than 9,000 square feet, which represents only about 25 percent of the total area of the Zoning Lot and, under ZR § 91-32, the applicable setback requirements are based on the lot area of the affected zoning lot such that if Lot 14 were a discrete zoning lot, above the applicable maximum base

height any new development on that parcel would be required to set back only 10 feet from the street line along both Greenwich and Thames streets; and

WHEREAS, the applicant notes that it proposes setbacks of 10 and 13 feet, which would actually exceed the requirements of two setbacks of 10 feet each, if Lot 14 were its own zoning lot; and

WHEREAS, however, because the Zoning Lot comprises Lots 13 and 14 and has a total lot area in excess of 35,000 square feet, above the maximum base height any new development on Lot 14 must set back 20 feet along both Greenwich and Thames streets; and

WHEREAS, the applicant represents that a complying building with the required setbacks of 20 feet along both Greenwich and Thames streets would result in a tall, slender building with small tower floor plates of only 5,382 sq. ft. and that taking into account a double loaded corridor design and space reserved for the building's circulation core, and the additional structural elements required for such a tall and slender building, floor plates of this size permit only five or six apartments per floor which would not have the optimal depths or room widths of New York City apartments; and

WHEREAS, accordingly, the applicant asserts that the complying building has a net square foot to gross square foot efficiency rate of approximately 70 percent, which is significantly below the real estate industry standard; and

WHEREAS, the applicant asserts that due to the small floor plates, in order for the complying building to utilize all of the available floor area, it would have 85 floors and an elevation of 1,048 feet and would require five high-speed elevators to serve the 85 floors, leading to compounded inefficiencies and premium costs; and

WHEREAS, in contrast, the applicant asserts that the proposed building would have a reduced height with larger tower floor plates of 6,489 sq. ft.; and

WHEREAS, the applicant asserts that taking into account the reduced amount of structural elements needed for a shorter building, these larger floor plates would accommodate seven or eight apartments per floor which would have the optimal depth and room width for residential apartments; and

WHEREAS, the applicant states that the proposed building has a net to gross square foot efficiency rate of approximately 78.5 percent, which is closer to the industry standard than the complying building's efficiency rate; and

WHEREAS, the applicant states that as a consequence of its larger floor plates, the proposed building has 70 stories and an elevation of 882 feet, which makes it significantly shorter than the complying building and it requires only four conventional passenger elevators in contrast to the five high-speed elevators required for the complying building; and

WHEREAS, the applicant identified additional

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elements of the complex and costly structural system required for the complying building, including: (1) a very high height to width, or “slenderness,” ratio of 17:1 in contrast to the proposed building’s 13:1 slenderness ratio, which would require additional structure to stiffen the building to resist wind, seismic and gravity loads; (2) the requirement for more concrete walls and reinforcing bar tonnage than the proposed building; (3) in order to resist wind and seismic loads, the complying building would require thicker shear walls than the proposed building; (4) the complying building would require high-strength grade 100 rebar, while the proposed building will use conventional grade 60 rebar; (5) the complying building would require significantly more concrete reinforcing tonnage than the proposed building; (6) the complying building would require thicker foundations than the proposed building; (7) at its upper levels, the complying building would require thicker floor slabs and more or larger reinforcing bars than the proposed building; and (9) in order to accommodate the movement of the façade between floors during periods of high wind, the complying building would require more expensive façade connection detailing than the proposed building; and

WHEREAS, the applicant asserts that there are approximately \$31 million in premium costs associated with a complying building; and

WHEREAS, the applicant states that although Lots 13 and 14 constitute a single zoning lot, Lot 13 is under separate ownership and all of the economic benefits of a redevelopment of the Landmark Building will flow to the owner of that property; and

WHEREAS, the Board finds that the historic configuration of the lot and the presence of the Landmark Building in the aggregate create an unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that, per ZR § 72-21(b), there is no reasonable possibility that the development of the site in compliance with the Zoning Resolution will bring a reasonable return; and

WHEREAS, the applicant assessed the financial feasibility of (1) the complying mixed-use commercial/residential building with the required setbacks and (2) the proposal; and

WHEREAS, the applicant concluded that only the proposal would result in a sufficient return; and

WHEREAS, at hearing, the Board asked the applicant to explain the effect of the Inclusionary Housing and tax abatements on the project’s feasibility; and

WHEREAS, in response, the applicant states that 20 percent of the apartments will be affordable units that will be rented to households earning no more than 60 percent of the area median income, which will allow for

Section 421-a real estate tax exemption for a 20-year period; the applicant estimates that the tax exemption will have a value of approximately \$38.7 million; and

WHEREAS, the applicant notes that under the Zoning Resolution, the affordable dwelling units will also generate Inclusionary Housing development rights, which, however, may not be used on the site but may be used on sites within the Special District that are zoned C6-4 or on other eligible s within Community Board 1 or within a half-mile radius of the site (per ZR § 91-22); and

WHEREAS, the applicant estimates the value of the transferable Inclusionary Housing development rights is \$38.9 million; and

WHEREAS, in response to questions about whether the upper floor apartments in the taller complying building would have greater value than the upper floors in the proposed building, the applicant stated that they would be of greater value but the inefficiencies associated with the smaller floor plates in the complying building would produce significantly less rentable square footage than the more efficient floor plate in the proposed building and would lead to the complying building achieving less rent than the proposed building; and

WHEREAS, accordingly, the applicant states that the higher upper floor rents in a complying building would not offset its significantly higher construction costs; and

WHEREAS, in response to the Board’s questions about the value of the Landmark Building, the applicant states that the site will be redeveloped in the future with 177,705 sq. ft. of hotel and retail floor area, which includes 143,335 sq. ft. of existing floor area and 34,370 sq. ft. of unbuilt floor area that will be constructed within the building envelope; and

WHEREAS, the applicant’s analysis concluded that the tax exemptions and development rights transfer are standard for residential development and are not alone able to offset the premium costs associated with the hardship at the site; and

WHEREAS, based upon its review of the record, the Board has determined that because of the subject site’s unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant notes that the proposed commercial and residential uses are both conforming and are compatible with the surrounding area; and

WHEREAS, the applicant notes that a building envelope with setbacks of 10 feet on Greenwich Street and 13 feet on Thames Street would be permitted as of

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right if Lot 14 did not share a zoning lot with the Landmark Building, thus, the building envelope is contemplated by the zoning; and

WHEREAS, the applicant notes that the complying building would have 85 stories and a height of 1,048 ft., compared to the 70 stories and 882 feet of the proposed, which is a difference of 15 stories and 166 feet of height and that the proposed is more compatible with the surrounding neighborhood context; and

WHEREAS, additionally, the applicant asserts that the proposed building will be more compatible with its surrounding context and is being designed with a lower base height to relate to the height of the significant architectural features of the adjacent Landmark Building; and

WHEREAS, the applicant notes that although the applicable height and setback regulations allow the base of a building on this site to reach a height of 97.5 feet before a setback is required, the base of the proposed building will reach a height of only 76 feet, which allows the top of the base to line up with the cornice of the Landmark Building and promote a harmonious relationship between the two buildings; and

WHEREAS, although the application for setback waiver does not require a CEQR analysis, the applicant performed a shadow analysis to respond to the Board's inquiry about shadows, which reflects that the proposed building would cause only small incremental shadows on the September 11th Memorial and Zucotti Park compared to the existing conditions; and

WHEREAS, further, the applicant notes that the proposed shadows would be incremental compared to those associated with the complying building because although the proposal reflects larger floor plates, the complying building would have a significantly greater height than the proposed building and the existing tall buildings in the surrounding area already create shadow impacts; and

WHEREAS, specifically, the applicant states that when compared to a complying design, the proposed building would not have any incremental shadows on Zucotti Park at any time of the year and would have a very small shadow on the September 11th Memorial only in the winter, during a brief period of the day; and

WHEREAS, the applicant states that the analysis concludes that when compared with a complying building, the incremental shadows caused by the proposed building will be negligible and even less in comparison to existing conditions in the area; and

WHEREAS, the applicant asserts that the site is immediately south of the World Trade Center site, which is being redeveloped with several tall commercial towers, and directly north of an area where older street-wall buildings of various heights predominate; and

WHEREAS, the applicant submitted a comparison study of the proposed building and the

complying building within the surrounding context, in support of the assertion that the proposed building will follow the height gradient formed by the buildings in these two distinct areas but that the taller complying building would disrupt this contextual gradient; and

WHEREAS, the applicant also notes that the Thames Street sidewalk abutting the site is currently only 3'-5" wide and that in order to satisfy the pedestrian circulation requirements of ZR § 91-42, the applicant will incorporate within the proposed building a covered walkway with a depth of 10'-0" that extends along its entire Thames Street frontage, which will provide circulation space with a total width of 13'-5", an improvement over the current narrow sidewalk; and

WHEREAS, the applicant also notes that the proposed building will provide a significant measure of flood protection including: the building's circulation core, including its elevators and service equipment, will be located at the eastern end of the site, which has an elevation that is approximately five feet higher than the western end of the site; and the building's essential electrical equipment will be located on the third floor rather than the cellar, where such equipment is typically located; and

WHEREAS, accordingly, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant asserts that the practical difficulties and economic hardship associated with the complying building arise from the unique development history of the Zoning Lot, which is improved with the Landmark Building, a designated City landmark, and the adjacent Lot 14 Building, which for many years were owned and operated by the American Stock Exchange as a unified and interconnected complex; and

WHEREAS, the applicant notes that in 2012, the former owner of Lot 14 recorded a Declaration of Zoning Lot Restrictions which declared Lots 13 and 14 to be a single zoning lot; however, the applicant asserts that, as a result of their common control and ownership, these two parcels have satisfied the definition of a ZR § 12-10 "zoning lot" since that provision took effect in 1961 and, accordingly, they could have been treated and developed as a single zoning lot at any time since then; and

WHEREAS, the applicant asserts that the recent recording of a zoning lot declaration for these two parcels merely confirmed and formalized their longstanding presumed zoning status; and

WHEREAS, the Board finds that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the site's unique physical conditions; and

WHEREAS, the applicant notes that the setback of

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10 feet from street line along Greenwich Street and 13 feet from the street line along Thames Street, rather than 20 feet on both frontages would satisfy the setback requirement of 10 feet along both streets if Lot 14 constituted a discrete zoning lot; and

WHEREAS, the applicant asserts that the proposed setbacks are the minimum to efficiently accommodate the necessary circulation core and two rows of apartments with the appropriate depths and room widths for rental apartments; and

WHEREAS, finally, the Board finds that the proposal is the minimum variance necessary to afford relief, as set forth in ZR § 72-21(e); and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a within a C5-5 zoning district within the Special Lower Manhattan District (LM), a 70-story mixed-use commercial/residential building, with 439 dwelling units, and commercial use on the first and second floors, which is contrary to the setback regulations set forth at ZR § 91-32; and *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received October 15, 2013" –(17) sheets; and *on further condition*:

THAT the bulk parameters of the proposed building will be as follows: a maximum floor area of 536,835.5 sq. ft. (14.99 FAR), 70 stories, 956.78 feet building height, and minimum setback of 10 feet on Greenwich Street and 13 feet on Thames Street, all as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered

A true copy of resolution adopted by the Board of Standards and Appeals, February 4, 2014.

Printed in Bulletin No. 6, Vol. 99.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

approved only for the portions related to the specific relief granted;

THAT construction will proceed in accordance with ZR § 72-23; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 4, 2014.

