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BOARD OF STANDARDS AND APPEALS

MEETING OF: March 11, 2024
CALENDAR NO.: 2022-69-A thru 2022-75-A
PREMISES: 2001 Bartow Avenue, Bronx
Block 5141, Lot 101

ACTION OF BOARD — Application denied.

THE VOTE —
Affirmative:.....0
Negative: Chair Chanda, Vice-Chair Scibetta, Commissioner
Ottley-Brown, Commissioner Sheta, and Commissioner
Yoon.....5

THE RESOLUTION —

I. The Appeal

This is an application for an interpretative appeal concerning a final determination of the New York City Department of Buildings (“DOB”), under DOB Sign Application Nos. 220323709, 220543473, 220543507, 220543491, 220353007, 220352594, and 220352936, dated August 12, 2022, which revoked the appellant’s permits for certain signage at the Premises, stating, in pertinent part:

The determination of the Appellate Division...dated January 18, 2022, *In the Matter of Baychester Retail III, LLC v. City of New York*, 201 A.D.3d 512 (1st Dep’t 2022), reversed the Decision and Order, dated September 15, 2024, of Supreme Court, New York County (Rakower, J.), which granted Baychester’s petition in part and estopped DOB from revoking petitioner’s existing permits. Accordingly, in light of the Appellate Division’s reversal, DOB’s approval and permits are now revoked.

Baychester’s sign applications [number]s 220323709, 220543473, 220543507, 220543491, 220353007, 220352594, [and] 220352936 violate Section 32-662 of the New York City Zoning Resolution (“[Z.R.]”), as the signs are located within 200 feet of an arterial highway. Therefore, pursuant to Section 28-105.10.1 of the Administrative Code of the City of New York (“AC”), the approval and permit are hereby revoked.

A public hearing was held on this application on May 23, 2023, after due notice by publication in *The City Record*, with a continued hearing on February 26, 2024, and then to decision on March 11, 2024. Commissioner Ottley-Brown performed an inspection of the site and surrounding area.

The Board received 15 letters of objection to this appeal, including a joint letter signed by a New York City Council Member, New York State Senator, and New York State Assembly Member; a letter from a neighboring residential development's management corporation; a letter from the District Manager of Community Board 10, Bronx; a petition of opposition with seven signatures, including from members of the Board of Directors of the neighboring residential development's management corporation and Community Board 10, Bronx; and letters from neighbors. These letters raised numerous concerns regarding the signage at the Premises, including concerns about the appellant's alleged past use of a tower signage mount to install a wind turbine, and subsequent turbine debris and LED panels falling from the tower during high winds; the excessive height, area, and bright LED lighting of the signage installations; and the installations' resulting light pollution, sleep disruption, driver distraction, and aesthetic disturbance.

II. Location

The Premises are located on the northeastern corner of the intersection of Bartow Avenue and Baychester Avenue (the New England Thruway), in a C7 zoning district, in the Bronx. The Premises have approximately 140 feet of frontage along Bartow Avenue, 145 feet of frontage along Baychester Avenue, 21,025 square feet of lot area, and are currently occupied by a one-story commercial building and three sign structures: a double-faced pole located near the southeastern corner of the Premises with two signs, one of which faces west toward the New England Thruway and the other of which faces east (the "Lollypop Signs"); a triple-faced pole located near the southwestern corner of the Premises with three signs, two of which face north and west, respectively, toward the New England Thruway, and one of which faces east (the "Triple Pole Signs"); and a tower pole located near the center of the Premises with six signs, four of which face the New England Thruway to the west (the "Tower Signs"). The seven signs that face the New England Thruway are the signs for which DOB has revoked the permits issued under Sign Application Nos. 220323709, 220543473, 220543507, 220543491, 220353007, 220352594, and 220352936, and are the subject of this instant appeal to the Board (the "Subject Signs").

III. Procedural History

A. History of Automotive Use Grants

The Board has exercised jurisdiction over the Premises since March 2, 1971, when, under BSA Cal. No. 651-70-BZ, the Board granted a special permit, pursuant to Z.R. § 73-211, to permit, in the subject C7 zoning district, the reconstruction and maintenance of an automotive service station with accessory uses, on condition that all work substantially conform to the BSA-approved plans; all laws, rules, and regulations applicable be complied with; and substantial construction be completed within one year from March 2, 1971.

On November 17, 1981, under BSA Cal. No. 395-81-A, the Board granted an appeal of the decision of the Fire Commissioner, dated May 6, 1981, acting on Acct. No. E254631, to modify the decision, on certain conditions; and under BSA Cal. No. 651-70-BZ, amended the special permit, pursuant to Z.R. §§ 72-01 and 72-22, to permit self-service use to continue for five years from November 17, 1981, in order to coincide with the terms and conditions of the resolution granted under BSA Cal. No. 395-81-A; install a 30'-0" by 57'-0" metal canopy and eliminate the gasoline pump island facing Bartow Avenue; the automotive service may be changed to a self-serve station for the sale of gasoline only; and the Premises conform to the BSA-approved plans, on certain conditions.

On October 29, 1985, under BSA Cal. Nos. 651-70-BZ and 395-81-A, the Board amended the special permit and appeal grant to permit the removal of six gasoline pumps and installation of one new multiple product dispenser ("MPD") pump on the inside island and two new MPD pumps on the outside island, on certain conditions.

On May 12, 1987, under BSA Cal. No. 395-81-A, the Board extended the term of the appeal grant for five years from November 17, 1986, to expire on November 17, 1991, on certain conditions.

Thereafter, on May 11, 1999, under BSA Cal. No. 651-70-BZ, the Board amended the special permit to permit the demolition of a then-existing 1,968-square-foot automotive service station with three automotive repair bays, four MPDs and metal canopy; to be replaced by the construction of a 3,400-square-foot masonry building containing attendant area, office, bathrooms, storage and accessory convenience store sales area, along with six MPDs and a 36' by 91'-7" metal canopy, on certain conditions. On March 6, 2001, under BSA Cal. No. 651-70-BZ, the Board extended the time to complete construction for 36 months from May 11, 2000, to expire on May 11, 2003.

On July 10, 2013, under BSA Cal. Nos. 651-70-BZ and 395-81-A, the Board issued a Letter of No Objection to permit the applicant to surrender the special permit and appeal grant.

B. History of Signage Appeals

On May 3, 2016, under BSA Cal. No. 35-15-A (“Bartow I”), the Board denied an appeal of DOB’s determination that a signage assembly at the Premises constituted a single sign that exceeded the applicable surface area regulations. Specifically, the Board considered the issue of whether the signage assembly at issue (54 electronic screens attached to panels on either side of a monopole, 27 to each side) constituted two large (27-sign panel) signs, as DOB argued, or 54 individual signs, as the appellant argued. Under Z.R. § 32-662, advertising signs located in a C7 zoning district (the subject district) are not permitted within 200 feet of an arterial highway and, beyond 200 feet of an arterial highway, must 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. The Board decided in favor of DOB, agreeing with DOB’s position that the signage assembly on the monopole constituted two large signs comprising more than the permitted surface area under Z.R. § 32-662. As explained further in the resolution, the Board reached its decision based, in pertinent part, on (a) public policy, noting, in agreement with letters submitted by DCP, that careful scrutiny of large assemblies located near major roadways is prudent, as such can be a dangerous distraction to drivers and source of visual pollution; and (b) because “surface area” is decided based on the overall structure on which the smaller sign components are placed (the two large panels in that case). The Board also stated that the fact that each screen was placed a foot apart from all other screens on the same panel did not make the screens count as individual signs, because the overall panel structure on which the screens rest is the sole deciding factor of “surface area.”

In response to the Board’s decision in Bartow I, the appellant appealed to the Supreme Court, New York County, which denied the appellant’s petition, concluding that the Board’s decision “to affirm DOB’s determination was supported by substantial evidence, and rational.” *Baychester Retail III LLC v. Perlmutter*, Index No. 157091/2016, Motion Seq. 001, Decision and Order, Doc. No. 68, 11-12 (Sup. Ct., N.Y. Cty., Mar. 13, 2017). The appellant then appealed to the Appellate Division, First Department, which affirmed the Supreme Court’s decision, again finding that the Board’s decision had “a rational basis” and was “supported by substantial evidence.” *Baychester Retail III LLC v. Perlmutter*, 161 A.D.3d 678, 678 (1st Dep’t, May 29, 2018). The First Department also noted that “[i]nsofar as DOB’s determination [was] inconsistent with any of its past decisions, the doctrine of judicial estoppel [did] not avail petitioner,” as “the record reflect[ed] BSA’s reasons for accepting this departure from precedent...therefore permit[ting] judicial review.” *Id.* at 678-679. The New York Court of Appeals thereafter denied the appellant’s motion for leave to appeal. *Baychester Retail III LLC v. Perlmutter*, 32 N.Y.3d 907, 2018 WL 5075777, at *1 (N.Y. Oct. 18, 2018).

During judicial review of the Bartow I decision, the appellant filed a Zoning Resolution Determination (“ZRD1”) request under Alteration Application No. 220543561 at DOB, seeking approval of a reconfiguration of the signage assembly at the Premises. DOB had initially approved the appellant’s proposed new signage structure, but did not approve all of the appellant’s applications for sign permits for the new structure. DOB then denied the ZRD1 request, finding that the signs still comprised one single sign structure in excess of the permitted surface area, and the appellant appealed the ZRD1 denial to the Board. Over the course of hearings and prior to the Board’s decision on the appeal of DOB’s denial of the proposed reconfigured assembly, the appellant appealed to the Supreme Court, New York County, seeking to prohibit the Board from retroactively reversing or modifying the position it had taken in Bartow I, which the appellant contended established the lawfulness of the proposed reconfigured signage assembly design. The Supreme Court denied the appeal. *Baychester Retail III LLC v. Perlmutter*, Index No. 157596/2017, Motion Seqs. 1-2, Decision and Order, Doc. Nos. 63-64 (Sup. Ct., N.Y. Cty., February 27, 2018).

On February 27, 2018 (“Bartow II”), the Board denied the appellant’s appeal of DOB’s ZRD1 denial determination, acting on Alteration Application No. 220543561, finding that the signage assembly at issue was 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 signage displays, contrary to Z.R. § 32-662. Specifically, the Board reviewed the same issue as considered in Bartow I (i.e., whether the subject displays constituted individual signs or two large signs with surface area in excess of the maximum permitted under Z.R. § 32-662), except, in Bartow II, the appellant proposed to reconfigure the assembly into a “grid” format as follows: 54 LED video screens 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 of surface area and each with a total width of 97 feet and 6 inches and a total height of 91 feet and 6 inches, attached to a monopole by structural frames consisting of vertical and horizontal supports, uprights, cross-arms and rods. Under the same section of the Zoning Resolution (Z.R. § 32-662) at issue in Bartow I, the Board again found in favor of DOB due to (1) public policy (as stated in Bartow I); and because (2) the structure proposed was nearly identical to the assembly at issue in Bartow I, with the only cognizable difference being the precise configuration of the frame used to attach the displays to the panels, and otherwise the assembly appeared the same as the assembly at issue in Bartow I and thereby was also contrary to Z.R. § 32-662.

In response to the Board’s decision in Bartow II, the appellant appealed to the Supreme Court, New York County, which denied the appeal and affirmed the Board’s decision to uphold DOB’s denial of the application for the reconfigured signage assembly, finding that the

appellant’s “modified proposal [was] a ‘distinction without a difference,’” that the Board’s Bartow II resolution was “not arbitrary and capricious,” and that the appellant’s “other arguments” were “unavailing.” *Baychester Retail III LLC v. Margery Perlmutter et al.*, Index No. 156584/2018, Motion Seq. 1, Decision and Order, 3-4 (Sup. Ct., N.Y. Cty., Feb. 26, 2019). After this ruling, the appellant appealed to the Appellate Decision, First Department, which affirmed the decision of the Supreme Court, stating that the Board “rationally concluded that, notwithstanding the panels’ independent armatures, given their unified configuration, all the panels comprise a single structure affixed to the monopole,” and “[a]s BSA did not materially change its position, petitioner’s jurisdiction, judicial estoppel, and issue and claim preclusion arguments [we]re unavailing.” *Baychester Retail III LLC v. Perlmutter*, 181 A.D.3d 512, 513-514 (1st Dep’t 2020).

During the pendency of the appeals before the Board and the Courts in Bartow II concerning the legality of the modified signage structure, DOB approved a signage configuration that included signs that had a surface area of less than 322 square feet. The appellant then erected these approved signs, but in June 2018, DOB issued a notice of intent to revoke the permits for such signs, finding that the boundary of the New England Thruway was coincident with the western border of the Premises and, therefore, the signs were within 200 feet of an arterial highway and did not comply with Z.R. § 32-662. DOB thereafter audited the appellant’s permits and determined that the boundary of the Thruway was the roadway further west, and thus the signs were not within 200 feet of an arterial highway.

Subsequently, the New York City Department of City Planning (“DCP”), by letter dated November 27, 2019 (the “2019 DCP Letter”), stated that it intended to confirm the location on the City Map of the eastern boundary of the New England Thruway between Bartow Avenue and Aldrich Street in the Bronx. DCP explained that the Thruway was mapped pursuant to Resolution 75-A of the New York City Board of Estimate (“BOE”), dated March 19, 1948 (the “1948 BOE Resolution”), and the Alteration Map corresponding to the 1948 BOE Resolution established that the section of Baychester Avenue, bordering Block 5141, between Bartow Avenue and Aldrich Street, was de-mapped and that the New England Thruway was mapped to the western border of Block 5141. DCP further stated that, as specified in the 1948 BOE Resolution, Baychester Avenue was incorporated into the Thruway as a service road. DCP also noted that the de-mapping of Baychester Avenue and the mapping of the Thruway to the western border of Block 5141 were reflected in the subsequent Bronx Section Maps dated April 11, 1948, and September 17, 1996. As such, the 2019 DCP Letter concluded that the mapped eastern boundary of the Thruway between Bartow Avenue and Aldrich Street is the western border of Block 5141, which is the western lot line of the Premises.

After the Supreme Court's decision to uphold the Board's Bartow II decision, and in response to the 2019 DCP letter, DOB issued a notice of intent to revoke the relevant sign permits, dated January 9, 2020. The appellant then filed an Article 78 petition at the Supreme Court, New York County, challenging this notice. On September 15, 2020, the Supreme Court issued a decision and order granting the petition "only to the extent that [DOB] is estopped from revoking [the] permits based upon the [2019 DCP Letter] which concerned a new interpretation of the boundary of the New England Thruway." *Baychester Retail III LLC v. DOB*, Index No. 151514/2020, Motion Seqs. 1-2, Decision and Order, Doc. No. 88, 1-2 (Sup. Ct., N.Y. Cty., Sep. 15, 2020). On appeal, the Appellate Division, First Department issued a decision and order dated January 18, 2022, which reversed the Supreme Court's decision on procedural grounds, finding that the Article 78 petition was unripe for appeal because DOB's notice of intent to revoke was not an actual revocation and did not cause any concrete injury to the appellant. The First Department further stated that the petitioner had failed to exhaust its administrative remedies as "it did not appeal to the Board of Standards and Appeals before commencing th[e] proceeding" and "failed to establish the applicability of any exception to the exhaustion requirement." *Baychester Retail III v. City of New York*, 201 A.D.3d 512, 513 (1st Dep't, Jan. 18, 2022).

On January 24, 2022, DOB issued revocation letters moving to revoke the subject permits. DOB then re-issued the revocation letters on August 12, 2022, noting that its notice procedure for the initial January 24, 2022, revocation letters was improper. These August 12, 2022, revocation letters are the determinations from which the appellant brings this instant appeal.

IV. Legal Authority

A. The Zoning Resolution's Prohibition on Advertising Signs within 200 Feet and in View of Arterial Highways in Certain Commercial Districts

Z.R. § 32-662 states, in pertinent part, the following:

C6-5 C6-7 C8

In all districts, as indicated, no advertising sign shall be located, nor shall an existing advertising sign be structurally altered, relocated or reconstructed within 200 feet of an arterial highway or of a public park with an area of one half acre or more, if such advertising sign is within view of such arterial highway or public park. For the purposes of this Section, arterial highways shall include all highways which are shown on the Master Plan of Arterial Highways and Major Streets, as "principal routes," "parkways" or "toll crossings," and that have been designated by the

City Planning Commission as arterial highways to which the provisions of this Section shall apply. Beyond 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.

B. The Board's Appellate Jurisdiction

Section 666(6)(a) of the New York City Charter states that the Board shall have the power to:

To hear and decide appeals from and review...except as otherwise provided by law, any order, requirement, decision or determination of the commissioner of buildings or of a deputy commissioner of buildings or any borough superintendent of buildings acting under a written delegation of power from the commissioner of buildings filed in accordance with the provisions of section six hundred forty-two or section six hundred forty-five of this charter.

Furthermore, Z.R. § 72-11 also authorizes the Board, in relevant part:

[To] hear and decide appeals from...any rule or regulation, order, requirement, decision or determination of the Commissioner of Buildings [or] any duly authorized officer of the Department of Buildings... On such an appeal or review, the Board may reverse, affirm, in whole or in part, or modify, such rule, regulation, order, requirement, decision or determination and may make such rule, regulation, order, requirement, decision or determination as in its opinion should have been made in the premises in strictly applying and interpreting the provisions of this Resolution, and for such purposes the Board shall have the power of the officer from whose ruling the appeal or review is taken.

V. Arguments on Appeal

A. The Appellant's Arguments

The appellant argues that the Subject Signs comply with Z.R. § 32-662 as (1) the boundary of the New England Thruway is not the Premises' western lot line and (2) the signs are located more than 200 feet from the Thruway. Regarding the first point, the applicant asserts, first, that the grassy space located between Baychester Avenue and the Thruway is not part of the Thruway. While the grassy area being part of the Thruway would place the Subject Signs within 200 feet of the Thruway in violation of Z.R. § 32-662, the appellant argues, referencing past statements of DOB and the Board, that, as a general matter, a landscaped area located between paved roadways is not a part of the adjoining roadways; it is an independent, non-street space. The

appellant points to the text of the DOB determination underlying BSA Cal. No. 215-10-A, an appeal involving a hospital's distance from the Cross Island Parkway, in which DOB claimed that a landscaped area adjacent to the Parkway, which was within the Parkway's property line, did not fall within the definition of *street* contained in Z.R. § 12-10, stating:

[T]he portion of the Cross Island Parkway that adjoins [the hospital's] property is a landscaped area and is not a street... The [Zoning Resolution § 12-10] defines a "street" in part, as a way shown on the City Map [yet] [t]he landscaped area abutting the [hospital's] property is not a way or means of approach, but rather functions as a buffer between the roadway of the Cross Island Parkway and neighboring properties.

The appellant contends that DOB maintained this position throughout that appeal and notes that the Board ultimately found that the grassy area at issue in that case did "not fit within the ZR definition of street in that it (1) can be distinguished from the roadway on the City Map; (2) is not part of the actual 'way' or path for travel; and (3) does not provide an approach for vehicles or pedestrians." Applying this approach, the appellant maintains that the grassy area located between the New England Thruway and Baychester Avenue is not a roadway since it is not a path or way for travel and does not provide an approach for vehicles or pedestrians.

The appellant next asserts that Baychester Avenue is, together with the grassy area, also a distinct feature separate from the New England Thruway. The applicant bases this contention on its own reading of the 1966 City Map. Specifically, the appellant argues that, because the Map depicts the Thruway and Baychester Avenue as each having their own street boundary lines, separated by the grassy area, they are established as separate roadways, and, therefore, the 1966 City Map superseded the 1948 BOE Resolution's de-mapping of Baychester and its incorporation into the Thruway as a service road.

The appellant next claims that the 2019 DCP Letter—which, as noted above, describes Baychester Avenue's incorporation into the Thruway—misinterpreted the effect of the 1966 City Map. In the appellant's view, the 1966 City Map indicated the Thruway and Baychester Avenue as separate streets because that Map was intended to reflect the as-built condition of the Thruway after its construction was completed in 1958. For these reasons, the appellant contends that the 1966 City Map and its subsequent updates are "clear and unambiguous in demarcating the New England Thruway and Baychester Avenue as separate roadways."

Moreover, the applicant maintains that even assuming *arguendo* that Baychester Avenue is a service road of the Thruway, service roads are not part of arterial highways, noting that the text of Z.R. § 32-662 does not list the term "service road" among the other elements of arterial

highways.¹ The appellant further adds that the New York State Highway Maintenance Law excludes service roads and intersecting street bridges from among the “system of highways of the state of New York for purposes of maintenance and repair.” N.Y. Hwy. L. § 349-D (2022). The applicant declares that this rule is consistent with R.C.N.Y. § 2-370, which the appellant notes prohibits the towing of any disabled vehicle from an arterial highway, parkway, expressway, roadway tunnel, or bridge, except by a licensed tow truck driver under authority issued by the Commissioner of the Department of Transportation. The appellant claims that, in contrast, no such authorization is required for the towing of vehicles on Baychester Avenue, and claims that both the City’s own Truck Route Map² and R.C.N.Y. § 4-13 distinguish Baychester Avenue, a “local truck route,” from the Thruway, a “through truck route.”

Regarding the distance of the Subject Signs from the Thruway, the appellant maintains that, based on its assertions that both the grassy space and Baychester Avenue are not part of the Thruway, the eastern edge of the Thruway is the eastern edge of that roadway and not the western lot line of the Premises, and, therefore, the only remaining inquiry is whether the Subject Signs are located 200 feet from that eastern edge of the Thruway’s paved street line. The appellant describes its methodology for measuring distance between a sign and an arterial highway as a well-established standard based on regulations and DOB guidance. The appellant cites 1 R.C.N.Y. § 49-15(d)(1), which states that such distance:

shall be calculated as the length of a horizontal plane extending between a vertical plane reflecting the edge of the sign, sign structure or sign location closest to the...arterial highway and a vertical plane reflecting the portion of the...highway closest to the sign, sign structure or sign location.

The appellant also references DOB Operations Policy and Procedure Notice #10/99 of 1999, which states that the distance “is to be measured horizontally, from the nearest line of the arterial highway...to the nearest point on the sign or sign structure,” and a prior Board resolution to further illustrate the usage of this standard. In applying this standard, the appellant analyzes two site surveys of the Premises,

¹ The text of Z.R. § 32-662 that the appellant quotes states that “arterial highways shall include all highways that are shown on the Master Plan of the Arterial Highways and Major Streets as ‘principal routes,’ ‘parkways,’ or ‘toll crossings,’ and that have been designated by the City Planning Commission as arterial highways to which the provisions of this Section shall apply.”

² 2022 NEW YORK CITY TRUCK ROUTE MAP, N.Y.C. DOT, <https://www.nyc.gov/html/dot/html/motorist/trucks.shtml#routes> (last visited Jan. 7, 2025) (describing “local truck route” as, e.g., a path for “trucks with an origin or destination for the purpose of delivery, loading or servicing within the respective Borough,” and “through truck route” as, e.g., a path for “trucks having neither an origin nor a destination within the respective Borough”).

which it submitted to the Board: one dated August 27, 2013, and another dated January 25, 2018. The appellant states that the 2013 Survey shows that the northwest corner of the Premises is located approximately 270 feet from the eastern curb of the Thruway and the southwest corner is located approximately 277 feet from the eastern edge of the Thruway; while the 2018 Survey illustrates that the Lollypop Signs are located approximately 415 feet away from the Thruway, the Triple Pole Signs are located approximately 279 feet from the Thruway, and the Tower Signs are located approximately 363 feet from the Thruway. Accordingly, the appellant claims that the Subject Signs are located more than 200 feet away from the Thruway and are thereby permitted.

The appellant also argues that DOB is estopped from arguing, and the Board is precluded from determining, that the Subject Signs are located within 200 feet of an arterial highway, because the Board is bound by statements made in the prior appeals and litigation involving the Premises which described the distance between the Subject Signs and the Thruway as being greater than 200 feet. Regarding Bartow I and its subsequent litigation, the appellant references a letter by DOB, dated November 5, 2015, submitted into the record of Bartow I, in which DOB stated that the signs “are located approximately 322 feet from the New England Thruway, an arterial highway.” The appellant also cites the January 26, 2015, ZRD1 denial decision from DOB, also submitted for Bartow I, in which DOB noted that an aerial imagery database “shows the distance between the panels and the New England Thruway at approximately 287 feet.” The appellant further highlights a letter by DCP, dated September 30, 2015, which DCP submitted in support of DOB in Bartow I, stating that the signs at issue were “within approximately 300 feet of an arterial highway.” Moreover, the appellant quotes the Bartow I resolution, which describes DOB as arguing that the signs at issue were “a single sign...the calculated surface area of which, in the aggregate is 9,164 sq. ft., or...28.5 times the maximum the surface area permitted for an advertising sign [at the Premises],” which the appellant construes as a representation that the signs were located 321.54 feet away from the New England Thruway (noting that the distance was calculated by dividing 9,164 square feet by 28.5). The appellant then quotes the Supreme Court’s decision on appeal from Bartow I, stating that it was “uncontested that...the signs nearest the New England Thruway sit at a distance of 322 linear feet away,” *Baychester*, Index No. 157091/2016, Doc. No. 68 at 7; submissions from DOB to the Board in Bartow II, dated November 22, 2017 and January 17, 2018, respectively, each of which refer to the distance as 322 feet; and the Supreme Court’s decision on appeal from Bartow II, which notes a distance of 322 feet. *Baychester*, Index No. 151514/2020, Doc. No. 88, at 1. The appellant also highlights the decision of the Supreme Court that estopped DOB from enforcing its January 9, 2020, revocation letters, in which the Court characterizes DOB’s basis for the revocation

letters in the 2019 DCP Letter as a “new interpretation” of the boundary of the Thruway. Thus, while the appellant concedes that the Board’s Bartow II resolution explicitly qualified that the Board had “not considered the exact distance of the Subject Structure from the New England Thruway beyond approximating the distance as 322 feet,” the appellant claims that the doctrines of resjudicata and collateral estoppel preclude DOB from relitigating the issue of the distance of the Subject Signs from the Thruway as DOB has previously argued, and the Board has previously determined, that the Subject Signs are located more than 200 feet away from the arterial highway.

Finally, the appellant also claims that the 1947 Alteration Map did not de-map Baychester Avenue as it was not intended for such purpose. The appellant argues that City Condemnation Maps, dated March 8, 1946, indicated as Map Nos. 41, 42, and 45 and Parcel Nos. 52, 53, 54, 55, and 58, and the associated key map highlighting the locations of the planned demolition required for the construction of the New England Thruway clarify that the purpose of the 1947 Alteration Map was solely to establish that the parcels between Baychester Avenue and Edson Avenue were condemned for the Thruway’s construction. As such, the appellant concludes that, consistent with the Condemnation Maps, the 1966 Alteration Map—which the appellant characterizes as the map on which Appellant and DOB relied in initially permitting the Subject Signs—and subsequent Monument Maps, such as the 1996 Monument Map, do not portray Baychester Avenue as a de-mapped street or as a part of the Thruway.

Accordingly, the appellant contends that the Subject Signs are lawful and requests that the Board grant the subject appeal of the August 12, 2022, revocation letters and reinstate the permits for the Subject Signs.

B. DOB’s Arguments in Opposition

DOB argues in opposition to the subject appeal that Baychester Avenue has been a part of the New England Thruway since 1947 and the Subject Signs are, therefore, within 200 feet of an arterial highway, contrary to Z.R. § 32-662. DOB explains that, as discussed in the 2019 DCP Letter, the 1947 Alteration Map and 1948 BOE Resolution established Baychester Avenue as a part of the New England Thruway and have not been superseded. Specifically, DOB states that the 1947 Alteration Map, titled on the map itself as “[e]stablishing the lines and grades of the New England Thruway between Hutchinson River Parkway Extension at Baychester Avenue and the Northern Boundary Line of the City of New York,” amended City Map Section Nos. 42, 43, 44, 45, and 52 of Plan No. 11199 by using red lines to indicate “Streets Hereby Established” and “Grades Hereby Established,” as indicated by the Map’s “Explanatory Notes.” DOB points out that on the portion of the Map that shows Baychester Avenue abutting the Premises,

Baychester Avenue is drawn in red lines. DOB asserts that, according to the meaning of red lines as described in the Map's Explanatory Notes and the Map's purpose to demarcate the boundaries of the Thruway, the Map "Hereby Established" Baychester Avenue as part of the Thruway.

DOB also references the 1948 BOE Resolution to support its interpretation of the 1947 Alteration Map. DOB notes that the 1948 BOE Resolution states that "the [1947 Alteration] map provides primarily for establishing the lines and grades of the New England Thruway" and "its easterly and westerly service streets...within the territory bounded approximately by Hutchinson River Parkway Extension, Ely Avenue, Bartow Avenue, Grace Avenue, Hammersley Avenue, Edson Avenue, Anita Place etc.," containing Baychester Avenue, which DOB contends is a service street of the Thruway. DOB further highlights the 2019 DCP Letter's discussion of the 1948 BOE Resolution, asserting that DCP confirmed DOB's interpretation by stating in the Letter that the 1947 Alteration Map established that the section of Baychester Avenue bordering Block 5141, between Bartow Avenue and Aldrich Street, "was de-mapped" and that "the New England Thruway was mapped to the western border of Block 5141."

Regarding the appellant's argument that Baychester Avenue is no longer a part of the Thruway, DOB maintains that the 1947 Alteration Map and 1948 BOE Resolution's inclusion of Baychester Avenue as a service road to the Thruway has been reflected in the subsequent Bronx Section Maps, also known as "Monument Maps," dated April 11, 1948 and September 17, 1996, respectively, as these maps show the Thruway and Baychester as one single roadway. DOB refutes the appellant's assertion that the 1966 Alteration Map superseded the prior maps' inclusion of Baychester Avenue in the Thruway and established it as a separate roadway. DOB contends that for the 1966 Alteration Map to have had the effect asserted by the appellant, the 1966 Alteration Map would have had to show the addition of new street lines around Baychester Avenue to indicate that Baychester Avenue was redesignated as its own roadway. Instead, DOB notes that the 1966 Alteration Map outlined Baychester Avenue in thin lines, which that Map's Explanatory Notes define as "street lines or easement line heretofore established and hereby retained," and not bold lines, which indicate "street line or easement line hereby established." Likewise, DOB explains that the 1996 Monument Map shows the Thruway and Baychester Avenue as one single roadway, and DOB points out that the City has not subsequently updated that Map. Accordingly, DOB concludes that Baychester Avenue remains part of the Thruway.

Finally, DOB asserts that, because Baychester Avenue is part of the Thruway, the appellant's site abuts an arterial highway. DOB represents that a review of the appellant's plans show that the entire subject site is located less than 151 feet from Baychester Avenue and, therefore, the Subject Signs are within 200 feet of the Thruway and

violate Z.R. § 32-662. Accordingly, DOB requests that the Board deny the appeal.

C. The 2024 DCP Letter

By correspondence dated January 30, 2024 (the “2024 DCP Letter”), DCP also discusses the instant question regarding the distance of the Subject Signs from the New England Thruway. Specifically, DCP asserts that the section of Baychester Avenue at the location of the Premises was eliminated and incorporated into the Thruway as a service road in 1948, which persists today. Thereby, DCP states, the eastern boundary of the New England Thruway is mapped to the western border of Block 5141 at the location of the subject property. With respect to its reasoning for this decision, DCP first explains its power over the City Map, noting that Chapter 8 of the New York City Charter confers DCP authority to maintain the official City Map and oversee changes. DCP clarifies that its authority includes interpreting the existing City Map, tracking changes over time, determining whether proposed changes are consistent with the Map, and ensuring that the Map accurately reflects approved changes.

Regarding the format and means of interpreting of the City Map, DCP describes the City Map as being composed of the latest final section map for the borough and any recent alteration maps. Section maps cover the entire city, broken into sections for ease of display, and are updated periodically. Section maps show legal street lines and grades at the time they were most recently updated. An alteration map shows changes to the underlying map that have been approved pursuant to the Uniform Land Use Review Procedure (“ULURP”) (or, for older changes, pursuant to the process that preceded the enactment of ULURP). An alteration map may show existing streets that are being eliminated (often shown with a dashed line type), new mapped streets that are being established (often shown with a darker, thicker line type), existing street lines to remain (often shown with a lighter line type) and treatment lines of existing or new curbs and sidewalks (often shown with the lightest, thinnest line type). The different line types and what they represent are explained in a legend on the map and may vary from map to map. DCP also notes that street lines are the legal boundaries of the street and street treatment lines (curb lines and representations of other street treatments) are illustrative.

In terms of identifying the mapped location of the New England Thruway in relation to the Premises, DCP explains that DCP reviewed the final section map and alteration maps to understand how the street is drawn on the map and at the related City Planning Commission (“CPC”) and/or BOE approvals for further context, and has determined that around the area of the subject property, certain changes to the City Map were adopted by the BOE in 1948, as shown on Alteration Map No. 11199. Although this is not the most recent alteration map for the area,

the changes shown on this Map with respect to the New England Thruway at the location of the Premises have since remained. The legend on Alteration Map No. 11199 explains that “heavy full black lines and small slanting black figures indicate the lines and dimensions of streets previously laid out and retained...The fine black lines and the fine red lines indicate the curb lines of streets...The heavy broken black lines indicate the side lines of streets hereby eliminated.” DCP contends that, as shown on the Map, the red lines within the New England Thruway running north-south, including the lines of Baychester Avenue and Tillotson Avenue farther to the north, are fine red lines showing curb treatments. DCP attached an excerpt of Map No. 11199 at the location where Bartow Avenue meets the New England Thruway, under which DCP states that “north is to the right...red lines are fine lines depicting street treatment...[and] heavy full black lines show existing mapped street lines, which also form the boundaries of blocks.” The 2024 DCP Letter then continues, noting again that curb treatment lines do not denote mapped streets, which are shown in the heavy full lines. In the location of the Premises, the easterly and westerly street lines of the New England Thruway are coterminous with the block lines (drawn with the heavy full black line type) and are inclusive of the service streets, including Baychester Avenue. Notably, the western boundary of Baychester Avenue is shown as a heavy broken black line, indicating the elimination of the side line of that street and its incorporation into the mapped Thruway as a service street. DCP maintains that the 1948 BOE Resolution confirms the status of Baychester Avenue as a service street where it states that Alteration Map No. 11199 “establish[ed] special roadway and sidewalk treatment in the [Thruway], including its easterly and westerly service streets...in accordance with the treatment shown on the map.”

The 2024 DCP Letter then discusses that, subsequent to the 1948 approval, Alteration Map No. 11567 was approved by the BOE in 1959, changing the street system around the New England Thruway near the Premises, including the elimination of Bartow Avenue (it was subsequently re-established as discussed further below). DCP explains that this Alteration Map shows the legal street lines and the street treatment lines of the New England Thruway and its service roads, as previously adopted in 1948, with fine black lines (“Indicates street line heretofore established and hereby retained”) and finer black lines (“Indicates roadway and sidewalk treatment hereby established or heretofore established”), respectively. Notably, the title of the map, the map itself, and the description of the map change in the CPC approval report (CP-14827) refer to Baychester and Tillotson Avenues parenthetically, as follows: “The New England Thruway (Baychester Avenue and Tillotson Avenue), Rombouts Avenue...,” further evincing that they are part of—not separately mapped streets from—the mapped Thruway (noting in a footnote that “where Baychester and Tillotson Avenues veer off from the New England Thruway in other locations, they

appear as separately mapped streets, denoted by a thicker line type”). The most recently adopted alteration map for the subject location is Map No. 11791, adopted by the BOE in 1966. It re-established Bartow Avenue, among other changes in connection with a nearby residential development, but it did not change the status of the New England Thruway at or around the Premises as it was adopted in 1948 as discussed above. Most notably, the CPC report (CP-19602) approving this map states as follows with respect to the status of Baychester Avenue:

Since Baychester Avenue is to be included in this circumferential street pattern of the design of “[the nearby residential development],” its two-way use must be installed at least for the portion adjacent to the project site and extending to Tillotson Avenue, *more particularly since it will also serve as the northbound service roadway of the New England Thruway* [emphasis added].

Regarding the final section map, DCP states that the Office of the Bronx Borough President maintains two separate maps comprising the final section map: a Monument Map and a Grade Map. The Monument Map shows the planimetric dimensions of street lines including block dimensions and angles, and the Grade Map shows the legal grades of streets along with illustrative curb treatment lines. They each form part of the legal City Map. The Monument Map for the area of the Premises clearly shows the mapped extent of the New England Thruway, and the Grade Map confirms that Baychester Avenue, shown with curb treatment lines, is a service roadway that is part of the mapped Thruway (noting in a footnote to “see Bronx final section map 45 Monument Map, dated September 17, 1996; and Bronx final section map 45 Grade map, dated September 18, 1996”).

Finally, DCP states that upon reviewing the relevant alteration maps and final section map at the location of the subject property, DCP concludes that the New England Thruway is a mapped street with its eastern boundary coterminous with the western border of Block 5141, and Baychester Avenue is a service roadway of the Thruway and not a separately mapped street.

VI. Board Review

In the course of its review, the Board has determined that, based on the evidence from DOB and DCP, DOB was rational in its application of the Zoning Resolution to determine the distance from the arterial highway and in concluding that the western boundary of the subject Premises is coincident with the eastern boundary of the New England Thruway. The Board characterized the appellant’s main argument as the assertion that DCP, DOB, and BSA had held in the previous matters that the distance between the Subject Signs and highway was more than 200 feet. However, the Board refuted this argument by stating that, in

reviewing the previous matters and submissions, the distance was not at issue in those matters, and the issue rather was whether a group of signs constituted one large sign or separate signs. Here, upon reviewing the evidence before it, such as Google Maps, the description of the Thruway, and the submissions from the appellant, DOB, and DCP, the Board concludes that the distance is clearly less than 200 feet, and it is obvious that Baychester Avenue is part of the Thruway.

Specifically, the Board stated that the 2024 DCP Letter contains a clear description of how the arterial highway abuts the Premises. Specifically, the Board found that this letter was crucial in informing its opinion because, as the authority in charge of making and clarifying the meaning and importance of the alteration maps, DCP stands as the authoritative body to explain the 1947 Alteration Map's intent and effect to dissolve Baychester Avenue as its own discrete street and incorporate it into the Thruway, as adopted by the BOE in 1948. Therefore, the Board concludes that DOB properly relied on that map in making its determination that Baychester Avenue is part of the Thruway. As such, the Subject Signs do not comply with Z.R. § 32-662.

Finally, the Board states that it was not compelled by the appellant's argument of collateral estoppel as the issue of the distance from the highway was not the issue of any prior litigation. The Board notes that the prior cases were about distinct questions independent from the issue at hand.

VII. The Decision

Based upon the foregoing, the Board finds that the DOB determination shall be upheld.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *deny* this appeal.

Adopted by the Board of Standards and Appeals, March 11, 2024.

CERTIFICATION

This copy of the resolution
dated March 11, 2024
is hereby filed by the
Board of Standards and Appeals
on January 15, 2025.



Carlo Costanza
Executive Director