

156-13-A

APPLICANT – Bryan Cave LLP, for 450 West 31 Street Owners Corp, owner; OTR Media Group, Inc., lessee.

SUBJECT – Application May 17, 2013 – Appeal of DOB determination that the subject advertising sign is not entitled to non-conforming use status. C6-4/HY zoning district.

PREMISES AFFECTED – 450 West 31st Street, West 31st Street, between Tenth Avenue and Lincoln Tunnel Expressway, Block 728, Lot 60, Borough of Manhattan.

COMMUNITY BOARD #10M

ACTION OF THE BOARD – Appeal Denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez ...4

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, this is an appeal of two final determinations, issued by the Manhattan Borough Commissioner of the Department of Buildings (“DOB”) on April 17, 2013 and on May 1, 2013, acting on DOB Application Nos. 102663949 and 102663930, respectively (the “Final Determinations”), which state, in pertinent part that:

As of this date, the Department has not received sufficient information to demonstrate that the approval and permit should not be revoked. Therefore, pursuant to Sections 28-104.2.10 and 28-105.10 of the Administrative Code of the City of New York, the approval and permit are hereby revoked; and

WHEREAS, a public hearing was held on this appeal on November 19, 2013, after due notice by publication in *The City Record*, with continued hearings on December 17, 2013, January 28, 2014, and February 11, 2014, and then to decision on April 8, 2014; and

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

WHEREAS, the subject site is located on the southwest corner of the intersection of Dyer Avenue and West 31st Street, within a C6-4 zoning district within the Special Hudson Yards District; and

WHEREAS, the site is occupied by a 12-story commercial building; a 1,200 sq. ft. illuminated advertising sign (the “Sign”) is located on the east wall of the 12-story building; and

WHEREAS, this appeal is brought on behalf of OTR Media Group, Inc., the lessee of the Sign (the “Appellant” or “OTR”); and

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

WHEREAS, the Board notes that by letter dated

April 7, 2014, the Appellant requested withdrawal of the appeal, and by letter dated April 8, 2014, DOB requested that the Board deny the Appellant’s request, citing concerns about public policy and its ability to take enforcement actions against the Sign and other similarly-situated signs; and

WHEREAS, per § 1-12.2 of the Rules of Practice and Procedure, the Board may consider a request to withdraw an appeal at any time before the Board’s final determination; however, the Board may reject the withdrawal request if it determines that proper enforcement or public policy would be served by rendering a decision; and

WHEREAS, the Board agrees with DOB that the appeal has broad public policy and enforcement implications; accordingly, the Appellant’s request to withdraw the appeal is denied; and

PROCEDURAL HISTORY

WHEREAS, on December 22, 1999, DOB issued a permit under Job. No. 102663930; this permit authorized the installation of the structural components of the Sign (the “Sign Structure Permit”); one day later, on December 23, 1999, DOB issued a permit under Job. No. 102663930; this permit authorized the installation of the Sign itself (“the Sign Permit”); at the time, the site and the permit applications were subject to the sign regulations applicable in an M1-6 zoning district; and

WHEREAS, on January 19, 2005, the site was rezoned from an M1-6 zoning district to a C6-4 zoning district within the Special Hudson Yards District; and

WHEREAS, in early 2013, DOB audited the applications documents for the Sign Permit and the Sign Structure Permit; with regard to the Sign Permit, DOB raised the following objection:

Provide additional information to clarify whether the sign is not within 200’-0” of an arterial highway or public park as per ZR 42-55; and

WHEREAS, with regard to the Sign Structure Permit, DOB raised the following objections:

Sign audit application no. 102663949 in conjunction to this application shall be resolved before sign structure application (audit) is lifted;

For sign structures, verify compliance with TPPN No. 5/00; and

WHEREAS, based on these objections, on or about January 11, 2013, DOB notified the Appellant of its intent to revoke the Sign Structure Permit, and on or about February 14, 2013, DOB notified the Appellant of its intent to revoke the Sign Permit; and

WHEREAS, by letter dated April 17, 2013, the Sign Permit was revoked, and by letter dated May 1, 2013, the Sign Structure Permit was revoked; and

WHEREAS, the instant appeal followed; and

WHEREAS, initially, the contested issue on appeal

156-13-A

was whether the Sign was “within view” of an approach to the Lincoln Tunnel; DOB initially advanced the argument that the Sign was “within view” of an approach per the Board’s interpretation of “within view” in BSA Cal. No. 134-13-A (538 Tenth Avenue, Manhattan) (adopting the “360 Degrees Standard” for determining whether a sign is “within view”); and

WHEREAS, the Appellant countered that because a motorist would have to tilt her head in order to view the Sign, the Sign should not be considered “within view”; however, even if the Sign is considered “within view” of a restricted roadway, the Appellant asserts that the roadway in question—the length of Dyer Avenue between the site (at West 31st Street) and the Lincoln Tunnel (hereafter “Lincoln Tunnel Expressway/Dyer Avenue”)—is neither a designated arterial highway itself, nor an “approach” to a designated arterial highway, per 1 RCNY § 49-01 (“Rule 49”), because northbound traffic along the roadway has an opportunity to enter the street network well north of the site at West 39th Street; and

WHEREAS, DOB agrees with the Appellant that Lincoln Tunnel Expressway/Dyer Avenue does not satisfy the definition of “approach” set forth in Rule 491; however, DOB asserts that the roadway itself is a designated arterial highway shown on the Master Plan of Arterial Highways and Major Streets (“Master Plan”) as part of the Lincoln Tunnel toll crossing and designated by the City Planning Commission (“CPC”) in its January 15, 1958 resolution (the “1958 CPC Resolution”); as such, DOB states that the Sign, which is within view of and a few linear feet from Lincoln Tunnel Expressway/Dyer Avenue, is prohibited by ZR § 42-552; and

WHEREAS, as set forth below, the Appellant disagrees that Lincoln Tunnel Expressway/Dyer Avenue is a designated arterial highway; therefore, the issue on appeal is whether that roadway is a designated arterial highway or an approach to a designated arterial highway under the Zoning Resolution; and **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

1 The Board agrees with the parties that Lincoln Tunnel Expressway/Dyer Avenue does not satisfy the definition of “approach” set forth in Rule 49.

2 Because the parties agree that the Sign is “within view” of certain portions of the full length of Lincoln Tunnel Expressway/Dyer Avenue, there is no further discussion of the 360 Degrees Standard in this appeal.

result of any subsequent amendment thereto; and

ZR § 42-55

Additional Regulations for Signs Near Certain Parks and Designated Arterial Highways

M1 M2 M3

In all districts, as indicated, the provisions of paragraphs (a), (b) and (c), or paragraph (d), of this Section, shall apply for #signs# near designated arterial highways or certain #public parks#.

(a) Within 200 feet of an arterial highway or a #public park# with an area of one-half acre or more, #signs# that are within view of such arterial highway or #public park# shall be subject to the following provisions:

- (1) no permitted #sign# shall exceed 500 square feet of #surface area#; and
- (2) no #advertising sign# shall be allowed; nor shall an existing #advertising sign# be structurally altered, relocated or reconstructed . . .

For the purposes of this Section, arterial highways shall include all highways that 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.

ZR Appendix H

Designation of Arterial Highways

Pursuant to the provisions of Section 32-66 and 42-55 (Additional Regulations for Signs Near Certain Parks and Designated Arterial Highways) of the Zoning Resolution of the City of New York, the City Planning Commission has designated as arterial highway to which the provisions of Sections 32-66 and 42-55 apply, the following arterial highways which appear on the City Map and which are also indicated as Principal Routes, Parkways and Toll Crossings on the duly adopted Master Plan of Arterial Highways and Major Streets. . . .

TOLL CROSSINGS . . . Lincoln Tunnel and Approaches;

* * *

1 RCNY 49-01 Definitions

Approach. The term “approach” as found within the description of arterial highways

156-13-A

indicated within Appendix C3 of the Zoning Resolution, shall mean that portion of a roadway connecting the local street network to a bridge or tunnel and from which there is no entry or exit to such network; and

THE APPELLANT’S POSITION

WHEREAS, the Appellant asserts that the Sign and Sign Structure Permits were improperly revoked by DOB because the Sign is not subject to the arterial highway restrictions on advertising signs; and

WHEREAS, specifically, the Appellant states that although the Sign is within view of Lincoln Tunnel Expressway/Dyer Avenue, that roadway is neither a designated arterial highway, nor an approach to a designated arterial highway; and

Arterial Highway

WHEREAS, the Appellant asserts that Lincoln Tunnel Expressway/Dyer Avenue is not an arterial highway for the following reasons: (1) the roadway is not listed by name in Appendix H; (2) the Master Plan is too vague to effect a designation of a particular roadway; (3) the 1958 CPC Resolution did not expressly designate the roadway as a toll crossing; and (4) the Master Plan and the CPC Resolution are, at best, ambiguous as to whether they designated the roadway as part of the Lincoln Tunnel toll crossing; and

WHEREAS, the Appellant states that although Lincoln Tunnel Expressway/Dyer Avenue appears as a series of dots on the Master Plan as a toll crossing, the roadway is not designated by name as an arterial highway in Appendix H of the Zoning Resolution; rather, the Appellant contends that Appendix H of the Zoning Resolution (“Appendix H”) lists only “Lincoln Tunnel and Approaches” under the toll crossings section; and

WHEREAS, the Appellant states that DOB’s basis for determining that the Lincoln Tunnel Expressway/Dyer Avenue appears on the Master Plan cannot be correct because even though the dots approximate where Lincoln Tunnel Expressway/Dyer Avenue is located, the Master Plan is too vague to give fair notice of the requirement; and

WHEREAS, likewise, the Appellant asserts that the 1958 CPC Resolution—which DOB contends amended the Master Plan to make Lincoln Tunnel Expressway/Dyer Avenue a toll crossing subject to the arterial highway provisions—failed to expressly designate Lincoln Tunnel Expressway/Dyer Avenue and only did so by implication when it depicted the roadway on the Master Plan as a toll crossing; and

WHEREAS, the Appellant contends that the dots

were not placed on the Master Plan to denote an official extension of the Lincoln Tunnel toll crossing but rather as a reference showing the connection to the Mid-Manhattan Expressway, which was relocated pursuant to the 1958 CPC Resolution; and

WHEREAS, in support of this assertion, the Appellant provided copies of CPC resolutions from the 1940s, 1950s, and 1960s that expressly state the name of the roadway to be designated as an arterial highway; the Appellant states that the 1958 CPC Resolution, in contrast, explicitly detailed the modifications to the Mid-Manhattan Expressway, but contained no clear language designating Lincoln Tunnel Expressway/Dyer Avenue as an arterial highway; and

WHEREAS, further, the Appellant asserts that the 1958 CPC Resolution suffers from internal inconsistencies and ambiguities that make it impossible to determine whether it modified the Master Plan with respect to Lincoln Tunnel Expressway/Dyer Avenue; and

WHEREAS, the Appellant also asserts that modifications to the City Map—which DOB notes correspond to the descriptions of Lincoln Tunnel Expressway/Dyer Avenue—are not relevant to the question of whether the roadway was designated under the 1958 CPC Resolution, because, as a matter of law, a City Map change does not fix the terms of a CPC resolution; and

WHEREAS, the Appellant contends that because both the 1958 CPC Resolution and the Master Plan are ambiguous as to whether Lincoln Tunnel Expressway/Dyer Avenue is a toll crossing and an arterial highway, the ambiguity must be resolved in favor of the property owner in accordance with Allen v. Adami, 39 NY2d 275, 277 (1976); 440 East 102nd Street Corp. v. Murdock, 285 NY 298, 304 (1941); and Exxon Corp. v. New York City Board of Standards and Appeals, 128 AD2d 289, 295-296 (1st Dep’t 1987), app. denied 70 NY2d 614 (1988); and

WHEREAS, finally, the Appellant states that by looking to the 1958 CPC Resolution and the Master Plan—which, again, the Appellant considers too vague to rely on—to determine whether the Sign is subject to the arterial highway restrictions, DOB is ignoring its prior interpretation, as embodied in Rule 49, contrary to Allen v. Blum, 85 AD2d 228, 236 (1st Dep’t 1982); and Chambers v. Coughlin, 76 Ad2d 980, 981 (3rd Dep’t 1980); and

WHEREAS, additionally, the Appellant asserts that, pursuant to Parkview Associates v. City of New York, 71 NY2d 274, 281 (1988), the specifics of a CPC resolution control the images on the map; as such, the vague dots on the Master Plan are clarified by the absence of explicit language designating Lincoln Tunnel Expressway/Dyer Avenue as a toll crossing in the 1958 CPC Resolution; and

WHEREAS, accordingly, the Appellant contends that Lincoln Tunnel Expressway/Dyer Avenue is not a

3 Previously, Appendix H was known as Appendix C; Rule 49 has not been amended to reflect the update. The change from C to H was purely administrative and had no substantive effect on the designation of any arterial highway.

156-13-A

designated arterial highway; and

Approach

WHEREAS, the Appellant asserts that, as roadway connecting to the Lincoln Tunnel, Lincoln Tunnel Expressway/Dyer Avenue is subject to the Rule 49 definition of “approach,” and according to such definition, the roadway is not an approach; and

WHEREAS, the Appellant states that in promulgating a definition for “approach” in Rule 49, DOB has already determined whether Lincoln Tunnel Expressway/Dyer Avenue is subject to the arterial highway restrictions; and

WHEREAS, the Appellant states, in essence, that if it is not apparent from the applicable CPC resolution and Master Plan whether a roadway is designated as an arterial highway, DOB must apply Rule 49’s definition of approach; and

WHEREAS, the Appellant asserts that, by definition, Lincoln Tunnel Expressway/Dyer Avenue is not an approach (and therefore not subject to the arterial highway restrictions) because northbound traffic along the roadway has an opportunity to enter the street network well north of the site at West 39th Street; and

WHEREAS, thus, the Appellant contends that the arterial highway sign restrictions are inapplicable to the Sign; and

WHEREAS, accordingly, the Appellant states that DOB’s revocation of the Sign Permit and the Sign Structure Permit must be reversed; and

DOB’S POSITION

WHEREAS, DOB asserts that the Sign is within view of Lincoln Tunnel Expressway/Dyer Avenue, which is a designated arterial highway; thus, the Sign and Sign Structure Permits were issued in 1999 contrary to ZR § 42-534 and were properly revoked; and

Arterial Highway

WHEREAS, DOB states that Lincoln Tunnel Expressway/Dyer Avenue is a designated arterial highway because it is: (1) shown on the Master Plan; and (2) designated as a toll crossing by CPC in the 1958 CPC Resolution; and

WHEREAS, DOB states that Lincoln Tunnel Expressway/Dyer Avenue is shown on the Master Plan, in that it is depicted as a series of dots descending from the Lincoln Tunnel, which, according to the Master Plan’s legend, indicate that the roadway is part of the Lincoln Tunnel toll crossing; and

WHEREAS, DOB disagrees with the Appellant that the dots are too vague to be understood as designating the roadways that comprise Lincoln Tunnel

Expressway/Dyer Avenue as a toll crossing; DOB states that there is sufficient information on the face of the Master Plan and in the relevant CPC resolutions adopting modifications to the Master Plan to demonstrate that the roadway is an arterial highway; and

WHEREAS, DOB notes that the Master Plan was a requirement of former New York City Charter § 197, which also required modification of the Master Plan from time to time to show desirable streets, roads, highways, and other features to provide for future growth, development, and adequate facilities in the city; and

WHEREAS, DOB states that the Master Plan shows integral parts of the highway system and is intended to be a macroscopic, schematic framework for development and purposefully does not show precise lines for all routes; nevertheless, DOB asserts that one can identify the location of Lincoln Tunnel Expressway/Dyer Avenue and determine that it is in fact a toll crossing by examining the 1958 CPC Resolution; and

WHEREAS, specifically, DOB states that the 1958 CPC Resolution makes reference to “[n]ew approaches for the Lincoln Tunnel, which have been recently built, [that] extend southerly to 30th Street and this street has been widened between Ninth and Tenth Avenues” and that such reference reflects a designation of Lincoln Tunnel Expressway/Dyer Avenue as a toll crossing; and

WHEREAS, DOB asserts that the widened street at West 30th Street between Ninth and Tenth Avenues referenced by CPC can only be Lincoln Tunnel Expressway/Dyer Avenue since no other street matches this description; and

WHEREAS, accordingly, DOB states that Lincoln Tunnel Expressway/Dyer Avenue is shown on the Master Plan; and

WHEREAS, likewise, DOB asserts that the language of the 1958 CPC Resolution—in addition to facilitating an understanding of the Master Plan—reflects a designation of Lincoln Tunnel Expressway/Dyer Avenue as a toll crossing; and

WHEREAS, DOB states that, contrary to the Appellant’s assertions, there is no need for the 1958 CPC Resolution to have verbalized the designation of Lincoln Tunnel Expressway/Dyer Avenue or list the roadway by name as had been done in other CPC designations of arterial highways; and

WHEREAS, DOB contends that an express statement was not required because the Master Plan itself was modified to extend the reach of the toll crossing; the extension of the dots on the Master Plan spoke for itself; and

WHEREAS, DOB also notes that the City Map depicts a widened street at West 30th Street between Ninth and Tenth Avenues, which matches precisely the location of the lengthened toll crossing according to the 1958 CPC Resolution; and

WHEREAS, additionally, DOB asserts that a CPC

4 ZR § 42-53 was modified and renumbered as ZR § 42-55 as a result of the February 27, 2001 text amendment. The modification was purely administrative and had no substantive effect on the issues presented in this appeal.

156-13-A

report need not explicitly declare that a roadway is an arterial highway; ZR § 42-55 and Appendix H, rather than the CPC report, are the operative statutory provisions that impose control over signs proximate to toll crossings on the Master Plan; and

WHEREAS, accordingly, DOB states that Lincoln Tunnel Expressway/Dyer Avenue is both designated as part of the Lincoln Tunnel toll crossing (which is an arterial highway according to Appendix H of the Zoning Resolution) and shown on the Master Plan; and

Approach

WHEREAS, DOB disagrees with the Appellant that Appendix H's listing of Lincoln Tunnel and Approaches implicates Rule 49's definition of "approaches" with respect to Lincoln Tunnel Expressway/Dyer Avenue; and

WHEREAS, DOB contends that because Lincoln Tunnel Expressway/Dyer Avenue is shown on the Master Plan as a toll crossing, the roadway necessarily is not an approach but is, rather, part of the toll crossing; thus, Appendix H's listing of the toll crossing "Lincoln Tunnel" reflects a designation of both the Lincoln Tunnel and Lincoln Tunnel Expressway/Dyer Avenue; and

WHEREAS, thus, DOB asserts that the Rule 49 definition of "approach" has no bearing on whether Lincoln Tunnel Expressway/Dyer Avenue has been designated as an arterial highway; and

WHEREAS, DOB states that the Rule 49 definition of approach is employed only where the Master Plan's schematic framework is too large in scale to ascertain whether a roadway is an approach, as that term is used in Appendix H; thus, the definition is inapplicable to this case because Lincoln Tunnel Expressway/Dyer Avenue is actually depicted as a toll crossing on the Master Plan; and

WHEREAS, accordingly, DOB states that the Sign and Sign Structure Permits were issued in violation of the arterial highway restrictions of ZR § 42-53; as such, the Final Determinations revoking such permits should be upheld; and

CONCLUSION

WHEREAS, the Board finds that: (1) Lincoln Tunnel Expressway/Dyer Avenue is a designated arterial highway, in that it is shown as part of the Lincoln Tunnel toll crossing on the Master Plan and was designated as such by the 1958 CPC Resolution; and (2) Lincoln Tunnel Expressway/Dyer Avenue is not subject to the Rule 49 definition of "approaches"; and

Arterial Highway

WHEREAS, the Board finds that Lincoln Tunnel Expressway/Dyer Avenue is a designated arterial highway, in that it is shown as part of the Lincoln Tunnel toll crossing on the Master Plan and was designated as such by the 1958 CPC Resolution; and

WHEREAS, the Board finds that the Master Plan shows a series of dots that approximate the location of

Lincoln Tunnel Expressway/Dyer Avenue; according to the legend for the map, the dots indicate that the toll crossing for the Lincoln Tunnel begins at the tunnel and descends southward between Ninth and Tenth Avenues to West 30th Street; and

WHEREAS, the Board finds that the change in the Master Plan accompanied the adoption of the 1958 CPC Resolution and that such resolution provides a basis for finding that the area shown on the Master Plan was intended to be made part of the toll crossing; and

WHEREAS, the Board agrees with DOB that the 1958 CPC Resolution makes reference to "[n]ew approaches for the Lincoln Tunnel, which have been recently built, [that] extend southerly to 30th Street and this street has been widened between Ninth and Tenth Avenues" and that such reference reflects a designation of Lincoln Tunnel Expressway/Dyer Avenue as a toll crossing; and

WHEREAS, the Board also agrees with DOB that the widened street at West 30th Street between Ninth and Tenth Avenues referenced by CPC can only be Lincoln Tunnel Expressway/Dyer Avenue since no other street matches this description; and

WHEREAS, the Board also finds that, contrary to the Appellant's assertions, there is no need for the 1958 CPC Resolution to have verbalized the designation of Lincoln Tunnel Expressway/Dyer Avenue or list the roadway by name as had been done in other CPC designations of arterial highways; and

WHEREAS, rather, the Board finds that a CPC report need not explicitly declare that a roadway is an arterial highway, and that ZR § 42-55 and Appendix H are the operative statutory provisions; and

WHEREAS, as to the Appellant's assertion that the dots were not placed on the Master Plan to denote an official extension of the Lincoln Tunnel toll crossing but rather as a reference showing the connection to the Mid-Manhattan Expressway, which was relocated pursuant to the 1958 CPC Resolution, the Board disagrees; that the Master Plan was amended at all carries significant weight particularly *because* it is macroscopic and schematic in nature; thus, any change to the Master Plan must be presumed to have been made deliberately; and

WHEREAS, turning to the Appellant's cited case law, the Board disagrees that there is an "ambiguity" that must be resolved in favor of the property owner pursuant to Allen v. Adami, 39 NY2d 275 (1976); and

WHEREAS, rather, as noted above, the Board finds that even a cursory review of the symbols and legend of the Master Plan plainly indicates that the Lincoln Tunnel toll crossing extends southward from the tunnel; likewise, mere reference to Appendix H reveals that the Lincoln Tunnel is a "toll crossing" subject to the arterial highway restrictions set forth in ZR § 42-55; thus, to the extent that the precise location of the toll crossing cannot be determined by reference to the Master Plan or Appendix H, it is proper to consult the CPC resolution that created

156-13-A

the designation in order to determine where the toll crossing—which is shown on the Master Plan and referenced in Appendix H—begins and ends; and

WHEREAS, thus, the Board observes that while the scope of the 1958 designation may not be readily apparent based solely on the Master Plan, the precise nature of the designation may be ascertained by reference to the 1958 CPC Resolution; thus, the designation—and, consequently, the applicability of the arterial highway restrictions, per ZR § 42-55—is, contrary to the Appellant’s assertions, clear and unambiguous; and

WHEREAS, likewise, the Board finds that there is no discrepancy between the Master Plan and the Zoning Resolution that implicates Parkview Associates v. City of New York, 71 NY2d 274 (1988); in that case, the Court of Appeals held that “discrepancies between the zoning map and enabling resolution are controlled by the specifics of the resolution”; insofar as the Parkview holding applies to a discrepancy between the Zoning Resolution and the Master Plan, here, there is no discrepancy – the Master Plan (and the 1958 CPC Resolution which amended it) merely clarify the requirements of ZR § 42-55 and Appendix H; and

WHEREAS, accordingly, the Board finds that Lincoln Tunnel Expressway/Dyer Avenue is designated as part of the Lincoln Tunnel toll crossing; and Approach;

WHEREAS, the Board agrees with DOB that the Rule 49 definition of “approaches” is not implicated in this appeal; and

WHEREAS, the Board finds that because Lincoln Tunnel Expressway/Dyer Avenue is shown on the Master Plan as a toll crossing, the roadway necessarily is not an approach but is, rather, part of the toll crossing; thus, Appendix H’s listing of the toll crossing “Lincoln Tunnel” reflects a designation of both the Lincoln Tunnel and Lincoln Tunnel Expressway/Dyer Avenue; and

WHEREAS, the Board also finds that, irrespective of the nomenclature employed, there was a clear intent in the 1958 CPC Resolution and in the amendment to the Master Plan to designate newly built roadways as part of the Lincoln Tunnel toll crossing arterial highway; where the CPC Resolution makes reference to the “approaches” it does so to distinguish the newly designated portions of the toll crossing from the actual tunnel; thus, the “approaches” portion of “Lincoln Tunnel and Approaches” is a historical use of the term—and one that is not subject to Rule 49’s definition of “approaches.”

A true copy of resolution adopted by the Board of Standards and Appeals, April 8, 2014.

Printed in Bulletin No. 15, Vol. 99.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

which came into effect decades later; and

WHEREAS, likewise, the Board observes that the Appellant’s interpretation of Rule 49 would impose *less* restrictive requirements than the statute being implemented by the rule; in effect, this would result in a legislative act being overruled by executive rule-making; accordingly, the Board declines to adopt the Appellant’s interpretation of Rule 49 in this case because doing so would permit that which the 1958 CPC Resolution intended to prohibit – advertising signs along the Lincoln Tunnel toll crossing; and

WHEREAS, thus, contrary to the Appellant’s assertions, DOB did not decide this case when it promulgated Rule 49; rather, CPC decided it when it made Lincoln Tunnel Expressway/Dyer Avenue part of the Lincoln Tunnel toll crossing; and

WHEREAS, accordingly, the Board finds that the Sign is within view of an arterial highway and that DOB properly revoked the Sign Permit and the Sign Structure Permit; and

Therefore it is Resolved, that this appeal, challenging the Final Determinations issued on April 17, 2013 and on May 1, 2013, is denied.

Adopted by the Board of Standards and Appeals, April 8, 2014.

