

2016-4329-A

APPLICANT – Richard G. Leland, for Baychester Retail III LLC, owner.

SUBJECT – Application November 10, 2016 – Administrative appeal challenging the Department of Buildings' final determination dated October 25, 2016, to permit the installation of 54 individual signs at the subject property. C7 zoning district.

PREMISES AFFECTED – 2001 Bartow Avenue, Block 5141, Lot 101, Borough of Bronx.

COMMUNITY BOARD #10BX

ACTION OF THE BOARD – Appeal denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4

THE RESOLUTION –

WHEREAS, the determination of the Department of Buildings (“DOB”), dated October 7, 2016, acting on Alteration Application No. 220543561 the (“Determination”), reads in pertinent part:

The request to allow the filing of multiple signs on each surface of a monopole advertising sign structure is denied.

BSA 35-15-A adopted May 3, 2016 denied the request to consider a sign surface assembly of multiple LED video screens as multiple signs in large part by concluding that the video screen assembly is held up by a unifying structure. While the newly proposed ‘grid’ holding the individual video screens differs from the ‘structure’ used for the sign assemblage considered in the BSA case ultimately, the newly proposed ‘grid’ is part of a monopole i.e.: every part of the grid that holds up the individual LED screens is held up by forces that ‘travel’ down to the monopole which holds up the entire grid. Therefore, independent of the particular formation of the ‘grid’ the structure holding up the individual LED screens must be considered one structure and following the BSA opinion each flat surface assembly of video screens is [to] be considered one sign; and

WHEREAS, this is an appeal for interpretation under Section 72-11 of the Zoning Resolution of the City of New York (“ZR”) and Section 666(6)(a) of the New York City Charter, brought on behalf of Baychester Retail III LLC (“Appellant”), alleging errors in the Determination pertaining to two vertical planes, each comprised of 27 illuminated light-emitting diode (“LED”) video screens (the “Subject Displays”), proposed to be placed on structural frames, consisting of vertical and horizontal supports, uprights, cross-arms and rods (the “Structural Frames”), atop a monopole (together with the Subject

Displays and the Structural Frames, as a whole, the “Subject Structure”) adjacent to the New England Thruway, a designated arterial highway; and

WHEREAS, on May 3, 2016, the Board denied an appeal regarding the subject site and an identically arranged array of two vertical planes of 27 illuminated LED video screens (the “Original Assembly”) for failing to comply with surface-area restrictions under BSA Calendar Number 35-15-A (the “Original Appeal”); and

WHEREAS, the Supreme Court of the State of New York upheld the Original Appeal in *Baychester Retail III LLC v. Bd. of Standards & Appeals of City of New York*, No. 157091/2016 (N.Y. County 2017); and

WHEREAS, this appeal was filed on November 10, 2016; and

WHEREAS, a public hearing was held on this application on March 21, 2017, after due notice by publication in *The City Record*, with continued hearings on May 23, 2017, October 3, 2017, and December 12, 2017, and then to decision on February 27, 2018; and

WHEREAS, Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and former Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, the New York City Department of City Planning (“DCP”) submitted testimony recommending denial of this appeal because, based upon DCP’s review of the Zoning Resolution’s sign provisions for commercial districts, the “surface area (of a sign)” definition of ZR § 12-10 and research into the advertising sign regulations adopted in 1961 and subsequently amended, in one instance in 1980, in response to the federal Highway Beautification Act, the Subject Displays exceed the surface area permitted near an arterial highway; and

WHEREAS, Community Board 10, Bronx, recommends denial of this appeal, stating that existing illuminated signs at the subject site shine directly into Co-op City apartments, thereby diminishing residents’ health and quality of life; the Community Board additionally questions the proximity of the Subject Displays to adjacent highways, their compliance with the federal Highway Beautification Act and requests that the Board review and take into account the effect that the Subject Displays would have on the health and quality of life of the residents of Co-op City; and

WHEREAS, Council Member Andy King submitted testimony stating that residents of Co-op City “do not deserve the nuisance” of illuminated signage that “substantially interferes with the ability of neighboring residents to use and enjoy their own properties” and expressing concerns that the Subject Displays will “expos[e] residents and [the] neighborhood to even more LED light, at all times of

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day and night, than they already experience from the existing [illuminated] signs”; and

WHEREAS, Congressman Eliot Engel submitted testimony in opposition to this appeal, stating that existing illuminated signs at the subject site “shine brightly during all hours of the day and night, making it difficult to sleep” for residents of Co-op City, and that the existing signs “are a nuisance that should not be permitted”; and

WHEREAS, in connection with concerns about three existing LED signs at the subject site, which, along with a large portion of the monopole intended to support the subject of this appeal, were installed sometime between December 2017 and January 2018, the Board received a 52-page petition signed by approximately 500 area residents opposing the installation of the Subject Displays and requesting removal of the recently-installed existing LED signs; and

WHEREAS, the Board clarified at hearing and explicitly states now that the three existing LED signs are not the subject of this appeal; and

WHEREAS, DOB and Appellant have been represented by counsel throughout this appeal; and

BACKGROUND

WHEREAS, the subject site is located on the northeast corner of Bartow Avenue and Baychester Avenue, in a C7 zoning district, in the Bronx; and

WHEREAS, the site has approximately 140 feet of frontage along Bartow Avenue, 145 feet of frontage along Baychester Avenue, 20,488 square feet of lot area and is improved with a one-story commercial building under construction, a triple-faced LED sign on a monopole, a double-faced LED sign on a monopole and a portion of the monopole intended to support the Structural Frames and the Subject Displays, all of which were constructed or installed in late 2017 or early 2018; and

WHEREAS, Appellant represents that the subject site is 287 feet from the New England Thruway,¹ an arterial highway designated by the City Planning Commission pursuant to ZR §§ 32-66 and 42-55; and

WHEREAS, Appellant represents that the Subject Displays are 322 feet from the New England Thruway²; and

WHEREAS, the Subject Displays are approximately 500 feet from Co-op City; and

WHEREAS, Co-op City is a residential development designed to house approximately 55,000 residents in approximately 39 buildings in order to “provide an attractive, pleasant, stimulating, and aesthetically satisfying living environment,” City Planning Commission, Report No. CP-18831, 339 (May 12, 1965); and

WHEREAS, the Subject Displays include 54 LED video screens for the display of advertisements to be supported by a 195-foot-high monopole, ranging in diameter from 12’-6” to 9’-2”;

WHEREAS, the Subject Displays’ 54 LED video screens are arranged on two vertical planes, back-to-back at an acute, V-shaped angle, each consisting of 27 LED video screens facing north and south, each spaced 12 inches apart, each measuring approximately 9,164 square feet and each with a total width of 97’-6” and a total height of 91’-6”;

WHEREAS, the Subject Displays are each attached to the monopole by the Structural Frames,³ which consist of vertical and horizontal supports, uprights, cross-arms and rods; and

ZONING RESOLUTION

WHEREAS, in 1940, the City Planning Commission determined that “[b]illboards and signs not only dominate our business streets . . . but they take advantage of every opportunity to crowd in upon public places, established and maintained by public funds, including civic centers, parks, and especially express highways and bridge approaches,” see Major Reports of the City Planning Commission, 85 (1940); and

WHEREAS, in response to the overcrowding of areas adjacent to public highways with signs and billboards, since 1940, the City has regulated commercial advertising signs adjacent to arterial highways in order to promote the City’s twin goals of advancing aesthetic values and improving traffic safety. See *Infinity Outdoor, Inc. v. City of New York*, 165 F. Supp. 2d 403, 406–11 (E.D.N.Y. 2001); see also *Clear Channel Outdoor, Inc. v. City of New York*, 594 F.3d 94, 99–100 (2d Cir. 2010); *Mogul Media, Inc. v. City of New York*, No. 16 CIV. 9794 (PAE), 2017 WL 6594223, at *1–2 (S.D.N.Y. Dec. 22, 2017) (appeal pending); and

1 The New England Thruway is under the jurisdiction of the New York State Thruway Authority. See N.Y. Pub. Auth. Law §§ 356, 361-a. Nothing in the record indicates that Appellant has complied with any relevant advertising-device regulations of the Thruway Authority, though the Board need not determine the extent of their applicability since the Subject Displays contravene the Zoning Resolution, as discussed herein.

2 In this appeal, the Board has not considered the exact distance of the Subject Structure from the New

England Thruway beyond approximating the distance as 322 feet, as presented by the Appellant and, in the course of BSA hearings, uncontroverted by DOB, and nothing herein shall be read as a determination as to such distance.

3 The Board notes that the term “structural frame” is undefined in the Zoning Resolution but is a term of art in the field of engineering.

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WHEREAS, in 1980, the Zoning Resolution was amended to incorporate federal and state highway-beautification standards for existing advertising signs “because local zoning controls are more stringent than standards set forth in the federal HBA,” City Planning Commission, Report No. N 790718 ZRY, 1 (Jan. 30, 1980)⁴; and

WHEREAS, in its 1980 report, the City Planning Commission further stated:

“By the term advertising sign the Commission intends to include both the message and the structure. Therefore, the relevant dimensions are those of the entire sign, not just the message area. If a sign structure built between 1968 and 1979 is 60 feet in height and 100 feet in length it is not grandfathered by the zoning text amendment even if the message area measures only 25 feet by 25 feet,” *id.* at 2; and

WHEREAS, under ZR § 12-10, a “sign” is “a structure or any part thereof, or is attached to . . . a *building or other structure*” (emphasis in original indicating defined term); and

WHEREAS, under ZR § 12-10, a commercial “advertising sign” is a “*sign* that directs attention to a business, profession, commodity, service or entertainment conducted, sold, or offered elsewhere than upon the same *zoning lot* and is not *accessory* to a *use* located on the *zoning lot*” (emphasis in original); and

WHEREAS, ZR § 12-10 defines a sign’s “surface area” as follows:

The “surface area” of a *sign* shall be the entire area within a single continuous perimeter enclosing the extreme limits of writing, representation, emblem, or any figure of similar character, together with any material or color forming an integral part of the display or used to differentiate such *sign* from the background against which it is placed. In any event, the supports or uprights on which such *sign* is supported shall not be included in determining the *surface area* of a *sign*.

4 Compliance with the federal Highway Beautification Act required the City’s enforcement against the plethora of then-illegal arterial advertising signs—an inordinately costly endeavor—so existing illegal advertising signs were granted lawful non-conforming use status so long as they complied with federal and state highway-beautification standards. See City Planning Commission, Report No. N 790718 ZRY, 1 (Jan. 30, 1980).

When two *signs* of the same shape and dimensions are mounted or displayed back-to-back and parallel on a single free-standing structural frame, only one of such *signs* shall be included in computing the total *surface area* of the two *signs*.

When a double-faced *sign* projects from the wall of a *building*, and its two sides are located not more than 28 inches apart at the widest point and not more than 18 inches apart at the narrowest point, and display identical writing or other representation, the *surface area* shall include only one of the sides. Any additional side of a multi-faced *sign* shall be considered as a separate *sign* for purposes of computing the total *surface area* of the *sign*; and

WHEREAS, under ZR § 32-63, “*advertising signs* are permitted subject to the applicable provisions of . . . Section 32-64 (Surface Area and Illumination Provisions) [and] Section 32-66 (Additional Regulations for Signs Near Certain Parks and Designated Arterial Highways) . . .”; and

WHEREAS, ZR § 32-64 states in pertinent part:

No *illuminated sign* shall have a degree or method of illumination which exceeds standards established by the Department of Buildings by rule pursuant to the City Administrative Procedure Act. Such standards shall ensure that illumination on any *illuminated sign* does not project or reflect on *residences, loft dwellings or joint living-work quarters for artists* so as to interfere with the reasonable use and enjoyment thereof. Nothing herein shall be construed to authorize a *sign with indirect illumination* to arrange an external artificial source of illumination so that direct rays of light are projected from such artificial source into *residences, loft dwellings or joint living-work quarters for artists*; and

WHEREAS, under ZR § 32-644, “*illuminated or flashing signs* with total *surface areas* not exceeding those shown in the following table are permitted: . . . C7 No restrictions as to size”; and

WHEREAS, under ZR § 32-662, “[b]eyond 200 feet from such arterial highway or *public park*, an *advertising sign* shall be located at a distance of at least as many linear feet therefrom as there are square feet of *surface area* on the face of such *sign*”; and

PUBLIC AUTHORITIES LAW

WHEREAS, under N.Y. Public Authorities Law § 361-a,⁵ “the erection or maintenance of any advertising device located within six hundred sixty feet of the nearest edge of the right-of-way of the

5 The Board requested at hearing that Appellant and DOB brief the applicability of this Public Authorities Law provision to the Subject Displays.

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thruway without a written permit therefor granted by the authority pursuant to this section is prohibited,” “[e]xcept as otherwise provided in this section”; and

PROCEDURAL HISTORY

WHEREAS, in the Original Appeal, Appellant sought redress from a DOB determination that a monopole supporting 54 illuminated LED video screens constituted a single sign and that such sign must comply with the arterial-advertising restrictions of ZR § 32-622; and

WHEREAS, on May 3, 2016, after five public hearings and much deliberation on a voluminous administrative record, the Board denied the Original Appeal finding that, among other things, an assembly made up of 54 illuminated LED video screens mounted on two vertical planes, each comprised of 27 LED video screens, mounted on opposite sides of a monopole (the “Original Assembly”) constituted at least one advertising sign, “the surface area of which greatly exceed[ed] that which is permitted at its location”; and

WHEREAS, on March 13, 2017, in *Baychester Retail III LLC*, the Supreme Court of the State of New York upheld the Board’s resolution in the Original Appeal; and

WHEREAS, Supreme Court concluded that the Board’s determination that 27 LED video screens arranged along a vertical plane on the Original Assembly constituted a single sign that, when measured in the aggregate, exceeded the surface area restrictions of ZR § 32-662 was rational and supported by substantial evidence; and

WHEREAS, Supreme Court referred to the “surface area (of a sign)” definition in ZR § 12-10 and found that one must consider that part of the entire structure which constitutes a “sign” and distinguish such “sign” from the “support”; and

WHEREAS, Supreme Court determined that the 27 LED video screens were “mounted” and “displayed back to back . . . on a single free-standing structural frame” and must be measured as a whole, not individually, based upon only one of the Original Assembly’s two vertical planes; and

WHEREAS, Supreme Court affirmed the Board’s calculation of the Original Assembly’s surface area “in and of itself,” “distinct from the monopole support”; and

WHEREAS, Supreme Court noted that “measurements of the support structure were not included in determining the surface area of the signs atop of the structure”; and

WHEREAS, Supreme Court found the Board’s resolution “buttressed by the fact that there is a single pole that supports the 54 purported individual panels”; and

WHEREAS, on October 7, 2016, DOB issued the Determination, and Appellant commenced this appeal on November 10, 2016, seeking reversal of

the Determination; and

ISSUE PRESENTED

WHEREAS, this appeal concerns whether the Subject Displays are located at a distance of at least as many linear feet from the New England Thruway as there are square feet of surface area on the Subject Displays as required by ZR § 32-662; and

APPELLANT’S POSITION

WHEREAS, Appellant argues that, in the Original Appeal, the Board determined that the configuration of the structural frame onto which 27 LED video screens were to be mounted constituted a single sign, hence the surface area of that sign, at 9,164 square feet, exceeded the maximum permissible surface area of 322 square feet, but that, in this appeal, the design of the Structural Frames renders the 54 LED video screens individual signs of less than 322 square feet each; and

WHEREAS, Appellant asserts that the structural frame rejected by the Board in the Original Appeal, which, it argues, hung all of the LED video screens off of one interconnected structural grid, is in this appeal, an array of supports, uprights, cross-arms and rods, each of which is attached independently to the monopole, creating 54 individual signs and sign structures mounted to a monopole that comply with ZR § 32-662; and

WHEREAS, in the Original Appeal, Appellant submitted a set of alternate drawings (“Exhibit K”) showing that a reconfiguration of the structural frame that placed each LED video screen on a separate structural arm extending horizontally from the monopole would be no different visually from the Original Assembly, which DOB, and later the Board, had rejected; and

WHEREAS, in the Original Appeal, comparing Exhibit K to the Original Assembly, Appellant entitled Exhibit K “A Distinction without a Difference” and stated that Exhibit K offered no visual difference in the appearance of the Original Assembly’s 27 LED video screens when seen from the front; and

WHEREAS, in response to questions posed by the Board, Appellant concedes that the Subject Displays are configured in a virtually identical manner to Exhibit K, which was presented to the Board in the Original Appeal; and

WHEREAS, in this appeal, Appellant states that DOB’s application of the Board’s determination in the Original Appeal to the Subject Displays contradicts the Board’s interpretation of the applicable zoning provisions; and

WHEREAS, Appellant states that this appeal concerns multiple structures affixed to a monopole, which design is similar to other sign structures that DOB has determined to be comprised of multiple signs because separate armatures support individual signs on a monopole; and

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WHEREAS, Appellant states that DOB requires separate construction applications and separate sign permits⁶ where there are gaps between signage and where signs are supported on separate structures attached to a common monopole; and

WHEREAS, Appellant states that the screens on the Subject Displays are neither parallel nor back-to-back; and

WHEREAS, Appellant states that each horizontal tubular steel arm does not ever touch or support any other screen, similar to the multi-faced signs located at 352 West 13th Street and 620 Eleventh Avenue; and

WHEREAS, accordingly, Appellant argues that each of the 54 LED video screens is a separate sign with less than 322 square feet of surface area that complies with ZR § 32-662; and

DOB'S POSITION

WHEREAS, having reviewed the Subject Displays under the standards set forth in BSA Calendar Number 35-15-A, DOB issued the Determination, finding that the

proposed 'grid' is part of a monopole i.e.: every part of the grid that holds up the individual LED screens is held up by forces that 'travel' down to the monopole which holds up the entire grid. Therefore, independent of the particular formation of the 'grid' the structure holding up the individual LED screens must be considered one structure and following the BSA opinion each flat surface assembly of video screens is [to] be considered one sign; and

WHEREAS, DOB states that, as with the Original Assembly, the Subject Displays' LED video screens will be placed on armatures that extend out from the monopole, making up a single grid-like structure, and that the placement of multiple LED video screens on series of horizontal armature supports connected to—and supported by—a monopole, but not connected to more than one screen or to each other, is an immaterial deviation from the Original Assembly's structural grids; and

WHEREAS, DOB states that this appeal does not concern LED video screens supported by separate ground-supported monopoles and disputes Appellant's characterization of the Subject Displays' arms as separate structures when they are all supported by a monopole and connected by vertical supports; and

WHEREAS, DOB states that, similar to the Original Assembly, the design and arrangement of LED video screens along vertical planes indicate that

the Subject Displays' vertical planes are to be perceived as a whole and are meant to be considered as such; and

WHEREAS, DOB states that the similarity, if not identicalness, of the Subject Displays to the Original Assembly was demonstrated by Appellant's own visual representations of the two proposed sign structures in the Original Appeal; and

WHEREAS, DOB states that the LED video screens on the Subject Displays will display pictorial representations or other figures of similar character and will be attached to a structure, be used to advertise and will be visible from outside a building, thereby meeting the sign definition of ZR § 12-10; and

WHEREAS, DOB states that the "extreme limits" of representation takes into account the totality of representation by multiple LED video screens on the Subject Displays; and

WHEREAS, DOB states that, unlike multi-faced signs at 352 West 13th Street and 620 Eleventh Avenue in Manhattan, the Subject Displays have a smaller degree of separation between panels, is not surrounded by open sky on three sides and is supported by a single grid connected to and supported by a monopole; and

WHEREAS, accordingly, DOB argues that the Subject Displays do not comply with ZR § 32-662 as it is located nearer the New England Thruway than its surface area of 9,164 square feet allows; and

DISCUSSION

WHEREAS, comparing the Subject Displays to the Original Assembly, the Board finds that the manner by which the LED video screens are attached is ultimately "a distinction without a difference," as Appellant noted in the Original Appeal; and

WHEREAS, the Board notes at the outset that, although Appellant states that the Subject Displays now comply with the Zoning Resolution, Appellant has not rearranged the Original Assembly and has instead slightly modified the design of the structural frames onto which the Original Assembly would be mounted—modifications which Appellant described in the Original Appeal as "a distinction without a difference" when comparing the modified frame to the frame to which the Original Assembly was mounted; and

WHEREAS, in the Original Appeal, the Board found that the Original Assembly was attached to a single freestanding pole "structure," and the Board finds that the Subject Displays are attached to a single freestanding pole "structure," ZR § 12-10 (defining "sign"); and

WHEREAS, in the Original Appeal, the Board found that connected to the Original Appeal's monopole were gridded structural frames made up of vertical and horizontal supports, uprights, cross-arms and rods, and the Board finds that connected to this appeal's monopole are the Structural Frames, which

6 The Board notes that the New York City Construction Codes, not the Zoning Resolution, govern applications for construction. See Admin. Code §§ 28-104.1, 28-105.4.5.

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are gridded and made up of vertical and horizontal supports, uprights, cross-arms and rods; and

WHEREAS, in the Original Appeal, the Board found that connected to the Original Appeal's gridded structural frames were 54 LED video screens, which made up the Original Assembly, and the Board finds that connected to this appeal's Structural Frames are 54 LED video screens, which make up the Subject Displays; and

WHEREAS, in the Original Appeal, the Board found that the Original Assembly's 54 LED video screens were arranged along two vertical planes, each measuring approximately 97'-6" in width and 91'-6" in height, and the Board finds that the Subject Displays' 54 LED video screens are arranged along two vertical planes, each measuring approximately 97'-6" in width and 91'-6" in height; and

WHEREAS, in the Original Appeal, the Board found that the Original Assembly constituted at least one sign, and the Board finds that the Subject Displays constitute two signs⁷; and

WHEREAS, in the Original Appeal, the Board found that 27 of the Original Assembly's LED video screens were "mounted" and "displayed . . . on a single free-standing structural frame," and the Board finds that 27 of the Subject Displays' LED video screens are "mounted" and "displayed . . . on a single free-standing structural frame," ZR § 12-10 (defining "surface area (of a sign)"); and

WHEREAS, in the Original Appeal, the Board found that the Original Assembly's 27 LED video screens were designed to display "writing, representation, emblem, or any figure of similar character," and the Board finds that the Subject Displays' 27 LED video screens are designed to display "writing, representation, emblem, or any figure of similar character," *id.*; and

WHEREAS, in the Original Appeal, the Board found that the "extreme limits of . . . representation" on the Original Assembly took into account all 27 of the LED video screens mounted and displayed along each vertical plane,⁸ and the Board finds that the

"extreme limits of . . . representation" on the Subject Displays take into account all 27 of the LED video screens mounted and displayed along each vertical plane, *id.*; and

WHEREAS, in the Original Appeal, the Board found no indication that "single continuous perimeter" referred to a continuous physical perimeter in examining the Original Assembly's vertical planes—that is, the perimeter of each individual LED video screen—and the Board finds no indication that "single continuous perimeter" refers to a continuous physical perimeter in examining the Subject Displays, *id.*; and

WHEREAS, in the Original Appeal, the Board found that the "single continuous perimeter enclosing the extreme limits of . . . representation" on the Original Assembly was a continuous line drawn around all 27 of the LED video screens located on a vertical plane, and the Board finds that the "single continuous perimeter enclosing the extreme limits of . . . representation" on the Subject Displays is a continuous line drawn around all 27 of the LED video screens located on each vertical plane of the Subject Displays, *id.*; and

WHEREAS, in the Original Appeal, the Board found that the "entire area within" the continuous line drawn around the Original Assembly's 27 LED video screens exceeded 322 square feet, and the Board finds that the "entire area within" the continuous line drawn around the Subject Displays' 27 LED video screens exceeds 322 square feet, *id.*; and

WHEREAS, in the Original Appeal, the Board found that said area constituted the "surface area" of the Original Assembly, and the Board finds that such area constitutes the "surface area" of the Subject Displays, *id.*; and

WHEREAS, in the Original Appeal, the Board did not include "the supports or uprights" in calculating the surface area of the vertical planes on the Original Assembly, and the Board does not include "the supports or uprights" in calculating the surface area of the Subject Displays; and

WHEREAS, in the Original Appeal, the Board found that, contrary to ZR § 32-662, the Original Assembly was not located at a distance of at least as many linear feet from the New England Thruway as there were square feet of surface area on either of the Original Assembly's vertical planes, and the Board finds that, contrary to ZR § 32-662, the Subject Displays are not located at a distance of at least as many linear feet from the New England Thruway as there are square feet of surface area on either of the Subject Displays' vertical planes; and

7 The Subject Displays are "attached to . . . a *building or other structure*," are "used to . . . advertise" and are "visible from outside a *building*." ZR § 12-10 (defining "sign"). Hence, both of the Subject Displays' vertical planes are signs. Were the Subject Displays arranged "back to back and parallel," "only one" of the Subject Displays would "be included in computing the total *surface area* of the two *signs*." ZR § 12-10 (defining "surface area (of a sign)").

8 In the resolution for the Original Appeal, under BSA Calendar Number 35-15-A, the Board incorrectly stated that the LED video screens were arranged on back-to-back and parallel vertical planes. The planes of the Original Assembly were actually

arranged back-to-back at an acute angle, just like the Subject Displays; however, this distinction was immaterial to the Original Assembly's non-compliance with ZR § 32-662.

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WHEREAS, in response to questions raised at hearing, Appellant states that, consistent with N.Y. Public Authorities Law § 361-a (restriction and regulation of advertising devices), no permit from the New York State Thruway Authority is necessary to construct or maintain an advertising device adjacent to the New England Thruway, citing a letter from the Thruway Authority's records access officer; and

WHEREAS, DOB states that it has not required the approval of a state agency as a prerequisite for the issuance of a sign permit in proximity to an arterial highway and presented a letter from the Thruway Authority's general counsel stating that "the Thruway Authority will continue to defer to the City of New York for permitting of advertising devices within City limits"; and

WHEREAS, the Board need not determine the applicability of N.Y. Public Authorities Law § 361-a in this appeal or of the Thruway Authority's advertising-device regulations promulgated thereunder; and

WHEREAS, the Board further notes that, in the Original Appeal, a minority of the Commissioners expressed a concern about whether it would be permissible to reconfigure the Original Assembly by mounting each LED video screen to an individual structure; however, the Board explicitly stated in the Original Appeal that it was not reaching a determination as to any signage assembly other than the Original Assembly; and

WHEREAS, the Board reiterates that the Subject Displays' LED video screens are not mounted to individual structures as Appellant alleges; rather, the Board finds that they are mounted to the Structural Frames, which are part of the Subject Structure—an individual structure; and

WHEREAS, the Board again finds that it would not be appropriate in this appeal for the Board to render a determination as to other signage assemblies, including those located at 352 West 13th Street and 620 Eleventh Avenue in Manhattan, and that this appeal only pertains to the Subject Displays; and

WHEREAS, consistent with the Board's resolution in the Original Appeal, the Board finds that the Subject Displays would be a clear hazard to motorists on the New England Thruway and, by virtue of its size, degree of illumination and, due to its close proximity to Co-op City, a potentially significant nuisance to area residents; and

WHEREAS, the Board notes that ZR § 32-64

A true copy of resolution adopted by the Board of Standards and Appeals, February 27, 2018.

Printed in Bulletin Nos. 9-10, Vol. 103.

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To Applicant

Fire Com'r.

Borough Com'r.

specifically prohibits signage illumination from projecting or reflecting on residences "so as to interfere with the reasonable use and enjoyment thereof"; and

WHEREAS, the Board credits the testimony in the record from residents of Co-op City, elected officials and other stakeholders that the Subject Displays would interfere with residents' quality of life in Co-op City—supporting the Board's concern about the negative land-use impacts posed by the Subject Displays; and

CONCLUSION

WHEREAS, the Board has considered all of Appellant's arguments on appeal but finds them ultimately unpersuasive; and

WHEREAS, for the foregoing reasons, the Board finds that DOB appropriately determined that, contrary to ZR § 32-662, the Subject Displays are not located at a distance of at least as many linear feet from the New England Thruway as there are square feet of surface area on the Subject Displays.

Therefore it is Resolved, that the determination of the Department of Buildings, dated October 7, 2016, acting on Alteration Application No. 220543561, shall be and hereby is *upheld* and that this appeal shall be and hereby is *denied*.

Adopted by the Board of Standards and Appeals, February 27, 2018.

