

***CORRECTION**

This resolution adopted on September 25, 2012, under Calendar Nos. 83-12-A and 84-12-A and printed in Volume 97, Bulletin Nos. 39-40, is hereby corrected to read as follows:

83-12-A & 84-12-A

APPLICANT – Richard G. Leland, Esq./Fried Frank, for Frank Ferrovicchio, owner; Millennium Billboards LLC, lessee..

SUBJECT – Application April 6, 2012 – Appeal from Department of Buildings’ determination that a sign is not entitled to continued, non-conforming use status as an advertising sign. C8-3 zoning district.

PREMISES AFFECTED – 653 Bruckner Boulevard, intersection of Bruckner Boulevard and Timpson Place, Block 2603, Lot 115, Borough of Bronx.

COMMUNITY BOARD #2BX

APPEARANCES –

For Applicant: Richard Leland.

ACTION OF THE BOARD – Application Denied.

THE VOTE TO GRANT –

Affirmative:0

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

THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to Notice of Sign Registration Rejection letters from the Bronx Borough Commissioner of the Department of Buildings (“DOB”), dated March 7, 2012, denying Application Nos. 2004601 and 2004702 for sign registration at the subject site (the “Final Determinations”); and

WHEREAS, the Final Determinations state, in pertinent part:

The Department of Buildings is in receipt of additional documentation submitted in response to the Deficiency Letter from the Signs Enforcement Unit and in connection with the application for registration of the above-referenced sign. Unfortunately, we find this documentation inadequate to support the registration of the sign and as such, the sign is rejected from registration. This sign will be subject to enforcement action 30 days from the issuance of this letter; and

WHEREAS, a public hearing was held on this appeal on August 7, 2012 after due notice by publication in *The City Record*, and then to decision on September 25, 2012; and

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

WHEREAS, the subject site is located on an irregularly-shaped lot bounded by Bruckner Boulevard to the south and Timpson Place to the north, within a C8-3 zoning district; and

WHEREAS, the site is occupied by a two-story building with a rooftop sign structure with two 14’-0” by 48’-0” signs; one facing north and one facing south (the “Signs”); and

WHEREAS, the Signs are located within 200 feet of the Bruckner Expressway, a designated arterial highway pursuant to Zoning Resolution Appendix H; and

WHEREAS, this appeal is brought on behalf of the lessee of the Signs (the “Appellant”); and

WHEREAS, the Appellant seeks a reversal of DOB’s rejection of the Appellant’s registration of the Signs based on DOB’s determinations that the Appellant (1) failed to provide evidence of the establishment of the advertising signs and (2) failed to establish that such use has, if established prior to the relevant date, continued without an interruption of two years or more; and

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

PROCEDURAL HISTORY

WHEREAS, the Appellant asserts that the Signs have been in continuous operation as advertising signs since as early as 1945; and

WHEREAS, the Appellant states that it began leasing the sign structure in 2004, and following the commencement of its lease, the Appellant applied to DOB for maintenance permits to place new advertising signage copy on each of the Signs; and

WHEREAS, the Appellant further states that on March 16, 2004, DOB issued permits 200844042-01-SG, 200844033-01-SG, 200843962-01-EW, and 200843971-01-EW (the “2004 Permits”), for the maintenance and replacement of “advertising sign copy” for each of the Signs and for maintenance of the “existing sign structure,” noting that there was no change in use; and

WHEREAS, on or about September 1, 2009, pursuant to the 2008 Building Code and Chapter 49 of Title 1 of the Rules of the City of New York (“RCNY”), the Appellant filed sign registration applications with DOB to register the Signs as non-conforming advertising signs (the “Sign Registration Applications”); and

WHEREAS, by letter dated October 3, 2011, DOB informed the Appellant that its filing failed to provide proof of legal establishment of the Signs prior to the 2004 Permits; and

WHEREAS, by letter dated January 6, 2012, the Appellant argued to DOB that the issuance of the 2004 Permits alone, without any further information, is sufficient “proof of legal establishment;” and

WHEREAS, by letter dated January 30, 2012, the Appellant supplemented its Sign Registration Applications with an affidavit attesting to the uninterrupted and continuing presence and use of the Signs from 1963 until 1989; and

WHEREAS, DOB determined that the additional material was inadequate proof of the legal establishment of the Signs, and issued the Final Determinations on March 7, 2012; and

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RELEVANT ZONING RESOLUTION PROVISIONS

ZR § 12-10 *Definitions*

Non-conforming, or non-conformity

A "non-conforming" #use# is any lawful

#use#, whether of a #building or other structure# or of a #zoning lot#, which does not conform to any one or more of the applicable #use# regulations of the district in which it is located, either on December 15, 1961 or as a result of any subsequent amendment thereto. . .

* * *

ZR § 32-662 *Additional Regulations for Advertising Signs*

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...However, in all districts as indicated, the more restrictive of the following shall apply:

- (1) Any advertising sign erected, structurally altered, relocated or reconstructed prior to June 1, 1968, within 660 feet of the nearest edge of the right-of-way of an arterial highway, whose message is visible from such arterial highways, shall have legal non-conforming use status pursuant to Section 52-83 (Non-Conforming Advertising Signs), to the extent of its size on May 31, 1968.
- (2) Any advertising sign erected, structurally altered, relocated, or reconstructed between June 1, 1968, and November 1, 1979, within 660 feet of the nearest edge of the right-of-way of an arterial highway, whose message is visible from such arterial highway, and whose size does not exceed 1,200 square feet in surface area on its face, 30 feet in height and 60 feet in length, shall have legal non-conforming use status pursuant to Section 52-83, to the extent of its size existing on November 1, 1979.

* * *

ZR § 52-11 *Continuation of Non-Conforming Uses*

General Provisions

A #non-conforming use# may be continued, except as otherwise provided in this Chapter; and

* * *

ZR § 52-61 *Discontinuance*

General Provisions

If, for a continuous period of two years, either the #nonconforming use# of #land with minor improvements# is discontinued, or the active operation of substantially all the #non-conforming uses# in any #building or other structure# is discontinued, such land or

#building or other structure# shall thereafter be used only for a conforming #use#. Intent to resume active operations shall not affect the foregoing . . . ; and

* * *

RCNY § 49-15 – Sign Inventory to be Submitted with Registration Application

... (d)(15) With respect to each sign that has been identified in the sign inventory as a non-conforming sign, the following additional information shall be included with the registration application:

- a. The Zoning Resolution section that establishes the sign as a non-conforming sign.
- b. Evidence that the non-conforming sign existed and the size of the sign that existed as of the relevant date set forth in the Zoning Resolution to establish its lawful status. Acceptable evidence may include permits, sign-offs of applications after completion, photographs and leases demonstrating that the non-conforming use existed prior to the relevant date. Affidavits, Department cashier's receipts and permit applications, without other supporting documentation, are not sufficient to establish the non-conforming status of a sign. The submitted evidence must specifically establish the non-conforming aspect of the sign. For example, where evidence is submitted to establish that a sign is a non-conforming advertising sign, proof that the sign was erected, but that does not establish that it was advertising, will not be sufficient; and

THE APPELLANT'S POSITION

A. Establishment Prior to November 1, 1979 and Continuous Use

WHEREAS, the Appellant contends that the Final Determinations should be reversed because (1) the Signs were established as advertising signs prior to November 1, 1979 and may therefore be maintained as legal non-conforming advertising signs pursuant to ZR § 52-11, and (2) the Signs have operated as advertising signs with no discontinuance of two years or more since their establishment; and

WHEREAS, in support of its assertion that the Signs were established prior to November 1, 1979 and have been in continuous use to the present, the Appellant relies on: (1) a 1945 action relating to an Electric Sign

1 DOB acknowledges that the surface area of the Signs do not exceed 1,200 sq. ft. on their face, 30 feet in height, or 60 feet in length, and therefore the Signs may have legal non-conforming status if erected prior to November 1, 1979 pursuant to ZR § 32-662.

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(ES 39-45) listed in DOB's Building Information System ("BIS"); (2) two 1960 actions relating to Electric Signs (ES 95-60 and ES 96-60) listed in BIS; (3) an affidavit dated January 21, 2012 from Donald Robinson, an employee of various outdoor advertising companies from 1963 through 1989, which states that the Signs were existing in 1963 and that they were being used from 1963 to 1989 as advertising signs (the "Robinson Affidavit"); and (4) aerial photographs dated March 30, 1978 showing a sign structure (with indiscernible sign copy) at the site (the "1978 Photographs"); and

WHEREAS, in support of the existence of the Signs as advertising signs from 1979 through 1985, the Appellant relies on: (1) aerial photographs dated January 3, 1980, which the Appellant claims show advertising copy for a retail establishment on the Signs (the "1980 Photographs"); (2) a 1984 action relating to an Electric Sign (ES 20-84) listed in BIS; (3) a 1985 action relating to an Electric Sign (ES 84-85) listed in BIS; and (4) the Robinson Affidavit; and

WHEREAS, in support of the existence of the Signs from 1986 through 1989, the Appellant relies on: (1) a letter dated December 18, 2000 from Frank Ferrovicchio, the then owner of the site, referencing a lease agreement for advertising signs at the site from February 18, 1986 which was amended and extended on February 29, 1996, to expire on February 28, 2001 (the "December 18, 2000 Letter"); (2) a letter dated October 6, 2000 from Vista Media Group stating that it has assumed the lessee rights and obligations under a lease with TDI/Outdoor Systems/Infinity (the "October 6, 2000 Letter"); and (3) the Robinson Affidavit; and

WHEREAS, in support of the existence of the Signs from 1990 through 1992, the Appellant relies on: (1) an aerial photograph dated February 2, 1990, which the Appellant claims shows advertising copy on the Signs (the "1990 Photograph"); (2) the December 18, 2000 Letter; and (3) the October 6, 2000 Letter; and

WHEREAS, in support of the existence of the Signs from 1993 through 1999, the Appellant relies on: (1) an aerial photograph dated March 26, 1993 (the "1993 Photograph"); (2) the December 18, 2000 Letter; and (3) the October 6, 2000 Letter; and

WHEREAS, in support of the existence of the Signs in 2000, the Appellant relies on: (1) the December 18, 2000 Letter; and (2) the October 6, 2000 Letter; and

WHEREAS, in support of the existence of the Signs in 2001, the Appellant relies on: (1) a letter dated July 11, 2001 from City Outdoor Inc., an outdoor advertising company, referencing a contract with an advertiser from September 2001 to December 2001 (the "July 11, 2001 Letter"); (2) the December 18, 2000 Letter; and (3) the October 6, 2000 Letter; and

WHEREAS, in support of the existence of the Signs in 2002, the Appellant relies on aerial photographs dated February 12, 2002 showing advertising copy for a car on the Signs (the "2002 Photographs"); and

WHEREAS, in support of the existence of the Signs in 2004, the Appellant relies on the 2004 Permits; and

WHEREAS, in support of the existence of the Signs in 2009, the Appellant relies on photographs taken in 2009 and submitted by the Appellant to DOB with its Sign Registration Applications; and

WHEREAS, the Appellant argues that the 1978 Photographs clearly show a sign structure on the site, and although the exact copy on the Signs is not discernible from the photographs, that evidence combined with the 1980 Photographs (taken less than three months after November 1, 1979) which clearly depict advertising copy on the Signs, supports the inference that the Signs were established as advertising signs prior to November 1, 1979; and

WHEREAS, the Appellant contends that it has submitted sufficient evidence for the Board to conclude that the Signs were established prior to November 1, 1979 and have been maintained as legal non-conforming uses since that date; and

B. Ability to Rely on 2004 Permits Alone

WHEREAS, the Appellant asserts that the Signs qualify as non-conforming advertising signs under ZR § 32-662 because the 2004 Permits issued by DOB establish that DOB has already accepted the legal non-conforming status of the Signs; and

WHEREAS, the Appellant further contends that the 2004 Permits specifically provide for the maintenance and replacement of "advertising sign copy" for the Signs and DOB has never alleged that the permits were issued for anything other than advertising signs; therefore, the fact that DOB issued the 2004 Permits establishes that DOB has sufficient evidence that advertising signs have continuously been maintained on the site prior to November 1, 1979; and

WHEREAS, as to the 1980s Department of Finance ("DOF") tax photograph submitted by DOB (the "1980s DOF Photograph"), which DOB claims is evidence of an accessory sign at the site at that time, the Appellant argues that DOB provides no substantiation as to whether this sign was an accessory sign or advertising sign, and in the event that the sign depicted in the photograph were determined to have been an accessory sign, DOB has not provided any proof that the advertising use of the Signs was discontinued for two years or more, and one single photo from a single moment in time is not in and of itself sufficient to establish discontinuance for a period of two years or more; and

WHEREAS, the Appellant argues that it made substantial investments in the Signs, including investments in repairs and maintenance along with the marketing costs involved in placing advertisements on the site, in reasonable reliance on DOB's issuance of the 2004 Permits; and

WHEREAS, the Appellant contends that it has continued to invest in the Signs in reliance on DOB's issuance of the 2004 Permits for eight years, and as the applicable laws have not changed since 2004, under established principles of equity DOB cannot now be allowed to change its position arbitrarily on the legality of the Signs to the detriment of the Appellant's business; and

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DOB'S POSITION

A. Establishment of the Signs Prior to November 1, 1979

WHEREAS, DOB contends that the Appellant has failed to provide adequate evidence that the Signs were established as advertising signs prior to November 1, 1979; and

WHEREAS, DOB states that in order to show proof of establishment of the advertising signs under the non-conforming use provisions of ZR § 32-662, the Appellant would need to demonstrate that the advertising signs were installed prior to November 1, 1979; and

WHEREAS, DOB further states that if the Appellant produced a permit for the advertising signs prior to November 1, 1979, DOB would accept the advertising signs as being established prior to the relevant date; further, if the Appellant is unable to produce an advertising sign permit, DOB states that it would also look at additional evidence indicated in RCNY 49(d)(15)(b), including photographs, affidavits, leases, and receipts which indicate that advertising signs were installed prior to November 1, 1979; and

WHEREAS, DOB argues that the only evidence the Appellant has produced to show establishment of the Signs prior to November 1, 1979 is the BIS printouts indicating applications for electric sign permits in 1945, 1960, 1984, and 1985, the aerial photographs from 1978 and 1980, the 2004 Permits, and the Robinson Affidavit, and none of these records establish that an advertising sign was installed prior to November 1, 1979; and

WHEREAS, as to the electric sign permits indicated on BIS from 1945, 1960, 1984, and 1985, DOB states that it performed a search of its records and, based on the documentation discovered with respect to the applications, finds that they do not establish the advertising signs prior to November 1, 1979; and

WHEREAS, specifically, DOB states that for ES 39-45, DOB's records only contain a "Block and Lot" docket entry dated April 13, 1945 indicating an electric sign 5'-0" by 8'-0" at the site, which does not support a contention that the Signs were established as advertising signs under this application; and

WHEREAS, DOB states that for ES 95-60 and ES 96-60, DOB's records only contain a "Block and Lot" docket entry dated April 7, 1960 which provides a limited description of two electric signs at the site and the description states "International Harvester Company, T. George Paladino Holding Corp., O."; and

WHEREAS, DOB contends that, based on a review of other sign entries in the "Block and Lot" dockets, the description for most advertising signs will specifically indicate that the sign is an advertising sign; since the description for the 1960 BIS records does not indicate that the signs are advertising signs, DOB states that it cannot conclude that advertising signs were established under these electric sign applications without further information; and

WHEREAS, DOB states that for BN 145-84, the application indicates that the proposed work was for "Refurbishing roof structure for *business signs* 10'-4" x

48'-0" = 496 Sq. Ft." (emphasis added), and since this application was filed to refurbish business signs (now defined as accessory signs under the Zoning Resolution), not advertising signs, this application not only fails to establish the Signs as advertising signs prior to November 1, 1979, but it also provides evidence that the advertising signs were not in existence at the site at that time; and

WHEREAS, DOB also submitted the 1980s DOF Photograph, and DOB contends that the 1985 BIS documentation to refurbish business signs is consistent with the 1980s DOF Photograph which clearly indicates that one of the Signs is being used as an accessory business sign, not as an advertising sign; specifically, the 1980s DOF Photograph clearly shows that the sign copy states "Center Sheet Metal," and a review of documents recorded for the site with DOF in ACRIS clearly indicates the existence of a "Center Sheet Metal, Inc." at the subject site from at least 1988 to 1993; and

WHEREAS, DOB states that for BN 741-85, the application indicates that the proposed work was for "a roof sign support structure," and since the application was filed in 1985, six years after the relevant date in ZR § 32-662 to establish a non-conforming advertising sign, this application does not support a contention that advertising signs were established prior to November 1, 1979, especially since BN 145-84 was filed a year before indicating business signs at the site; and

WHEREAS, DOB argues that while BN 741-85 does indicate that an application exists for proposed work on an advertising sign at the site, the Appellant has not produced any evidence which indicates the establishment of advertising signs at the site prior to November 1, 1979; and

WHEREAS, DOB disagrees with the Appellant's contention that the 1978 Photographs combined with the 1980 Photographs establish the use of the advertising signs at the site prior to November 1, 1979, and asserts that the 1978 Photographs and one of the two 1980 Photographs are unclear and the other 1980 Photograph shows a sign with a copy that states, in part, "the Tire Shop," which may be an accessory sign and not an advertising sign; and

WHEREAS, DOB argues that the Appellant has not provided evidence which proves that the 1980 Photographs demonstrate an advertising copy on the Signs, and while there is no evidence that advertising signs existed in 1979, as noted above, there is substantial evidence which indicates that at least one accessory sign was located at the site in the 1980's as evidenced by the BN 145-84 job application to refurbish a roof structure for "business signs" and the 1980s DOF Photograph with ACRIS documents supporting the fact that the sign was accessory; and

WHEREAS, as to the Appellant's claim that issuance of the 2004 Permits is sufficient for the legal establishment of the Signs, DOB states that the 2004 Permits were based on professionally certified plans and job applications, and were issued in error and would have been the subject of objections and a 15-day Letter of Intent to Revoke had it not been for the

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commencement of the subject appeal; and

WHEREAS, DOB argues that, as the 2004 Permits were issued based on professionally certified job applications and plans, DOB did not review the plans to determine whether the Signs complied with the non-conforming use requirements in a C8-3 zoning district pursuant to ZR § 32-662 at the time of filing; however, once DOB reviewed the legality of the Signs under ZR § 32-662 as part of its review of the Sign Registration Applications, DOB determined that the Signs did not comply with the non-conforming use requirements; and

WHEREAS, DOB further argues that the 2004 Permits were issued to “maintain” the existing roof structures and Signs and to replace the advertising copy based on the Appellant’s professional certification that the Signs were lawfully used as advertising signs; however, the applications did not include evidence to establish the legality of the Signs or the erection of advertising signs prior to November 1, 1979, and therefore the 2004 Permits do not establish the Signs as non-conforming advertising signs; and

B. The Evidence of Continuity Fails to Satisfy the Standard Set Forth in DOB Technical Policy and Procedure Notice 14/1988 (“TPPN 14/1988”)

WHEREAS, DOB asserts that even if the Appellant has established the Signs as non-conforming advertising signs, the Appellant must also submit sufficient evidence to establish that the Signs have been continuously used as advertising signs since November 1, 1979, without any two-year period of discontinuance, as required by ZR § 52-61; and

WHEREAS, DOB contends that the Appellant’s evidence of continuity of the Signs fails to satisfy TPPN 14/1988, which sets forth guidelines for DOB’s review of whether a non-conforming use has been continuous; the TPPN includes the following types of evidence, which have been accepted by the Borough Commissioner: (1) Item (a): City agency records; (2) Item (b): records, bills, documentation from public utilities; (3) Item (c): other documentation of occupancy including ads and invoices; and (4) Item (d): affidavits; and

WHEREAS, DOB notes that the Appellant has not provided any relevant records from any City agency (Item (a) evidence), except for the 2004 Permits, which were improperly issued as described above, and the BIS and DOB records from 1945, 1960, 1984, and 1985; DOB asserts that, at most, BN 741-85 indicates that applications were filed with DOB for proposed work on advertising signs in 1985; and

WHEREAS, DOB notes that no public utility bills or records (Item (b) evidence) and no other bills indicating the use of the building (Item (c) evidence) were submitted by the Appellant; and

WHEREAS, as to the Robinson Affidavit (Item (d) evidence), which the Appellant alleges is evidence of the continuous use of the Signs as advertising signs from 1963 until 1989, DOB argues that the affidavit is not credible based on the 1980s DOF Photograph and ACRIS records which clearly indicates that at least one of the Signs was being used as an accessory sign for a time in the 1980s,

not an advertising sign of “off premise advertisements;” and

WHEREAS, DOB asserts that because the Robinson Affidavit is uncorroborated testimonial evidence that the Signs have existed continuously from 1963 until 1989, this evidence is not considered sufficient because the testimony may be tainted by memory lapses, bias, and misperception, and because it is clear from the 1980s DOF Photograph that the affidavit cannot be deemed credible; and

WHEREAS, as to the photographs, DOB states that, even if it accepted the establishment of the Signs prior to November 1, 1979, there is a gap of photographic evidence from January 3, 1980 (which as described above, may be a photograph of an accessory sign) until March 26, 1993 (which is a photograph of a sign with an unusual size, proportion, and angle compared to the Signs currently located on the site, and it is not clear that the sign in the photograph is located on the subject site); and

WHEREAS, DOB asserts that, due to the gap in photographic evidence, the job application from 1984 (BN 145-84) which states that business signs were located on the site, the 1980s DOF Photograph and ACRIS records which indicate that there were accessory signs on the site for a time starting in the 1980s, and the fact that it does not find the Robinson Affidavit to be credible, DOB concludes that the totality of the evidence presented by the Appellant does not establish that advertising signs have continued on the site without an interruption of two years or more since November 1, 1979; and

CONCLUSION

WHEREAS, the Board agrees with DOB’s determination that the Appellant has not provided sufficient evidence of the establishment of the Signs as advertising signs prior to November 1, 1979, or of their continuous use as advertising signs without any two-year interruption since 1979; and

WHEREAS, the Board finds the Appellant’s evidence of the establishment of the Signs as advertising signs prior to November 1, 1979 to be insufficient primarily because: (1) the 1945 and 1960 BIS documentation does not provide sufficient information to support the establishment of advertising signs; (2) the 1978 Photographs are not decipherable as to whether the Signs depicted advertising or accessory copy; (3) the 1980 Photographs are beyond the applicable date for establishing the advertising signs, the north-facing sign is not decipherable, and the south-facing sign which reads “The Tire Shop” is not sufficient to establish that the sign is an advertising sign rather than an accessory sign; and (4) the Robinson Affidavit is not substantiated and is contradicted by the evidence submitted by DOB (the 1984 BIS documentation, the 1980s DOF Photograph, and the corresponding ACRIS records) that the signs were used as accessory signs for a time in the 1980s; and

WHEREAS, the Board agrees with DOB that, even if the Appellant had provided sufficient evidence of the establishment of the Signs prior to November 1, 1979, the evidence submitted regarding the continuous use of the Signs as advertising signs without any two-year

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discontinuance is also insufficient; and

WHEREAS, as noted above, the Board finds that the 1978 Photographs and the 1980 Photographs are not clear enough to establish that the Signs were being used as advertising signs, the Robinson Affidavit cannot be relied upon as evidence of the continued use of the Signs as advertising signs given the contradiction between the affidavit and the evidence submitted by DOB that the Signs were used as accessory business signs for a time in the 1980s, and the 1984 BIS documentation indicates use of the Signs as business signs rather than advertising signs; accordingly, even if the Board found that there was establishment of the Signs as advertising signs prior to November 1, 1979, the Appellant has failed to provide any evidence of the continuous use of the Signs as advertising signs from November 1, 1979, until at least 1985, when BN 741-85 was filed for proposed work on an "advertising sign;" and

WHEREAS, as to the remaining evidence submitted by the Appellant in support of the continuous use of the Signs as advertising signs, the Board finds (1) the 1990 Photograph is not clear enough to establish whether the Signs were being used to display advertising or accessory copy; (2) the December 18, 2000 Letter, which references a lease agreement for advertising signs on the site from February 18, 1986 through February 28, 2001, does not constitute sufficient evidence in and of itself, and particularly without a copy of the lease in question, to establish that the Signs were being used as advertising signs throughout this period; and (3) the October 6, 2000 Letter and the July 11, 2001 Letter are not substantiated and are insufficient to establish the use of the Signs without additional supporting information, given that the letters make no reference to the address or location of the subject site, or to the signs in question at the site; and

WHEREAS, the Board finds that only the 1993 Photograph, the 2002 Photographs, and the 2009 Photographs submitted with the Sign Registration Applications are clearly decipherable as advertising signs; and

WHEREAS, the Board agrees with DOB that the issuance of the 2004 Permits is not sufficient for the legal establishment of the Signs, as the 2004 Permits were based on professionally certified plans and job applications, and once DOB reviewed the legality of the Signs under ZR § 32-662 as part of its review of the Sign Registration Applications, DOB determined that the Signs did not comply with the non-conforming use requirements and therefore the 2004 Permits were issued in error; and

WHEREAS, the Board notes the principle that government agencies, like DOB, maintain the ability to correct mistakes, such as the issuance of building permits (see Charles Field Delivery v. Roberts, 66 N.Y.2d 516 (1985) in which the court states that agencies are permitted to correct mistakes as long as

such changes are rational and are explained), and agrees that DOB is not estopped from correcting an erroneous approval of a building permit (see Parkview Associates v. City of New York, 71 N.Y.2d 274, cert. denied, 488 U.S. 801 (1988)); and

WHEREAS, based upon the above, the Board finds that there are significant gaps in time regarding the evidence submitted by the Appellant in support of the continuous use of the Signs as advertising signs, which the Board cannot ignore, and the limited evidence to which the Board does give some weight (the 1985 BIS documentation, the 1993 Photograph, the 2002 Photographs, and the 2009 Photographs), does not support the continuous use of the Signs as advertising signs since November 1, 1979, but merely indicates moments in time at which the Signs may have been used as advertising signs, without any evidence supporting the Appellant's claim that there was no two-year discontinuance of the use; and

WHEREAS, as to the Appellant's claim that the Board should find that the Signs are legal based on the principles of equity, the Board notes that questions of equity are not within its purview, as the Board is an administrative body and is not empowered to provide an equitable remedy (see People ex rel. New York Tele. Co. v. Public Serv. Comm., 157 A.D. 156, 163 (3d Dep't 1913) (administrative body "ha[s] no authority to assume the powers of a court of equity"); see also Faymor Dev. Co. v Bd. of Sds. and Apps., 45 N.Y.2d 560, 565-567 (1978)); and

WHEREAS, in sum, the Board concludes as follows: the Appellant has not established that the Signs were established as advertising signs prior to November 1, 1979 or that the Signs have been in continuous use as advertising signs since November 1, 1979 without any two-year period of discontinuance; thus, the Signs do not meet the criteria required for continuing such use within the subject zoning district and must cease.

Therefore it is Resolved that this appeal, which challenges the Final Determinations issued on March 7, 2012 is denied.

Adopted by the Board of Standards and Appeals, September 25, 2012.

***The resolution has been revised. Corrected in Bulletin Nos. 41-43, Vol. 97, dated October 25, 2012.**

**A true copy of resolution adopted by the Board of Standards and Appeals, September 25, 2012.
Printed in Bulletin Nos. 39-40, Vol. 97.**

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.