

# ZONING RESOLUTION Web Version

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## THE CITY OF NEW YORK



THE CITY OF NEW YORK  
Bill de Blasio, Mayor

CITY PLANNING COMMISSION  
Carl Weisbrod, Chairman

## Article VII: Administration

### Chapter 3 - Special Permits by the Board of Standards and Appeals

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CITY PLANNING COMMISSION  
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(12/15/61)

**Chapter 3**  
**Special Permits by the Board of Standards and Appeals**

(12/15/61)

**73-00**  
**SPECIAL PERMIT USES AND MODIFICATIONS**

(4/22/09)

**73-01**  
**General Provisions**

In harmony with the general purpose and intent of this Resolution and in accordance with the provisions set forth in this Chapter, the Board of Standards and Appeals may, in an appropriate case:

- (a) grant special permits for specified #uses# in specific districts (referred to hereinafter as special permit #uses#);
- (b) permit specified modifications of the #use# or #bulk# regulations of this Resolution;
- (c) permit the renewal of revoked building permits as provided in Sections 11-31 to 11-33, inclusive, relating to Building Permits Issued before Effective Date of Amendment; or
- (d) permit the renewal of a variance, exception, or permit issued by the Board prior to December 15, 1961, in accordance with the provisions of Section 11-41 relating to Exceptions, Variances, or Permits Previously Authorized;

provided that, in each specific case, the requirement for findings as set forth in this Chapter (or in the Sections referred to in paragraph (c) or (d) of this Section) shall constitute a condition precedent to the grant of such special permit, modification, or renewal.

In addition to meeting the requirements, conditions, and safeguards prescribed by the Board as set forth in this Chapter, each such special permit #use# shall conform to and comply with all of the applicable district regulations on #use#, #bulk#, supplementary #use# regulations, regulations applying along

district boundaries, #accessory signs#, #accessory# off-street parking and off-street loading, and all other applicable provisions of this Resolution, except as otherwise specifically provided in this Chapter or as they may be modified in accordance with paragraph (b) of this Section. In the case of required #accessory# off-street parking, such #use# shall satisfy the requirements specified for such #uses# in Sections 25-31, 36-21 or 44-21 (General Provisions) except that, where no parking requirement is specified therein, such #use# shall satisfy the requirements set forth in this Chapter.

In the #waterfront area#, the powers of the Board to grant special permits are made inapplicable or modified in accordance with the provisions of Section 62-131 (Applicability of Article VII, Chapter 3).

(12/15/61)

### **73-02**

#### **Further Requirements**

It shall be a further requirement that the decision or determination of the Board of Standards and Appeals shall set forth each required finding in each specific grant of a special permit #use#, modification or renewal and, in each denial thereof, which of the required findings have not been satisfied. In any such case, each finding shall be supported by substantial evidence or other data considered by the Board in reaching its decision, including the personal knowledge of or inspection by the members of the Board.

(12/18/80)

### **73-03**

#### **General Findings Required for All Special Permit Uses and Modifications**

The Board of Standards and Appeals shall have the power, as authorized by Section 73-01, paragraph (a) or (b), and subject to such appropriate conditions and safeguards as the Board shall prescribe, to grant special permit #uses# or modifications of #use#, parking, or #bulk# regulations as specifically provided in this Chapter, provided in each case:

- (a) The Board shall make all of the findings required in the applicable sections of this Chapter with respect to each

such special permit #use# or modification of #use#, parking or #bulk# regulations and shall find that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of such special permit #use# or modification of #use#, parking or #bulk# regulations at the particular site are outweighed by the advantages to be derived by the community by the grant of such special permit. In each case the Board shall determine that the adverse effect, if any, on the privacy, quiet, light and air in the neighborhood of such special permit #use# or modification of #use#, parking or #bulk# regulations will be minimized by appropriate conditions governing location of the site, design and method of operation.

- (b) In all cases the Board shall deny a special permit whenever such proposed special permit #use# or modification of #use#, parking or #bulk# regulations will interfere with any public improvement project (including housing, highways, public #buildings# or facilities, redevelopment or renewal projects, or right-of-way for sewers, transit or other public facilities) which is approved by or pending before the Board of Estimate, Site Selection Board or the City Planning Commission as determined from the calendars of each such agency issued prior to the date of the public hearings before the Board of Standards and Appeals.
- (c) When under the applicable findings the Board is required to determine whether the special permit #use# or modification of #use#, parking or #bulk# regulations is appropriately located in relation to the #street# system, the Board shall in its discretion make such determination on the basis of the Master Plan of Arterial Highways and Major Streets on the official City Map. Whenever the Board is required to make a finding on the location of a proposed special permit #use# or modification of #use#, parking or #bulk# regulations in relation to secondary or local #streets# and such classification of #streets# is not shown on the Master Plan, the Board in its discretion shall request the City Planning Commission to establish a report on the appropriate classification of such #street#.
- (d) For applications relating to Sections 73-243, 73-48 and 73-49, the Board in its discretion shall request from the Department of Transportation a report with respect to the anticipated traffic congestion resulting from such special permit #use# or modification of #use#, parking or #bulk# regulations in the proposed location. If such a report is requested, the Board shall in its decision or determination give due consideration to such report and further shall have

the power to substantiate the appropriate finding solely on the basis of the report of the Department of Transportation with respect to the issue referred.

- (e) If a term of years is specified in the applicable section, the Board shall establish a term of years not to exceed such maximum. For those special permit #uses# or modification of #use# parking or #bulk# regulations for which a maximum term has not been specified, the Board may fix an appropriate term for any such special permit #use# or modification of #use# parking or #bulk# regulations.
- (f) On application for renewal of any such special permit authorized in this Chapter, the Board shall determine whether the circumstances warranting the original grant still obtain. In addition, the Board shall ascertain whether the applicant has complied with the conditions and safeguards theretofore described by the Board during the prior term. In the event that the Board shall find the applicant has been in substantial violation thereof, it shall deny the application for renewal.
- (g) The Board may permit the #enlargement# or #extension# of any existing #use#, which, if new, would be permitted by special permit in the specified districts under the provisions of Section 73-01 and other applicable provisions of this Chapter, provided that before granting any such permit for #enlargement# or #extension# within the permitted districts, the Board shall make all of the required findings applicable to the special permit #use#, except that:
  - (1) in the case of colleges or universities in R1 or R2 Districts, the Board may waive all such required findings set forth in Section 73-121 (Colleges or universities); and
  - (2) in the case of public utility #uses#, the Board may waive all such required findings set forth in Sections 73-14 (Public Service Establishments) or 73-16 (Public Transit, Railroad or Electric Utility Substations).

No such #enlargement# or #extension# shall create a new #non-compliance# or increase the existing degree of #non-compliance# with the applicable #bulk# regulations, except as may be permitted in accordance with the provisions of Sections 73-62 to 73-68, inclusive, relating to Modification of Bulk Regulations.

(8/16/79)

## **73-04**

### **Conditions and Safeguards**

The Board of Standards and Appeals may prescribe such conditions and safeguards to the grant of special permit (#uses#) as it may deem necessary in the specific case, in order to minimize the adverse effects of such special permit upon other property and the community at large. Such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy. Failure to comply with such conditions or restrictions shall constitute a violation of this Resolution, and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies.

(7/22/71)

## **73-10**

### **SPECIAL PERMIT USES**

(4/28/94)

## **73-11**

### **General Provisions**

Subject to the general findings required by Section 73-03 and in accordance with the provisions contained in Sections 73-12 to 73-36, inclusive, the Board of Standards and Appeals shall have the power to permit special permit #uses#, and shall have the power to impose appropriate conditions and safeguards thereon.

In the #Special Midtown District#, the powers of the Board to permit special permit #uses# are modified by the provisions of Sections 81-13 (Special Permit Use Modifications) and 81-061 (Applicability of Chapter 3 of Article VII).

Except as permitted pursuant to this Chapter, in R3, R4 or R5 Districts, the following #uses# shall be subject to the height and setback requirements of an R2 District:

Camps

Public utility or public service facilities

Radio and television towers, non-#accessory#

Riding academies or stables.

(9/9/04)

**73-12**

**Community Facility Uses in R1, R2, R3-1, R3A, R3X, R4-1, R4A or R4B Districts**

In R1, R2, R3-1, R3A, R3X, R4-1, R4A or R4B Districts, the Board of Standards and Appeals may permit specified #community facility uses# in accordance with the provisions of this Section.

(12/15/61)

**73-121**

**Colleges or universities**

The Board of Standards and Appeals may permit colleges or universities including professional schools but excluding business colleges or trade schools in R1 or R2 Districts, provided that the following findings are made:

- (a) that such #use# is so located as not to impair the character of the surrounding area or its future development as a neighborhood of #single-family residences#; and
- (b) that such #use# is so located as to draw a minimum of vehicular traffic to and through local #streets#.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.

(3/22/16)

**73-122**

**College or school student dormitories or fraternity or sorority student houses**

The Board of Standards and Appeals may permit college or school student dormitories or fraternity or sorority student houses in R1 or R2 Districts, provided that the following findings are made:

- (a) that such #use# does not exceed the maximum #floor area ratio# for #residential use# as set forth in Section 23-14 (Open Space and Floor Area Regulations in R1 through R5 Districts);
- (b) that the amount of #open space# and its distribution on the #zoning lot# conform to standards appropriate to the character of the neighborhood;
- (c) that, notwithstanding the provisions of Section 25-33 (Waiver of Requirements for Spaces below Minimum Number), at least one #accessory# off-street parking space is provided for each six beds; and
- (d) that such #use# conforms to all the other applicable Off-Street Parking Regulations as set forth in Article II, Chapter 5.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.

(3/22/16)

### **73-123**

#### **Non-commercial clubs**

The Board of Standard and Appeals may permit non-commercial clubs, except swimming pool clubs or clubs with swimming pools located less than 500 feet from any #lot line#, in R1 or R2 Districts, provided that the following findings are made:

- (a) that such #use# is so located as not to impair the character of the surrounding area or its future development as a neighborhood of #single-family residences#;
- (b) that such #use# is so located as to draw a minimum of vehicular traffic to and through local #streets#;
- (c) that such #use# complies with the minimum required #open space ratio# and maximum #floor area ratio# for #residential use# as set forth in Section 23-14 (Open Space and Floor Area Regulations in R1 through R5 Districts);
- (d) that not more than half the #open space# provided is occupied by driveways, private streets, open #accessory# off-street parking spaces or active outdoor recreation

facilities; and

- (e) that the amount of #open space# provided and its distribution on the #zoning lot# conform to standards appropriate to the character of the neighborhood.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area, including requirements for shielding of floodlights, screening or landscaping.

(12/15/61)

### **73-124**

#### **Welfare centers**

The Board of Standard and Appeals may permit welfare centers in R1 or R2 Districts, provided that the following findings are made:

- (a) that such #use# is so located as not to impair the character of the surrounding area or its future development as a neighborhood of #single-family residences#; and
- (b) that such #use# is conveniently accessible to the people it serves.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.

(1/18/11)

### **73-125**

#### **Ambulatory diagnostic or treatment health care facilities**

In R3A, R3X, R3-1, R4A, R4B or R4-1 Districts, excluding #lower density growth management areas#, the Board of Standards and Appeals may permit ambulatory diagnostic or treatment health care facilities listed in Use Group 4, limited in each case to a maximum of 10,000 square feet of #floor area#, provided that the Board finds that the amount of open area and its distribution on the #zoning lot# conform to standards appropriate to the character of the neighborhood.

The Board may prescribe appropriate conditions and safeguards to

minimize adverse effects on the character of the surrounding area.

(2/2/11)

### **73-126**

#### **Certain community facility uses in lower density growth management areas**

In R3A, R3X, R3-1, R4A, R4B or R4-1 Districts in #lower density growth management areas#, the Board of Standards and Appeals may permit ambulatory diagnostic or treatment health care facilities listed in Use Group 4, limited in each case to a maximum of 10,000 square feet of #floor area#, provided that such facilities are located on #zoning lots# that comply with the minimum #lot area# and #lot width# regulations of Section 23-35 (Special Provisions for Zoning Lots Containing Certain Community Facility Uses in Lower Density Growth Management Areas).

In addition, for #buildings# in R3, R4 and R5 Districts in #lower density growth management areas# subject to the provisions of paragraph (b) of Section 24-011 (Exceptions to the bulk regulations of this Chapter) the Board may permit the #development# of a #building# pursuant to the #bulk# regulations of Article II, Chapter 4 (Bulk Regulations for Community Facility Buildings in Residence Districts).

In order to grant such special permit, the Board shall find that:

- (a) the amount and type of open area and its distribution on the #zoning lot# is compatible with the character of the neighborhood;
- (b) the distribution of #bulk# on the #zoning lot# will not unduly obstruct access of light and air to adjoining properties or #streets#; and
- (c) the scale and placement of the #building# on the #zoning lot# relates harmoniously with surrounding #buildings#.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.

(2/2/11)

### 73-13

#### Open Uses in R1 or R2 Districts

In R1 or R2 Districts, the Board of Standard and Appeals may permit outdoor tennis courts or ice skating rinks, provided that the Board finds that such #use# is so located as not to impair the character of the surrounding area or its future development as a neighborhood of #single-family residences#.

The Board shall prescribe the following conditions:

- (a) that such #use# and any #accessory# facilities affixed to the land are not located closer than 20 feet to any #lot line#; and
- (b) that all lighting is directed away from nearby #zoning lots# containing #residences#.

The Board may prescribe additional appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area, including requirements for screening or for landscaping.

(2/2/11)

### 73-14

#### Public Service Establishments

In all #Residence Districts#, the Board of Standard and Appeals may permit electric or gas utility substations, limited in each case to a site of not more than 10,000 square feet, potable water pumping stations, or telephone exchanges or other communications equipment structures, provided that the following findings are made:

- (a) that such #use# will serve the residential area within which it is proposed to be located; that there are serious difficulties in locating it in a district wherein it is permitted as of right and from which it could serve the residential area, which make it necessary to locate such #use# within a #Residence District#; and
- (b) in the case of such electric or gas utility substations or potable water pumping stations, that the site for such #use# has a minimum #lot area# of 4,500 square feet.

The Board may prescribe appropriate conditions or safeguards to minimize adverse effects on the character of the surrounding

area, including requirements that electric utility substations shall meet the performance standards for an M1 District; that such electric or gas utility substations or potable water pumping stations shall be surrounded with fences, barriers, or other safety devices; or that any such #use# shall be landscaped.

(12/15/61)

### **73-15**

#### **Other Public Utility Facilities**

In all #Residence Districts#, the Board of Standard and Appeals may permit public utility stations for oil or gas metering or regulating, or terminal facilities located at river crossings for access to electric, gas or steam lines, provided that the Board finds that the proposed location, design and method of operation will not have a detrimental effect on the privacy and quiet of the neighborhood and the safety of its inhabitants.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area, including requirements for construction of fences, barriers or other safety devices, or for landscaping.

(2/2/11)

### **73-16**

#### **Public Transit, Railroad or Electric Utility Substations**

In all #Residence# and #Commercial Districts#, and in M1 Districts in the #Special Downtown Jamaica District#, the Board of Standard and Appeals may permit electric utility substations (including transformers, switches, or auxiliary apparatus) or public transit or railroad electric substations, limited in each case to a site of not more than 40,000 square feet, and in the case of electric utility substations to a site of not less than 10,000 square feet, provided that the following findings are made:

- (a) that such #use# will serve either the residential community within which it is proposed to be located or the residential community immediately adjacent, and that there are serious difficulties in locating such #use# in a nearby district where it is permitted as-of-right;
- (b) in the case of public transit or railroad electric

substations, that the site for such #use# has a minimum frontage of 50 feet and a minimum #lot area# of 4,500 square feet;

- (c) that the site for such #use# is so located in #Residence Districts# as to minimize the adverse effects on the integrity of existing and future development, or is so located in #Commercial Districts# as to minimize the interruption of the continuity of retail frontage;
- (d) that the architectural and landscaping treatment of such #use# will blend harmoniously with the rest of the area; and
- (e) that such #use# will conform to the performance standards applicable to M1 Districts.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area, including requirements for soundproofing, for the construction of fences, barriers, or other safety devices, for screening of apparatus, or for landscaping.

(12/15/61)

### **73-17**

#### **Camps, Overnight or Outdoor Day**

In all #Residence Districts#, and in C1, C2 or C3 Districts, the Board of Standards and Appeals may permit overnight or outdoor day camps, whether commercial or philanthropic, for a term not to exceed five years, provided that the Board finds that such #use# will not cause excessive traffic congestion.

The Board shall prescribe the following conditions:

- (a) that a minimum of 150 square feet of #lot area# is provided for each child enrolled in the camp;
- (b) that along any #rear# or #side lot lines#, #yards# are provided, each with a minimum depth (or width) of 40 feet, within which no camp equipment is affixed to the land;
- (c) that in #Residence Districts# or C3 Districts the #zoning lot# is screened along the #rear# and #side lot lines#, and in C1 or C2 Districts along any #rear# or #side lot line# adjoining a #Residence District#, by a strip at least four feet wide, densely planted with shrubs or trees which are at least four feet high at the time of planting and which are

of a type which may be expected to form a year-round dense screen at least six feet high within three years; and

- (d) that in the case of outdoor day camps, for each 6,000 square feet of #lot area#, one #accessory# off-street parking space of 500 square feet is provided to accommodate buses used in the transportation of campers, in addition to the #accessory# off-street parking requirement established for such #uses# under the applicable provisions of Sections 25-31 or 36-21 (General Provisions).

The Board may prescribe additional appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.

(12/15/61)

### **73-18**

#### **Riding Academies or Stables**

In all #Residence Districts#, and in C2, C6 or C7 Districts, the Board of Standards and Appeals may permit riding academies or stables operated as a recreation service, for a term not to exceed five years, provided that the following findings are made:

- (a) that such #use# is so located as not to impair the essential character of the surrounding area;
- (b) that adequate horseback riding facilities are available on the same #zoning lot# or within 600 feet of such #zoning lot#;
- (c) that the location and operation of such #use# will not be such as to result in any serious traffic hazards or conflicts on nearby #streets#; and
- (d) that in #Residence Districts#, no stables or riding areas are located within 40 feet of any #side# or #rear lot line#.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area, including requirements for sanitation, for screening, or for landscaping.

(11/19/87)

**73-19**  
**Schools**

In C8 or M1 Districts, the Board of Standards and Appeals may permit #schools# which have no #residential# accommodations except #accessory# accommodations for a caretaker, provided that the following findings are made:

- (a) that within the neighborhood to be served by the proposed #school# there is no practical possibility of obtaining a site of adequate size located in a district wherein it is permitted as of right, because appropriate sites in such districts are occupied by substantial improvements;
- (b) that such #school# is located not more than 400 feet from the boundary of a district wherein such #school# is permitted as-of-right;
- (c) that an adequate separation from noise, traffic and other adverse effects of the surrounding non-#Residential Districts# is achieved through the use of sound-attenuating exterior wall and window construction or by the provision of adequate open areas along #lot lines# of the #zoning lot#; and
- (d) that the movement of traffic through the #street# on which the #school# is located can be controlled so as to protect children going to and from the #school#. The Board shall refer the application to the Department of Traffic for its report with respect to vehicular hazards to the safety of children within the block and in the immediate vicinity of the proposed site.

The Board may prescribe additional appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.

(8/19/76)

**73-20**  
**THEATERS**

(2/2/11)

**73-201**  
**In C1 Districts**

In C1 Districts, the Board of Standards and Appeals may permit theaters with a capacity of not more than 500 persons in a new or existing #building#. In C1-5, C1-6, C1-7, C1-8 and C1-9 Districts, motion picture theaters shall have a minimum of four square feet of waiting area within the #zoning lot# for each seat. The required waiting space shall be either in an enclosed lobby or open area that is covered or protected during inclement weather and shall not include space occupied by stairs or space within 10 feet of a refreshment stand or of an entrance to a public toilet. The Board shall not apply these requirements to any additional motion picture theater created by the subdivision of an existing motion picture theater.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of nearby residential areas.

(2/2/11)

### **73-202**

#### **In M1-5A or M1-5B Districts**

In M1-5A or M1-5B Districts, the Board of Standards and Appeals may permit theaters for a term not to exceed five years, provided that the following findings are made:

- (a) that such #use# will not impair the character or the future use or development of the surrounding residential or mixed use neighborhoods;
- (b) that such #use# will not cause undue congestion in local #streets#; and
- (c) that such #use# provides a waiting area of adequate size to prevent obstruction of #street# areas and other #uses# within the same or other #building#.

The Board shall prescribe appropriate controls to minimize adverse effects on the character of the surrounding area, including, but not limited to, location of entrances and operable windows; provision of sound-lock vestibules; specification of acoustical insulation; maximum size of establishment; number, kinds of amplification of musical instruments or voices; shielding of flood lights; adequate screening; curb cuts, or parking.

(12/15/61)

**73-21**

**Automotive Service Stations**

(4/8/98)

**73-211**

**Location in C2, C4, C6 or C7 Districts**

In any C2, C4, C6 or C7 District whose longer dimension is 375 feet or more (exclusive of land in #streets#), the Board of Standards and Appeals may permit #automotive service stations#, provided that the following findings are made:

- (a) that the site for such #use# has a minimum area of 7,500 square feet; and
- (b) that the site for any such #use# which is not located on an arterial highway or a major #street# has a maximum area of 15,000 square feet.

The Board shall prescribe the following conditions:

- (1) that any facilities for lubrication, minor repairs or washing are located within a #completely enclosed building#;
- (2) that the site is so designed as to provide reservoir space for five waiting automobiles within the #zoning lot# in addition to spaces available within an enclosed lubritorium or at the pumps;
- (3) that entrances and exits are so planned that, at maximum expected operation, vehicular movement into or from the #automotive service station# will cause a minimum of obstruction on #streets# or sidewalks;
- (4) that, along any #rear lot line# or #side lot line# adjoining a #Residence District#, the #zoning lot# is screened, as the Board may prescribe, by either of the following methods:
  - (i) a strip at least four feet wide, densely planted with shrubs or trees at least four feet high at the time of planting and which are of a type which may be expected to form a year-round dense screen at least six feet high within three years; or

- (ii) a wall or barrier or uniformly painted fence of fire-resistant material at least six feet high, but not more than eight feet above finished grade. Such wall, barrier, or fence may be opaque or perforated, provided that not more than 50 percent of its face is open; and
- (5) that #signs#, other than #advertising signs#, shall be subject to the applicable district #sign# regulations, provided that:
- (i) in C2 Districts, the provisions of Sections 32-642 (Non-illuminated signs) and 32-643 (Illuminated non-flashing signs) shall be modified to permit non-#illuminated# or #illuminated# non-#flashing signs# with a total #surface area# not exceeding 150 square feet on any #zoning lot#; and
  - (ii) the provisions set forth in Section 32-652 (Permitted projection in all other Commercial Districts) may be modified in accordance with the provisions of Section 73-212 (Projection of accessory signs).

The Board may prescribe additional appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area, and to protect #residential zoning lots# which are adjoining or across the #street#.

(12/15/61)

### **73-212**

#### **Projection of accessory signs**

In C2, C4, C6 or C8 Districts, the Board of Standards and Appeals may permit not more than one #sign accessory# to an #automotive service station#, to project across a #street line# more than the amount permitted in Section 32-652 (Permitted projection in all other Commercial Districts), but in no case more than four feet, provided that the following findings are made:

- (a) That projection in the amount permitted is required for adequate advance identification of such #automotive service station# to motorists on heavily traveled #streets# in the interests of traffic safety.
- (b) That such #sign# conforms to all other applicable district #sign# regulations, and its total #surface area# is not more than 30 square feet.

(2/2/11)

### **73-22**

#### **Commercial Beaches**

In C3 Districts, the Board of Standards and Appeals may permit #commercial# beaches for a term not to exceed five years, provided that the Department of Health has certified that the waters may be used for bathing purposes and do not violate safe and acceptable standards of water pollution, and provided further that the Board shall make the following findings:

- (a) that such #use# is so located as to minimize interference with the movement and navigation of ships or boats;
- (b) that no more than 20 percent of the shore line in any one mapped district is used for such #use#;
- (c) that no #accessory# stands for the sale of food or drink shall be located within 100 feet of a #Residence District# boundary, and that the total #floor area# of all such stands shall not exceed 200 square feet; and
- (d) that such #use# will not create such traffic congestion as to impair the residential character of the area. The Board shall refer the application to the Department of Traffic for a report as to whether the #use# will create such detrimental traffic congestion that it impairs such residential character.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area, or requirements for the shielding of floodlights or adequate screening.

(2/2/11)

### **73-23**

#### **Commercial Swimming Pools**

In C3 Districts, the Board of Standards and Appeals may permit #commercial# swimming pools with a pool area of not more than 5,000 square feet for a term not to exceed five years, provided that the following findings are made:

- (a) that such #use# is so located as not to impair the essential

character or the future use or development of the nearby residential neighborhood; and

- (b) that such pool is not located within 200 feet of the shore line.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area, including requirements for shielding of floodlights or adequate screening.

(12/18/80)

### **73-24**

#### **Eating or Drinking Places**

(2/2/11)

### **73-241**

#### **In C1-1, C1-2, C1-3, C1-4, C2-1, C2-2, C2-3, C2-4, C3, C5, M1-5A or M1-5B Districts**

In C1-1, C1-2, C1-3, C1-4, C2-1, C2-2, C2-3, C2-4, C3, C5, M1-5A or M1-5B Districts, the Board of Standards and Appeals may permit eating or drinking establishments with entertainment but not dancing, with a capacity of 200 persons or less, for a term not to exceed five years, provided that the following findings are made:

- (a) that such #use# will not impair the character or the future use or development of the surrounding residential or mixed use neighborhood;
- (b) that such #use# will not cause undue congestion in local #streets#;
- (c) that in M1-5A and M1-5B Districts, eating and drinking places shall be limited to not more than 5,000 square feet of floor space;
- (d) that in C1-1, C1-2, C1-3, C1-4, C2-1, C2-2, C2-3, C2-4, C5, M1-5A and M1-5B Districts, such #use# shall take place in a #completely enclosed building#; and
- (e) that the application is made jointly by the owner of such #building# and the operators of such eating or drinking

establishment.

The Board may modify the regulations relating to #signs# in C3 Districts to permit a maximum total #surface area# of 50 square feet of non-#illuminated# or #illuminated# non-#flashing signs#, provided that any #illuminated sign# shall not be less than 150 feet from the boundary of any #Residence District#.

The Board shall prescribe appropriate controls to minimize adverse effects on the character of the surrounding area, including, but not limited to, location of entrances and operable windows, provision of sound-lock vestibules, specification of acoustical insulation, maximum size of establishment, kinds of amplification of musical instruments or voices, shielding of floodlights, adequate screening, curb cuts or parking.

(2/2/11)

### **73-242**

#### **In C3 Districts**

In C3 Districts, the Board of Standards and Appeals may permit eating or drinking establishments (including those which provide outdoor table service or musical entertainment but not dancing, with a capacity of 200 persons or less, and including those which provide music for which there is no cover charge and no specified showtime) for a term not to exceed five years, provided that the following findings are made:

- (a) that such #use# is so located as not to impair the essential character or the future use or development of the nearby residential neighborhood; and
- (b) that such #use# will generate a minimum of vehicular traffic to and through local #streets# in residential areas.

The Board may modify the regulations relating to #signs# in C3 Districts to permit a maximum total #surface area# of 50 square feet of non-#illuminated# or #illuminated# non-#flashing signs#, provided that any #illuminated sign# shall not be less than 150 feet from the boundary of any #Residence District#.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area, including requirements for shielding of floodlights or adequate screening.

(2/8/90)

**73-243**

**In C1-1, C1-2 and C1-3 Districts**

In C1-1, C1-2 and C1-3 Districts, (except in Special Purpose Districts) the Board of Standards and Appeals may permit eating or drinking places (including those which provide musical entertainment but not dancing, with a capacity of 200 persons or less, and those which provide outdoor table service) with #accessory# drive-through facilities for a term not to exceed five years, provided that the following findings are made:

- (a) the drive-through facility contains reservoir space for not less than 10 automobiles;
- (b) the drive-through facility will cause minimal interference with traffic flow in the immediate vicinity;
- (c) the eating or drinking place with #accessory# drive-through facility fully complies with the #accessory# off-street parking regulations for the indicated zoning district, including provision of the required number of #accessory# off-street parking spaces for the indicated zoning district (for the purpose of this finding, the waiver provisions of Sections 36-231 and 36-232 shall be inapplicable);
- (d) the character of the commercially zoned #street# frontage within 500 feet of the subject premises reflects substantial orientation toward the motor vehicle, based upon the level of motor vehicle generation attributable to the existing #commercial uses# contained within such area and to the subject eating or drinking place (excluding the #accessory# drive-through facility portion);
- (e) the drive-through facility shall not have an undue adverse impact on #residences# within the immediate vicinity of the subject premises; and
- (f) there will be adequate buffering between the drive-through facility and adjacent #residential uses#.

In connection therewith, the Board may modify the requirement of Section 32-411 insofar as it relates to the #accessory# drive-through facility. The Board may prescribe additional appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.

(3/20/13)

**73-244**

**In C2, C3, C4\*, C6-4\*\*, M1-5A, M1-5B, M1-5M and M1-6M Districts, the Special Hudson Square District and the Special Tribeca Mixed Use District**

In C2, C3, C4\*, C6-4\*\*, M1-5A, M1-5B, M1-5M and M1-6M Districts, the Special Hudson Square District and the #Special Tribeca Mixed Use District#, the Board of Standards and Appeals may permit eating or drinking establishments with entertainment and a capacity of more than 200 persons or establishments of any capacity with dancing, for a term not to exceed three years, provided that the following findings are made:

- (a) that a minimum of four square feet of waiting area within the #zoning lot# shall be provided for each person permitted under the occupant capacity as determined by the New York City Building Code. The required waiting area shall be in an enclosed lobby and shall not include space occupied by stairs, corridors or restrooms. A plan shall be provided to the Board to ensure that the operation of the establishment will not result in the gathering of crowds or the formation of lines on the #street#;
- (b) that the entrance to such #use# shall be a minimum of 100 feet from the nearest #Residence District# boundary;
- (c) that such #use# will not cause undue vehicular or pedestrian congestion in local #streets#;
- (d) that such #use# will not impair the character or the future use or development of the surrounding residential or mixed use neighborhoods;
- (e) that such #use# will not cause the sound level in any affected conforming #residential use#, #joint living-work quarters for artists# or #loft dwelling# to exceed the limits set forth in any applicable provision of the New York City Noise Control Code; and
- (f) that the application is made jointly by the owner of the #building# and the operators of such eating or drinking establishment.

The Board shall prescribe appropriate controls to minimize adverse effects on the character of the surrounding area, including, but not limited to, location of entrances and operable windows, provision of sound-lock vestibules, specification of

acoustical insulation, maximum size of establishment, kinds of amplification of musical instruments or voices, shielding of flood lights, adequate screening, curb cuts or parking.

Any violation of the terms of a special permit may be grounds for its revocation.

- \* In C4 Districts where such #use# is within 100 feet from a #Residence District# boundary
- \*\* In C6-4 Districts mapped within that portion of Community District 5, Manhattan, bounded by West 22nd Street, a line 100 feet west of Fifth Avenue, a line midway between West 16th Street and West 17th Street, and a line 100 feet east of Sixth Avenue

(2/2/11)

### **73-25**

#### **Boatels**

In C3 Districts, the Board of Standards and Appeals may permit #boatels# provided that the following findings are made:

- (a) that such #use# is so located as not to impair the essential character or the future use or development of the nearby residential neighborhood; and
- (b) that any restaurant permitted in connection with such #use# satisfies the conditions for issuance of special permits to eating or drinking places, as set forth in Section 73-24.

The Board may modify the regulations relating to #signs# in C3 Districts to permit a maximum total #surface area# of 50 square feet of non-#illuminated# or #illuminated# non-#flashing signs# on each of not more than three #street# or water frontages.

The Board may prescribe appropriate conditions or safeguards to minimize adverse effects on the character of the surrounding area, including requirements with respect to the location of #illuminated signs#, the shielding of floodlights or adequate screening.

(2/2/11)

### **73-26**

### **Children's Amusement Parks**

In C8 or M1 Districts, the Board of Standards and Appeals may permit children's amusement parks with an area of at least 10,000 square feet but not more than 75,000 square feet, for a term not to exceed five years, provided that the following findings are made:

- (a) that such #use# is so located as not to impair the essential character or the future use or development of the surrounding area;
- (b) that the principal vehicular access for such #use# is not located on a local #street# or on an arterial highway;
- (c) that such #use# is not located within 400 feet of a #Residence District#;
- (d) that vehicular entrances and exits for such #use# are provided separately, and that no entrance is located less than 50 feet from any exit; and
- (e) that such #use# will not cause traffic congestion or other adverse effects which interfere with the appropriate use of land in the district or in any adjacent district, and that such #use# is so located as to minimize vehicular traffic to and through local #streets# in residential areas.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area, or requirements for shielding of floodlights, adequate screening, or surfacing all access roads or driveways.

(2/2/11)

### **73-27**

#### **Funeral Establishments**

In C1 or C4 Districts, the Board of Standards and Appeals may permit funeral establishments provided that the following findings are made:

- (a) that there are serious difficulties involved in locating within a district wherein such #use# is permitted as-of-right and from which it could serve the needs of its prospective clientele, which make it necessary to locate such #use# within a C1 or C4 District;

- (b) that the site for such #use# is so located as to cause minimum interruption of the continuity of the frontage devoted to retail shopping #uses#. In determining whether the #use# will cause only minimum interruption of such retail frontage, the Board may make a favorable finding on the ground that there exists a substantial number of other incompatible #uses# interrupting such frontage within 200 feet on either side of the proposed site (not including land in #streets#); and
- (c) that such #use# is so located as to draw a minimum of vehicular traffic to and through local #streets# in residential areas.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.

(12/15/61)

### **73-28**

#### **Newspaper Publishing**

In C6 Districts, the Board of Standards and Appeals may permit newspaper publishing establishments provided that the following findings are made:

- (a) that such #use# will not cause undue traffic congestion in local #streets#;
- (b) that such #use# is not located within 200 feet of a #Residence District#; and
- (c) that such #use# shall conform to all performance standards applicable in M1 Districts.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.

(12/15/61)

### **73-29**

#### **Utilization of Explosives in Manufacturing Processes**

In all #Manufacturing Districts#, the Board of Standards and

Appeals may permit the utilization of Class IV explosives, as defined in Section 42-272 (Classifications), in manufacturing processes or other production and storage #accessory# thereto, provided that the following findings are made:

- (a) that such manufacture is carried on within #completely enclosed buildings or other structures# whose exterior walls are of incombustible materials;
- (b) that such #buildings or other structures# are protected throughout by an automatic fire extinguishing system which meets all requirements set forth in the Administrative Code of the City of New York; and
- (c) that such utilization and the storage #accessory# thereto complies with all additional applicable provisions of the Administrative Code and all rules and regulations of the Fire Department.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.

(12/15/61)

**73-30  
Radio or Television Towers**

In all districts, the Board of Standards and Appeals may permit non-#accessory# radio or television towers, provided that it finds that the proposed location, design, and method of operation of such tower will not have a detrimental effect on the privacy, quiet, light and air of the neighborhood.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.

(12/15/61)

**73-31  
Sand, Gravel or Clay Pits**

(4/23/64)

## 73-311

### General provisions

In all districts, the Board of Standards and Appeals may permit, for a term not to exceed 10 years, the extraction of sand, gravel, or clay from a #zoning lot# which is limited in size to a maximum of 50 acres and which is located not less than 1,000 feet from the nearest boundary of any #zoning lot# 10 acres or more in area used for such extraction, provided that the Board finds that such #use# is so located as not to impair the essential character or the future use or development of the surrounding area, and provided that the following conditions are met:

- (a) that the applicant submits a site plan showing the proposed extent and depth of the area to be excavated, together with the certification of the Department of Buildings that the proposed method of operations and the final elevation of the pit will not undermine or cause settlement to nearby #streets#, sewers, #buildings or other structures#, or installations;
- (b) that the applicant submits a plan for the rehabilitation of the #zoning lot# to be undertaken after the completion of the excavation operations which is satisfactory to the Board, and posts a bond, in an amount to be determined by the Board, for the performance of such rehabilitation;
- (c) that the entire perimeter of the #zoning lot#, except for necessary truck roads, is fenced, including locked gates, so as to prevent children from gaining access to the excavated areas;
- (d) that one #accessory# off-street parking space is provided for every 2,000 square feet of #lot area# or for every three employees, whichever shall require a lesser number of spaces; and
- (e) that the performance standards for M1 Districts shall apply to such operations in all districts other than M2 or M3 Districts, where the applicable performance standards shall govern.

(12/15/61)

## 73-312

### Conditions on operation

The Board of Standards and Appeals shall impose the following conditions on the method of operation of such #uses#:

- (a) that all drilling, blasting, or excavation operations shall be limited to Mondays through Fridays between the hours of 8:00 a.m. and 5:00 p.m.;
- (b) that the emission of process dust either from the area of operations or from the excavated materials themselves shall be minimized by frequent watering or by such other means as the Board shall direct;
- (c) that the warning notices respecting unlawful entry shall be posted on the fence, and that a watchman shall be stationed on the premises to police the entire area after normal working hours and on weekends and holidays; and
- (d) that excavation operations shall be undertaken in such manner as to avoid the creation of undrained pockets and the formation of stagnant pools. When topographical conditions make such compliance impossible, all pools of water resulting from surface drainage shall be sprayed in accordance with the requirements of the Department of Health to eliminate breeding places for mosquitoes or other insects.

The Board may prescribe additional appropriate conditions and safeguards to protect the public health, safety, and general welfare during the period between the cessation of operations and the final rehabilitation of the site in accordance with approved plans.

(10/11/62)

### **73-32**

#### **Manufacture of Gaseous or Liquid Oxygen**

In M3 Districts, the Board of Standards and Appeals may permit the manufacture of gaseous or liquid oxygen provided that such manufacture complies with all the applicable provisions of the Administrative Code of the City of New York and all rules and regulations of the Fire Department.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area, including adequate buffering.

(8/22/69)

**73-33**

**Storage of Non-flammable Liquids**

In M1 Districts, the Board of Standards and Appeals may permit the storage of non-flammable liquids in tanks to be located no closer than 100 feet from a #Residence District# boundary.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area, including adequate buffering.

(2/13/70)

**73-34**

**Fire Stations in Prefabricated Temporary Structures**

In all #Residence Districts# except R1, R2, R3 and R4 Districts, the Board of Standards and Appeals may permit, for a term of five years, fire stations in prefabricated temporary structures, provided that such #use# is located in a high fire incidence area as designated by the Fire Department.

For fire stations in prefabricated temporary structures, in all #Residence Districts# except R1, R2, R3 and R4 Districts and in all #Commercial# and #Manufacturing Districts#, the Board may permit modifications of the applicable regulations in Sections 23-40 to 23-55, inclusive, Sections 33-20 to 33-31, inclusive, and Sections 43-20 to 43-22, inclusive, relating to Yard Regulations.

(4/8/98)

**73-35**

**Amusement Arcades**

In C4-1 Districts, or in M2 or M3 Districts which contain shopping centers on March 4, 1976, the Board of Standards and Appeals may permit amusement arcades to be located within shopping centers for a term of one year, provided the following findings are made:

- (a) that the application for the special permit is a joint application made by the management of such shopping center

and the operator of the proposed amusement arcade;

- (b) that such amusement arcade will be beneficial to the other #uses# located within the shopping center; and
- (c) that the #use# is so located within the shopping center that no entrance and no #sign# fronts upon or faces a #street#.

The special permit may be renewed for subsequent one year terms provided the Board finds that the facts upon which the special permit was granted have not substantially changed.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area, including limitations on hours of operation or requirements for security and supervision.

(2/2/11)

### **73-36**

#### **Physical Culture or Health Establishments**

- (a) In C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board of Standards and Appeals may permit #physical culture or health establishments# as defined in Section 12-10, including gymnasiums (not permitted under Use Group 9) or massage establishments other than #adult physical culture establishments#, for a term not to exceed ten years, provided the following findings are made:
  - (1) that such #use# is so located as not to impair the essential character or the future use or development of the surrounding area; and
  - (2) that such #use# contains:
    - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball courts, tennis courts; or
    - (ii) a swimming pool of a minimum 1,500 square feet; or
    - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight

reduction, aerobics or martial arts; or

- (iv) facilities for the practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as #accessory# to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.

- (b) In C4-7, C5-2, C5-3, C5-4, C5-5, C6-4, C6-5, C6-6, C6-7, C6-8 or C6-9 Districts, the Board may permit #physical culture or health establishments# located on the roof of a #commercial building# or the #commercial# portion of a #mixed building#, provided the following additional findings are made:

- (1) that such #use# shall be an incidental part of a permitted #physical culture or health establishment# located within the same #commercial# or #mixed building#;
- (2) that such #use# shall be open and unobstructed to the sky;
- (3) that such #use# shall be located on a roof not less than 23 feet above #curb level#;
- (4) that the application for such #use# shall be made jointly by the owner of the #building# and the operator of such #physical culture or health establishment#; and
- (5) that the Board shall prescribe appropriate controls to minimize adverse impacts on the surrounding area, including but not limited to, requirements for the location, size and types of signs, limitations on the manner and/or hours of operation, shielding of floodlights, adequate screening, and the control of undue noise including the amplification of sound, music or voices.

- (c) No special permit shall be issued pursuant to this Section unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall

determine to be satisfactory; and

- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.

The Board shall retain the right to revoke the special permit, at any time, if it determines that the nature or manner of operation of the permitted #use# has been altered from that authorized.

The Board may prescribe appropriate conditions and safeguards including location of #signs# and limitations on the manner and/or hours of operation in order to minimize adverse effects on the character of the surrounding community.

(7/22/71)

#### **73-40**

#### **MODIFICATIONS OF USE OR PARKING REGULATIONS**

(12/17/87)

#### **73-41**

#### **General Provisions**

Subject to the general findings required by Section 73-03 and in accordance with the provisions contained in Sections 73-42 to 73-53, the Board of Standards and Appeals shall have the power to permit modification of #use# or parking regulations of this Resolution, and shall have the power to impose appropriate conditions and safeguards thereon.

(1/28/65)

#### **73-42**

#### **Enlargement of Uses across District Boundaries**

In all districts, the Board of Standards and Appeals may permit the expansion of a conforming #use# located within a #building or other structure# into a district where such #use# is not permitted, provided that the #enlarged use# is contained within a single #block# and the expansion of either the depth or the width of the conforming #use# is no greater than 50 percent of either the depth or width, respectively, of that portion of the #zoning

lot# located in the district where such #use# is a conforming #use#, but in no case shall the area of the expansion exceed 50 percent of the area of the #zoning lot# located in the district where such #use# is a conforming #use#, and provided further that the following findings are made:

- (a) there is no reasonable possibility of expanding such #use# within the existing district where it is a conforming #use#;
- (b) such conforming #use# was in existence prior to January 6, 1965, or the date of any applicable subsequent amendment to the #zoning maps#; and
- (c) such expanded #use# is not so situated or of such character or size as to impair the essential character or the future use or development of the surrounding area.

In the case of a #use# which, at the time of application to the Board under the provisions of this Section, is already partially located in the more restricted district, where it is a #non-conforming use#, or which has extended into such district in accordance with the provisions of Section 77-11 (Conditions for Application of Use Regulations to Entire Zoning Lot), the maximum expansion to be permitted under the provisions of this Section shall be computed as 50 percent of the width or depth of that portion of the #zoning lot# located within the mapped boundary of the district where such #use# is a conforming #use#, and shall be measured from such mapped district boundary.

In every case where the Board permits such expansion, the #building or other structure#, or portion thereof, situated on the expanded portion of the #zoning lot# shall comply on such expanded portion with the applicable #bulk# regulations of the district in which such #use# is a conforming #use# and, subject to such compliance on the expanded portion of the #zoning lot#, the Board may permit such conforming #use#, even when located in an existing #building or other structure# which is #non-complying#, to expand across the district boundary in accordance with the provisions of this Section.

All the applicable regulations of the district in which such #use# is a conforming #use# shall apply on the entire #zoning lot#, or any portion thereof, to be occupied by such #use# and any special regulation applying along district boundaries shall apply along #rear# and #side lot lines# of the expanded #zoning lot#.

Where #yard# regulations are applicable, the Board may permit the expanded area to include, in addition to area permitted under other provisions of this Section, such area as is necessary for

the required #yards#. However, such additional area shall not be counted as #lot area# for purposes of #bulk# computations.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the district including requirements for adequate screening.

(3/22/16)

### **73-43**

#### **Reduction of Parking Spaces**

The Board of Standards and Appeals may permit a reduction in the number of #accessory# off-street parking spaces required under the provisions of Sections 25-31, 36-21 or 44-21 (General Provisions), in accordance with the applicable provisions of Sections 73-431 through 73-435 for the reduction of parking spaces.

(9/9/04)

### **73-431**

#### **Reduction of parking spaces for houses of worship**

In all districts, the Board of Standards and Appeals may permit a waiver of, or a reduction in, the number of required #accessory# off-street parking spaces for houses of worship, provided:

- (a) the house of worship will be operated or utilized in such a manner as to reduce demand for on-site parking; and
- (b) such reduction is commensurate with the reduced demand for on-site parking.

Factors to be considered by the Board may include, without limitation, the size of the congregation, the frequency and time of worship services and other events, and the proximity of public transportation. The Board may impose appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.

(2/2/11)

### **73-432**

### **Reduction of parking spaces for places of assembly**

In all #Commercial# and #Manufacturing Districts#, the Board of Standards and Appeals may permit a reduction in the number of #accessory# off-street parking spaces required under the provisions of Sections 25-31, 36-21 or 44-21 (General Provisions) for #uses# in parking requirement category D (Places of Assembly) whenever such #uses# are located on the same #zoning lot# as other #uses#, proportionate to the extent that the Board finds:

- (a) that the spaces #accessory# to such other #uses# will remain available for #use# by persons visiting the place of assembly during the entire period that such place of assembly remains in #use#; and
- (b) that, in accordance with submitted schedules of the times of operation for all #uses# on the #zoning lot#, there will be no conflict in the #use# of such #accessory# off-street parking spaces, and that the provision of the full quota of required off-street parking spaces for places of assembly is therefore not needed. The permit to reduce such spaces shall be automatically revoked whenever there is a change in the nature of the conditions upon which such reduced requirements were based, including changes in #use#, availability of spaces or hours of operation.

(3/22/16)

### **73-433**

#### **Reduction of existing parking spaces for income-restricted housing units**

For #zoning lots# within the #Transit Zone# with #buildings# containing #income-restricted housing units# in receipt of a certificate of occupancy prior to March 22, 2016, the Board of Standards and Appeals may permit a waiver of, or a reduction in, the number of #accessory# off-street parking spaces required for such #income-restricted housing units# prior to March 22, 2016, provided that the Board finds that such waiver or reduction will:

- (a) facilitate an improved site plan;
- (b) facilitate the creation or preservation of affordable housing, where a #development# includes new #residential floor area# on the #zoning lot#;
- (c) not cause traffic congestion; and

- (d) not have undue adverse effects on residents, businesses or #community facilities# in the surrounding area, as applicable, including the availability of parking spaces for such #uses#.

Factors to be considered by the Board may include, without limitation, the use of the existing parking spaces by residents of the #zoning lot#, the availability of parking in the surrounding area and the proximity of public transportation. The Board may impose appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.

(3/22/16)

### **73-434**

#### **Reduction of existing parking spaces for affordable independent residences for seniors**

For #zoning lots# outside the #Transit Zone# with #buildings# containing #affordable independent residences for seniors# in receipt of a certificate of occupancy prior to March 22, 2016, the Board of Standards and Appeals may permit a reduction in the number of #accessory# off-street parking spaces required for such #affordable independent residences for seniors# prior to March 22, 2016, provided that the Board finds that:

- (a) such reduction will facilitate an improved site plan;
- (b) any new #dwelling units# created on the portion of the #zoning lot# previously occupied by such parking spaces will be #income-restricted housing units#;
- (c) such reduction will not cause traffic congestion; and
- (d) such reduction will not have undue adverse effects on residents, businesses or #community facilities# in the surrounding area, as applicable, including the availability of parking spaces for such #uses#.

Any permitted reduction shall be in compliance with the parking requirement for #affordable independent residences for seniors# developed after March 22, 2016, as set forth in Section 25-252.

Factors to be considered by the Board may include, without limitation, the use of the existing parking spaces by residents of the #zoning lot#, the availability of parking in the surrounding area and the proximity to public transportation. The

Board may impose appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.

(3/22/16)

### **73-435**

#### **Reduction of parking spaces for other government-assisted dwelling units**

In all districts in the #Transit Zone#, the Board of Standards and Appeals may permit a waiver of, or reduction in, the number of required #accessory# off-street parking spaces required for government-assisted #dwelling units# subject to restrictions on rents in #developments# or #enlargements#, provided that the conditions and findings set forth in this Section are met.

As a condition for such waiver or reduction, at least 20 percent of all #dwelling units# in such #development# or #enlarged building# shall be #income-restricted housing units#, and an additional 30 percent of all #dwelling units# in such #development# or #enlarged building# shall be subject to a legally binding restriction limiting rents as prescribed by a City, State, or Federal agency, law, regulation, or regulatory agreement, for a period of not less than 30 years.

In order to grant such permit, the Board shall find that such waiver or reduction will:

- (a) facilitate such #development# or #enlargement#;
- (b) not cause traffic congestion; and
- (c) not have undue adverse effects on residents, businesses or #community facilities# in the surrounding area, as applicable, including the availability of parking spaces for such #uses#.

The Board may impose appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.

(9/9/04)

### **73-44**

#### **Reduction of Parking Spaces for Ambulatory Diagnostic or**

**Treatment Facilities Listed in Use Group 4 and Uses in Parking Requirement Category B1**

In the districts indicated, the Board of Standards and Appeals may permit a reduction in the number of #accessory# off-street parking spaces required by the provisions of Section 36-21 or 44-21 (General Provisions) for ambulatory diagnostic or treatment facilities listed in Use Group 4 and #uses# in parking requirement category B1 in Use Group 6, 7, 8, 9, 10, 11, 14 or 16 to the applicable number of spaces specified in the table set forth at the end of this Section, provided that the Board finds that occupancy by ambulatory diagnostic or treatment facilities listed in Use Group 4 or #uses# in parking category B1 is contemplated in good faith on the basis of evidence submitted by the applicant. In such a case the Board shall require that the certificate of occupancy issued for the #building# within which such #use# is located shall state that no certificate shall thereafter be issued if the #use# is changed to a #use# listed in parking category B unless additional #accessory# off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius.

REDUCED ACCESSORY OFF-STREET  
 PARKING SPACES REQUIRED FOR AMBULATORY DIAGNOSTIC  
 OR TREATMENT FACILITIES LISTED IN USE GROUP 4 AND  
 COMMERCIAL USES IN PARKING REQUIREMENT CATEGORY B1

Parking Spaces Required per Number of Square Feet of #Floor Area#*	Districts
1 per 400	C1-1 C2-1 C3 C4-1
1 per 600	C1-2 C2-2 C4-2 C8-1 M1-1 M1-2 M1-3 M2-1 M2-2 M3-1
1 per 800	C1-3 C2-3 C4-3 C7 C8-2

\* For ambulatory diagnostic or treatment facilities listed in Use Group 4, parking spaces required per number of square feet of #floor area# or #cellar# space, except #cellar# space #used# for storage

(5/8/13)

## **Modification of Off-Site Parking Provisions**

In all districts, the Board of Standards and Appeals may modify the provisions regulating the location of #accessory# off-street parking spaces provided off the site, in accordance with the provisions of this Section which are applicable in the specified district. However, in no event shall #accessory# off-street parking spaces be permitted off-site in a #public parking garage#.

This Section shall not apply to the #Manhattan Core# where the regulations set forth in Article I, Chapter 3, shall apply.

In all cases, the Board may impose appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.

(2/2/11)

### **73-451**

#### **For residences**

The Board of Standards and Appeals may permit off-site spaces #accessory# to #residences# or to #non-profit hospital staff dwellings# to be located in any district except an R1 or R2 District, or at a greater distance from the #zoning lot# than the maximum distance specified in the applicable district regulations, provided that the following special findings are made:

- (a) that the required #accessory# on-street parking spaces cannot reasonably be provided on the #zoning lot# because of physical conditions including irregularity, narrowness or shallowness of lot size or shape, or exceptional topographical or other physical conditions;
- (b) that within the maximum permitted radius for off-site parking or within a district other than a #Residence District#, there is substantial difficulty in obtaining a site of sufficient size to accommodate the required #accessory# off-street parking spaces because such sites are occupied by substantial improvements;
- (c) that where such spaces are located at a greater distance from the #zoning lot# than the maximum distance permitted by the district regulations, such distance is not greater than as shown in the following table for the specified districts; and

Maximum Distance (in feet)	Districts
1,200	R3 R4 R5 R6 R7-1 R7B C1-1 C1-2 C1-3 C2-1 C2-2 C2-3 C3 C4-1 C4-2 C4-3
1,500	R7-2 R7A R7X R8 R9 R10 C1-4 C1-5 C1-6 C1-7 C1-8 C1-9 C2-4 C2-5 C2-6 C2-7 C2-8 C4-4 C4-5 C4-6 C4-7 C5 C6

- (d) that where such off-site spaces are located in a #Residence District#, they are so located as not to impair the essential character or the future use or development of the nearby residential neighborhood.

(6/27/63)

### **73-452**

#### **For community facilities in Residence Districts**

The Board of Standards and Appeals may permit off-street parking spaces #accessory# to a #community facility use# other than a #non-profit hospital staff dwelling#, which #use# is located in an R1, R2, R3 or R4 District, to be provided off-site and located in any district, or may permit off-street parking spaces #accessory# to a #community facility use# other than a #non-profit hospital staff dwelling#, which #use# is located in any other #Residence District#, to be provided off-site and located in an R1, R2, R3 or R4 District or located in any other #Residence District# at a greater distance from the #zoning lot# than the maximum distance specified in Section 25-53 (Off-Site Spaces for Permitted Non-Residential Uses), provided that in such instances, all such spaces shall be not further than 600 feet from the nearest boundary of the #zoning lot# containing such #use#, and provided further that the following special findings are made:

- (a) that where such spaces are located in an R1 or R2 District, the #community facility use# to which they are #accessory# is a #use# permitted as-of-right in such district;
- (b) that there is no way to arrange such spaces on the same #zoning lot# as such #use#;

- (c) that such spaces are so located as to draw a minimum of vehicular traffic to and through #streets# having predominantly #residential# frontage; and
- (d) either that such spaces are located on an adjoining #zoning lot# or a #zoning lot# directly across the #street# from such #use# or, if such spaces are not so located, that there is substantial difficulty in obtaining a site of sufficient size to accommodate the required #accessory# off-street parking spaces on an adjoining #zoning lot# or a #zoning lot# directly across the #street# from such #use# or in a location where such off-site spaces would be permitted as-of-right, because such sites are occupied by substantial improvements.

(6/27/63)

### **73-453**

#### **For non-residential uses in Commercial or Manufacturing Districts**

For non-#residential uses#, other than #non-profit hospital staff dwellings#, the Board of Standards and Appeals may extend the maximum permitted radius for off-site parking spaces located in #Commercial# or #Manufacturing Districts#, as specified in Sections 25-53 (Off-Site Spaces for Permitted Non-Residential Uses), 36-43 (Off-Site Spaces for Commercial or Community Facility Uses) or 44-32 (Off-Site Spaces for All Permitted Uses), from 600 to 1,200 feet, whenever the Board finds:

- (a) that the required #accessory# off-street parking spaces cannot reasonably be provided on the #zoning lot# because of physical conditions including irregularity, narrowness or shallowness of lot size or shape, or exceptional topographical or other physical conditions; and
- (b) that, within 600 feet of a boundary of the #zoning lot#, there is substantial difficulty in obtaining a site of sufficient size to accommodate the required #accessory# off-street parking spaces because such sites are occupied by substantial improvements.

(9/9/04)

### **73-454**

#### **For houses of worship**

The Board of Standards and Appeals may modify, as applicable, the provisions of Sections 25-53 (Off-Site Spaces for Permitted Non-Residential Uses), 25-542 (Shared parking facilities for houses of worship), 36-43 (Off-Site Spaces for Commercial or Community Facility Uses), 36-442 (Shared parking facilities for houses of worship), 44-32 (Off-Site Spaces for All Permitted Uses) or 44-332 (Shared facilities for houses of worship), relating to the maximum permitted distance of the location of #accessory# off-street parking spaces for houses of worship, provided that in such instances all such spaces shall be not further than 1,000 feet from the nearest boundary of the #zoning lot# containing such house of worship, upon finding that:

- (a) such spaces conform to all applicable regulations of the district in which they are located; and
- (b) the location of such spaces will not result in undue traffic congestion in the area.

The Board may impose appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.

(2/2/11)

### **73-46**

#### **Waiver of Requirements for Conversions**

In R6 or R7-1 Districts, in C1 or C2 Districts mapped within R6 or R7-1 Districts, or in C4-2 or C4-3 Districts, where the number of #accessory# off-street parking spaces required for additional #dwelling units# created by #conversions# of any kind exceeds the number of spaces which may be waived as of right under the provisions of Sections 25-262 (For conversions), 36-363 (For conversions in C1 or C2 Districts governed by surrounding Residence District bulk regulations) or 36-364 (For conversions in C4 Districts), the Board of Standards and Appeals may waive all or part of the required spaces, provided that the Board finds that there is neither a practical possibility of providing such spaces:

- (a) on the same #zoning lot# because of insufficient #open space# and the prohibitive cost of structural changes necessary to provide the required spaces within the #building#; nor
- (b) on a site located within 1,200 feet of the nearest boundary of the #zoning lot# because all sites within such radius are

occupied by substantial improvements.

(5/8/13)

**73-47**

**Rental of Accessory Off-Street Parking Spaces to Non-Residents**

In C1 or C5 Districts, for a term not to exceed five years, the Board of Standards and Appeals may permit off-street parking spaces #accessory# to #residences# or #non-profit hospital staff dwellings# to be rented for periods of less than one week, to persons who are not occupants of such #residences# or #non-profit hospital staff dwellings#, provided that such rental of spaces conforms to the provisions set forth in Section 36-46 (Restrictions on Use of Accessory Off-Street Parking Spaces) and that the following special findings are made:

- (a) that the number of spaces to be rented or the location of access, thereto, is such as to draw a minimum of vehicular traffic to and through #streets# having predominantly #residential# frontages;
- (b) that the total number of spaces to be rented to non-residents does not exceed 100; and
- (c) that where the total number of spaces to be rented to non-residents exceeds 20, reservoir space is provided at the vehicular entrance to accommodate 10 automobiles or 20 percent of the spaces so rented, whichever amount is less.

The Board may impose appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area, including limitations on #signs# or requirements for the shielding of floodlights.

This Section shall not apply to the #Manhattan Core# where the regulations set forth in Article I, Chapter 3, shall apply.

(5/8/13)

**73-48**

**Exceptions to Maximum Size of Accessory Group Parking Facilities**

The Board of Standards and Appeals may permit #accessory group parking facilities# with more than 150 spaces in #Commercial# or #Manufacturing Districts# or for hospital and related facilities

in #Residence Districts# in accordance with the provisions of this Section provided that such provisions shall not apply to #accessory# off-street parking spaces provided in #public parking garages# in accordance with the provisions of Section 36-57 or 44-46 (Accessory Off-Street Parking Spaces in Public Parking Garages).

This Section shall not apply to the #Manhattan Core# where the regulations set forth in Article I, Chapter 3, shall apply.

(2/2/11)

### **73-481**

#### **For hospitals and related facilities in Residence Districts**

The Board of Standards and Appeals may permit #accessory group parking facilities# with more than 150 spaces for hospitals and related facilities in all #Residence Districts#, provided that the following findings are made:

- (a) that such facility is so located as to draw a minimum of vehicular traffic to and through local #streets# in residential areas;
- (b) that such facility has adequate reservoir space at the vehicular entrance to accommodate either 10 automobiles or five percent of the total parking spaces provided by the facility, whichever amount is greater, but in no event shall such reservoir space be required for more than 20 automobiles; and
- (c) that the #streets# providing access to such #use# will be adequate to handle the traffic generated thereby.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area, including requirements for locations of entrances and exits or for shielding of floodlights.

(6/27/63)

### **73-482**

#### **In Commercial or Manufacturing Districts**

The Board of Standards and Appeals may permit #accessory group parking facilities# with more than 150 spaces in #Commercial# or

#Manufacturing Districts#, provided either that such facilities have separate entrances and exits on two or more #streets# or that the following findings are made:

- (a) that such facility, if #accessory# to a non-#residential use#, other than a #non-profit hospital staff dwelling#, has adequate reservoir space at the vehicular entrance to accommodate either 10 automobiles or five percent of the total parking spaces provided by the facility, whichever amount is greater, but in no event shall such reservoir space be required for more than 50 automobiles; and
- (b) that the #streets# providing access to such #use# will be adequate to handle the traffic generated thereby.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area, including limitations on #signs# or requirements for locations of entrances or for shielding of floodlights.

(6/27/63)

### **73-49**

#### **Roof Parking**

In C2-1, C2-2, C2-3, C2-4, C4-1, C4-2, C4-3, C4-4, C7, C8-1, C8-2, C8-3, M1-1, M1-2, M1-3, M2-1, M2-2 or M3-1 Districts, the Board of Standards and Appeals may permit the parking or storage of motor vehicles on the roof of a #public parking garage# with a total of 150 spaces or less and, in all districts, the Board may permit modifications of the applicable provisions of Sections 25-11, 36-11 or 44-11 (General Provisions) so as to permit #accessory# off-street parking spaces to be located on the roof of a #building#. As a condition of permitting such roof parking, the Board shall find that the roof parking is so located as not to impair the essential character or the future use or development of adjacent areas.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area, including requirements for setback of roof parking areas from #lot lines#, or for shielding of floodlights.

(6/12/96)

### **73-50**

## **Special Provisions Applying Along District Boundaries**

In appropriate cases, for #zoning lots# with single frontage, the Board of Standards and Appeals may permit primary business entrances, #show windows#, or #signs# not otherwise permitted under the provisions of Section 32-51 or 42-44 (Limitations on Business Entrances, Show Windows or Signs), provided that in no case shall any such primary business entrance, #show window# or #sign# be permitted within 10 feet of a #Residence District# boundary.

In addition, in appropriate cases, the Board may waive the requirements for #rear yards# or #side yards# set forth in Sections 33-29 or 43-30 (Special Provisions Applying along District Boundaries) or the requirements for #front yards# as set forth in Section 34-233 (Special provisions applying along district boundaries).

It is further provided that, in appropriate cases, the Board may waive in whole or in part the #front yard# requirement set forth in Section 43-304 (Required front yards along district boundary located in street) after finding that such waiver will not have an adverse effect on the surrounding area. The Board shall prescribe appropriate conditions and safeguards to preserve and enhance the character of the surrounding area, and to ensure the maintenance of resulting #front yards#.

(6/22/63)

### **73-51**

#### **Modification of Supplementary Use Regulations**

In C1, C2, C3, C4, C5, C6 or C7 Districts, the Board of Standards and Appeals may permit public utility radio or television facilities which do not comply with the applicable provisions of Section 32-42 (Location within Buildings) to be located on the top #story# or the roof of a #building# and may prescribe appropriate conditions and safeguards to minimize adverse effects on #uses# occupying lower #stories# or on the character of the surrounding area.

In addition, the Board may permit public utility antennas, microwave platforms and dishes or other radio or television equipment to penetrate the maximum height limit or the #sky exposure plane# set forth in Section 33-43 (Maximum Height of Walls and Required Setbacks) or 33-44 (Alternate Front Setbacks) provided that such equipment shall not exceed 20 feet in height.

(6/25/64)

### **73-52**

#### **Modifications for Zoning Lots Divided by District Boundaries**

Whenever a #zoning lot# existing in single ownership on December 15, 1961, or on the effective date of any applicable subsequent amendment to the #zoning maps# is divided by a boundary between two or more districts in which different #uses# are permitted, the Board of Standards and Appeals may permit a #use# which is a permitted #use# in the district in which more than 50 percent of the #lot area# of the #zoning lot# is located to #extend# not more than 25 feet into the remaining portion of the #zoning lot#, where such #use# is not a permitted #use#, provided that the following findings are made:

- (a) that, without any such extension, it would not be economically feasible to use or #develop# the remaining portion of the #zoning lot# for a permitted #use#; and
- (b) that such extension will not cause impairment of the essential character or the future use or development of the surrounding area.

Where such an extension of a #use# is permitted, the Board may permit the #bulk#, off-street parking and loading, and all other regulations of the district in which more than 50 percent of the #lot area# of the #zoning lot# is located, to apply for the distance, not exceeding 25 feet, that such #use# is permitted to #extend# into the remaining portion of the #zoning lot#.

Any portion of the #zoning lot# beyond such distance shall be subject to all the regulations of the district in which it is located, and shall not be counted as #lot area# for a #building or other structure#, or portion thereof, used for such #extended use#.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effect on the character of the surrounding area.

(2/2/11)

### **73-53**

#### **Enlargements or Extensions of Certain Manufacturing or Related Uses**

- (a) In all districts, the Board of Standards and Appeals may modify #use# and #bulk# regulations to permit the #enlargement# or #extension# of #floor area# of a conforming or #non-conforming use# listed in Section 15-50 (REFERENCED COMMERCIAL AND MANUFACTURING USES), provided that:
- (1) such #use# is not subject to termination pursuant to Section 52-70, et seq.;
  - (2) the #use# for which such special permit is being sought has been lawfully located on the #zoning lot# on which the expansion is to occur, or a portion thereof, for five years or more;
  - (3) the #building# in which such #use# is located has not previously been #enlarged#, pursuant to Sections 11-412, 43-121 or 72-21;
  - (4) the #use# is not listed in Use Group 18; and
  - (5) in a #Residence District#, such #enlargement# or #extension# shall be permitted in existing #floor area# or on a vacant portion of a #zoning lot# only when no lawful #residential use# has occupied such #floor area# or vacant portion of a #zoning lot# at any time during the five years prior to the date of application for such special permit.
- (b) Any #enlargement# or #extension# permitted pursuant to this Section shall be subject to the following requirements:
- (1) the permitted #enlargement# or #extension# may be the greater of:
    - (i) 45 percent of the #floor area# occupied by such #use# on December 17, 1987; or
    - (ii) 2,500 square feet additional to the #floor area# occupied by such #use# on December 17, 1987.

In no event shall the amount of #enlargement# or #extension# under paragraph (b)(i) of this Section exceed 10,000 square feet additional to the #floor area# occupied by such #use# on December 17, 1987;
  - (2) unless the #zoning lot# is located within an M2 or M3 District, more than 300 feet from a #Residence District# boundary, any #enlarged# or #extended# portion, or activity generated by such #enlargement# or #extension#, including storage and processing, shall be

in #completely enclosed buildings#;

- (3) in the case of a #non-conforming use#, such #enlarged# or #extended use# shall conform to all performance standards applicable in a M1 District located at the boundary with a #Residence District#; however, conforming #uses# shall conform to the applicable performance standards of the district in which they are located;
  - (4) no open #uses# of any kind, including storage or processing, shall be permitted within 30 feet of a #rear lot line# that is located within a #Residence District# or within 30 feet of the #rear lot line# that coincides with a #rear lot line# of a #zoning lot# in a #Residence District#;
  - (5) no #enlargement# or #extension# that exceeds 16 feet above #curb level# shall be permitted within 30 feet of the #rear lot line# that coincides with a #rear lot line# of a #zoning lot# in a #Residence District#;
  - (6) no #enlargement# or #extension# that exceeds 16 feet above #curb level# shall be permitted within eight feet of the #side lot line# that coincides with a #rear lot line# of a #zoning lot# in a #Residence District#;
  - (7) no open #uses# of any kind, including storage or processing, shall be permitted within eight feet of the #side lot line# that coincides with a #rear lot line# of a #zoning lot# in a #Residence District#;
  - (8) no #enlargement# or #extension#, or open #uses# of any kind, including storage or processing, shall be permitted within eight feet of the #lot line# which coincides with a #side lot line# of a #zoning lot# in an R1, R2, R3, R4 or R5 District; and
  - (9) no #side yard# shall be required in an R6, R7, R8, R9 or R10 District or in a #Commercial or #Manufacturing District#; however, if such #side yard# is provided, it must be at least eight feet in width.
- (c) In granting such special permit, the Board shall find:
- (1) that such #enlargement# or #extension# will not generate significant increases in vehicular or pedestrian traffic nor cause congestion in the surrounding area;

- (2) that there will be adequate parking for any vehicles generated by such #enlargement# or #extension#;
- (3) that any required #side yard# shall be suitably landscaped or fenced as the Board shall prescribe;
- (4) that any #accessory# parking or loading generated by such #enlargement# or #extension# shall be suitably buffered from adjacent #uses# by methods that the Board shall prescribe; and
- (5) that the special permit, if granted, will not alter the essential character of the neighborhood or district in which the #use# is located, nor impair the future use or development of the surrounding area.

The Board may prescribe appropriate conditions and safeguards including, if appropriate, limitations on hours of parking and delivery, requirements for off-street loading, and location of curb cuts to minimize adverse effects of the #enlargement#, #extension# or existing #uses# on the character of the surrounding area, and to protect #residential# or #commercial zoning lots#.

(7/22/71)

### **73-60**

#### **MODIFICATIONS OF BULK REGULATIONS**

(8/26/92)

### **73-61**

#### **General Provisions**

Subject to the general findings required by Section 73-03 and in accordance with the provisions contained in Sections 73-62 to 73-68 inclusive, the Board of Standards and Appeals shall have the power to permit modification of the #bulk# regulations of this Resolution, and shall have the power to impose appropriate conditions and safeguards thereon.

In the #Special Midtown District#, the powers of the Board to permit modification of the #bulk# regulations are made inapplicable in accordance with the provisions of Section 81-061 (Applicability of Chapter 3 of Article VII).

(2/2/11)

**73-62**

**Modification of Bulk Regulations for Buildings Containing Residences**

(2/2/11)

**73-621**

**Enlargement, change of use, or extension within buildings containing residential uses**

For a complying or #non-complying building# existing on December 15, 1961, or in R2X, R3, R4 or R5 Districts on June 30, 1989, and containing #residential uses#, the Board of Standards and Appeals may permit an #enlargement#, a change of #use# or (in the case of a #mixed building#) an #extension#, provided that such #enlargement#, change of #use# or #extension# shall not create any new #non-compliance# or increase the amount or degree of any existing #non-compliance# except as provided in this Section.

In the districts and for the #buildings# for which an #open space ratio# is required, the #open space ratio# permitted under this Section shall not be less than 90 percent of the #open space ratio# required under the applicable #bulk# regulations set forth in Article II or III of this Resolution. In the districts and for the #buildings# to which a maximum #lot coverage# applies, the maximum #lot coverage# permitted under this Section shall not exceed 110 percent of the maximum #lot coverage# permitted under the applicable #bulk# regulations set forth in Article II or III of this Resolution. In all districts, the #floor area ratio# permitted under this Section shall not exceed the #floor area ratio# permitted under such regulations by more than 10 percent. In R2X, R3 or R4 Districts, the additional #floor area# permitted pursuant to this Section may be computed using a base #floor area ratio# including the #floor area# permitted under a sloping roof with a structural headroom between five and eight feet when such space is provided in the #building#.

(10/27/16)

**73-622**

**Enlargements of single- and two-family detached and semi-detached**

## residences

The Board of Standards and Appeals may permit an #enlargement# of an existing #single-# or #two-family detached# or #semi-detached residence# within the following areas:

- (a) Community Districts 11 and 15, in the Borough of Brooklyn;
- (b) R2 Districts within the area bounded by Avenue I, Nostrand Avenue, Kings Highway, Avenue O and Ocean Avenue, Community District 14, in the Borough of Brooklyn; and
- (c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE OF PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

Such #enlargement# may create a new #non-compliance#, or increase the amount or degree of any existing #non-compliance#, with the applicable #bulk# regulations for #lot coverage#, #open space#, #floor area#, #side yard#, #rear yard# or perimeter wall height regulations, provided that:

- (1) any #enlargement# within a #side yard# shall be limited to an #enlargement# within an existing #non-complying side yard# and such #enlargement# shall not result in a decrease in the existing minimum width of open area between the #building# that is being #enlarged# and the #side lot line#;
- (2) any #enlargement# that is located in a #rear yard# is not located within 20 feet of the #rear lot line#; and
- (3) any #enlargement# resulting in a #non-complying# perimeter wall height shall only be permitted in R2X, R3, R4, R4A and R4-1 Districts, and only where the #enlarged building# is adjacent to a #single-# or #two-family detached# or #semi-detached residence# with an existing #non-complying# perimeter wall facing the #street#. The increased height of the perimeter wall of the #enlarged building# shall be equal to or less than the height of the adjacent #building's non-complying# perimeter wall facing the #street#, measured at

the lowest point before a setback or pitched roof begins. Above such height, the setback regulations of Section 23-631, paragraph (b), shall continue to apply.

The Board shall find that the #enlarged building# will not alter the essential character of the neighborhood or district in which the #building# is located, nor impair the future use or development of the surrounding area. The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.

(3/22/16)

### **73-623**

#### **Bulk modifications for certain Quality Housing buildings on irregular sites**

For #developments# or #enlargements# of #Quality Housing buildings# in which at least 50 percent of the #dwelling units# are #income-restricted housing units#, or at least 50 percent of its total #floor area# is a #long-term care facility# or philanthropic or non-profit institution with sleeping accommodation, the Board of Standards and Appeals may modify the underlying #bulk# regulations, other than #floor area ratio#, provided that in no event shall such #building# height or the number of #stories# therein exceed those set forth in paragraph (b) of Section 23-664 (Modified height and setback regulations for certain Inclusionary Housing buildings or affordable independent residences for seniors), and provided that the Board finds that:

- (a) there are physical conditions, including irregularity, narrowness or shallowness of lot size or shape, or topographical features that create practical difficulties in complying with the #bulk# regulations for #Quality Housing buildings# and would adversely affect the #building# configuration or site plan;
- (b) the practical difficulties of developing on the #zoning lot# have not been created by the owner or by a predecessor in title;
- (c) the proposed modifications will not unduly obstruct access of light and air to adjoining properties or #streets#;
- (d) the proposed scale and placement of the #development# or #enlargement# relates harmoniously with the surrounding area; and

- (e) the requested modification is the least amount necessary to relieve such practical difficulties.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.

(3/22/16)

### **73-624**

#### **Reduction or modification of Mandatory Inclusionary Housing requirements**

For a #development#, #enlargement# or #conversion# subject to the provisions of paragraph (d)(3), inclusive, of Section 23-154 (Inclusionary Housing), the Board of Standards and Appeals may, upon determining that a hardship that is specifically created by the requirements of such Section exists, modify the income levels specified for #qualifying households#, reduce the amount of #affordable floor area# required or reduce the amount of a payment into the #affordable housing fund#, provided the Board finds that:

- (a) the applicant has applied for any appropriate relief for which such #development#, #enlargement# or #conversion# is eligible for any financial hardship or practical difficulty not specifically created by the requirements of Section 23-154, paragraphs (d)(3)(i) through (d)(3)(v) and (d)(5);
- (b) such requirements for #affordable housing# or a contribution to an #affordable housing fund# create an unnecessary hardship, with no reasonable possibility that a #development#, #enlargement# or #conversion# on the #zoning lot# in strict compliance with the provisions of Section 23-154, paragraphs (d)(3)(i) through (d)(3)(v) and (d)(5), and Section 23-90 (INCLUSIONARY HOUSING), inclusive, will bring a reasonable return, and that a modification or reduction of these requirements is therefore necessary to enable the owner to realize a reasonable return from such #zoning lot#; and
- (c) the unnecessary hardship claimed as a basis for such modification or reduction has not been created by the owner or by a predecessor in title.

In determining whether a hardship exists, the Board shall consider whether alternative permitted #uses#, or alternative

forms of housing tenure would bring a reasonable return from the #zoning lot#.

The Board may modify #affordable housing# requirements set forth in Section 23-154, paragraphs (d)(3)(i) through (d)(3)(iv) and (d)(5), to permit appropriate relief as follows.

First, the Board shall determine whether compliance with the requirements of Option 1, Option 2 or the Deep Affordability Option, as set forth in Section 23-154, paragraphs (d)(3)(i), (d)(3)(ii) and (d)(3)(iii), respectively, where not otherwise permitted, provides sufficient relief.

If the Board does not so find, the Board shall next determine whether compliance with the requirements of the Workforce Option, as set forth in Section 23-154, paragraph (d)(3)(iv), where not otherwise permitted, provides sufficient relief.

If the Board does not so find, the Board, in consultation with the Department of Housing Preservation and Development, shall determine a modification or reduction of the requirements of Section 23-154, paragraph (d)(3)(i) through (d)(3)(iv) and (d)(5), that represents the minimum necessary modification or reduction to afford relief.

In addition, the Board, in consultation with the Department of Housing Preservation and Development, may permit a modification or reduction of the requirements of Section 23-154, paragraph (d)(3)(v) that represents the minimum necessary modification or reduction to afford relief.

A copy of each application to the Board for a special permit under the provisions of this Section shall be provided by the applicant to the Department of Housing Preservation and Development concurrently with its submission to the Board. Before the Board issues a final determination on any application made pursuant to this Section, #HPD# shall submit comment or appear before the Board regarding such application.

A special permit pursuant to this Section shall lapse after a term of four years, pursuant to Section 73-70 (LAPSE OF PERMIT). When considering an application for renewal of a special permit pursuant to paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), the Board shall consult with #HPD# in determining whether the circumstances warranting the original grant of such permit still obtain, and may renew, modify, or deny the application for renewal, as appropriate.

The Board may prescribe such conditions and safeguards as it

deems necessary to minimize adverse effects upon the surrounding area and the community at large.

(2/2/11)

### **73-63**

#### **Enlargement of Non-Residential Buildings**

For a complying or #non-complying non-residential building# existing on December 15, 1961, the Board of Standards and Appeals may permit an #enlargement#, provided that such #enlargement# shall not create any new #non-compliance# or increase the amount or degree of any existing #non-compliance# except as provided in this Section.

In all districts, the #floor area ratio# permitted under this Section shall not exceed the #floor area ratio# permitted under the applicable #bulk# regulations set forth in Article II, III or IV of this Resolution by more than 10 percent, or 10,000 square feet, whichever is less.

(9/9/04)

### **73-64**

#### **Modifications for Community Facility Uses**

On a #zoning lot# occupied by any of the #community facility uses# specified in this Section, and in all districts where such #uses# are permitted as-of-right or by special permit, the Board of Standards and Appeals may permit #developments# or #enlargements# for such #uses#, which do not comply with certain applicable district #bulk# regulations, in accordance with the provisions of this Section.

Such specified #community facility uses# are:

College or school student dormitories or fraternity and sorority student houses

Colleges or universities, including professional schools, but excluding business colleges or trade schools

Community centers

Houses of worship, rectories, parish houses or seminaries

Libraries, museums or non-commercial art galleries

Monasteries, convents or novitiates

#Non-profit hospital staff dwellings#

Non-profit or voluntary hospitals and related facilities

Philanthropic or non-profit institutions with or without sleeping accommodations, excluding ambulatory diagnostic or treatment health care facilities listed in Use Group 4

#Schools#.

(3/22/16)

### **73-641**

#### **Integration of new buildings or enlargements with existing buildings**

For any such new #building# or #enlargement#, subject to the required findings set forth in this Section, the Board of Standards and Appeals may permit modifications of the applicable regulations in Sections 24-38, 33-28 or 43-28 (Special Provisions for Through Lots), or in Sections 24-50 through 24-55, inclusive, paragraphs (b) and (c) of Section 24-56, Sections 33-40 through 33-45, inclusive, or Sections 43-41 through 43-45, inclusive, relating to Height and Setback Regulations, or in Sections 24-61 through 24-65, inclusive, Section 33-51, or Section 43-51, relating to Court Regulations and Minimum Distance between Windows and Walls or Lot Lines, provided that on December 15, 1961, the applicant owned the #zoning lot# or any portion thereof, and continuously occupied and used one or more #buildings# located thereon for a specified #community facility use#, from December 15, 1961, until the time of application. However, for #Quality Housing buildings# utilizing the height and setback regulations of Article II, Chapter 3, as required by Sections 24-50 and 33-40, the Board shall not permit modification to the provisions of Sections 23-67 through 23-69, inclusive.

As a condition of granting such modification, the Board shall find:

- (a) that such modification is required in order to enable such #use# to provide an essential service to the community;
- (b) that without such modification there is no way to design and

construct the new #buildings# or #enlargements# in satisfactory physical relationships to the existing #buildings# which are to remain upon the site, so as to produce an integrated development; and

- (c) that such modification is the minimum modification necessary to permit the development of such integrated community facility, and thereby creates the least detriment to the character of the neighborhood and the use of nearby #zoning lots#.

(2/2/11)

### **73-642**

#### **Temporary failure to comply**

In any district where such a specified #community facility use# is permitted, and on any #zoning lot# where one or more #buildings# occupied by such #use# exist on the date of application for the special permit, the Board of Standards and Appeals may permit #development# or #enlargements# which, only because of the continued existence of such #buildings# on a temporary basis, fail to comply with one or more of the applicable district #bulk# regulations, provided that the Board finds that continued use of the existing #buildings# is essential as a service to the community until the new construction makes it possible to replace the facilities contained therein.

The Board shall prescribe as a condition of such permit that such existing #buildings# will be removed within a stated period of time not to exceed two years after completion of the #development# or #enlargement#.

(2/2/11)

### **73-643**

#### **Community centers**

In any such #development# or #enlargement# consisting of a community center serving primarily the residents of the #zoning lot#, the Board of Standards and Appeals may permit the density regulations set forth in Sections 24-20 (APPLICABILITY OF DENSITY REGULATIONS TO ZONING LOTS CONTAINING BOTH RESIDENTIAL AND COMMUNITY FACILITY USES) or 35-40 (APPLICABILITY OF DENSITY REGULATIONS) to be modified, provided that the total number of #dwelling units# permitted by these Sections and all other

applicable #bulk# regulations set forth in Articles II and III of this Resolution shall not be increased by more than 10 percent.

(3/8/62)

### **73-65**

#### **Enlargement of Public Utility Facilities**

The Board of Standards and Appeals may permit an #enlargement# which does not comply with the applicable district #bulk# regulations for any #building or other structure# existing on December 15, 1961, within which any one of the following public utilities is located:

Electric or gas utility substations

Telephone exchanges or other communications equipment structures

Water or sewage pumping stations;

provided that the following findings are made:

- (a) that the growth of the utility service demand in the area served by the #building or other structure# requires such #enlargement# to house the additional facilities needed to fulfill the demand;
- (b) that the network of lines, pipes or other distribution facilities located below the surface of the #streets# is so integrated with the operations carried on within such #building# that the provision of such additional facilities at another location would cause substantial duplication of plant and facilities and inconvenience to the public; and
- (c) that #non-compliance#, if any, with the applicable #yard# or height and setback regulations is the minimum made necessary by essential engineering requirements.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area and shall require that the certificate of occupancy shall be limited to such #use#.

(7/23/64)

## **73-66**

### **Height Regulations around Airports**

The Board of Standards and Appeals may permit the construction, #enlargement#, or reconstruction of a #building or other structure# in excess of the height limits established under Sections 61-21 (Restriction on Highest Projection of Building or Structure) or 61-22 (Permitted Projection within any Flight Obstruction Area), provided that the applicant submits a site plan, with elevations, showing the proposed #building or other structure# in relation to such maximum height limits, and that the Board finds that such proposed #building or other structure#, #enlargement#, or reconstruction would not constitute a hazard (either under the existing layout of the airport or under any planned reorientation or lengthening of the airport runways) to the safety of the occupants of such proposed #building#, to other #buildings# in the vicinity or to the safety of air passengers, and would not disrupt established airways.

The Board shall refer the application to the Federal Aeronautics Administration for a report as to whether such construction will constitute a danger to the safety of air passengers or disrupt established airways.

(10/29/07)

## **73-67**

### **Additional Floor Space of Public Parking Garages**

In C2-1, C2-2, C2-3, C2-4, C4-1, C4-2, C4-3, C4-4, C4-5D, C7, C8-1, C8-2, C8-3, M1-1, M1-2, M1-3, M2-1, M2-2 or M3-1 Districts, for #public parking garages# with a total of 150 spaces or less, the Board of Standards and Appeals may permit floor space on one or more #stories# to be exempted from the definition of #floor area# as set forth in Section 12-10 (DEFINITIONS), provided that all floor space so exempted is located not more than 23 feet above #curb level# and provided that the following findings are made:

- (a) that the additional floor space permitted is needed in order to prevent excessive on-street parking demand and relieve traffic congestion; and
- (b) that the hazards or disadvantages to the community at large resulting from the additional floor space permitted are outweighed by the advantages to be derived by the community therefrom under the conditions and safeguards imposed.

The Board may impose appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.

(2/2/11)

### **73-68**

#### **Height and Setback and Yard Modifications**

In C5-5, C6-8 and C6-9 Districts, the Board of Standards and Appeals may permit modifications of the applicable regulations in Sections 33-26 to 33-30, inclusive, relating to Rear Yard Regulations, or in Sections 33-41 to 33-45, inclusive, relating to Height and Setback Regulations.

The Board may grant such modifications upon consideration that the applicable height and setback or #rear yard# regulations cannot be complied with by some method feasible for the applicant to pursue because of size or irregular shape of the lot, size or irregular shape of the #block#, and width of #streets#. The Board shall also consider the characteristics of surrounding development.

The Board shall require, where appropriate, sufficient safeguards to ensure the free flow of pedestrian and vehicular traffic in the general area. The Board may prescribe additional appropriate conditions and safeguards to enhance the character of the surrounding area.

(4/30/08)

### **73-69**

#### **Rear Yard Modifications**

The Board of Standards and Appeals may permit modifications to the #rear yards# required pursuant to Sections 23-543, 24-393, 33-303 or 43-313 (For zoning lots with multiple rear lot lines) for #zoning lots# existing on April 30, 2008, provided the following findings are made:

- (a) that due to the irregular shape of the #zoning lot#, compliance with the #rear yard# regulations would create site planning constraints and adversely affect the layout and development of the site; and
- (b) that the requested reduction in #rear yard# depth is the

least amount necessary to grant relief.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.

(7/18/95)

### **73-70**

#### **LAPSE OF PERMIT**

A special permit for a specified #use# or for a modification of the #use# or #bulk# regulations granted under the provisions of this Resolution shall automatically lapse if substantial construction, in accordance with the plans for which such permit was granted, has not been completed within four years from the date of granting such permit by the Board of Standards and Appeals or, if judicial proceedings have been instituted to review the Board's decision, the four-year lapse period shall commence upon the date of entry of the final order in such proceedings, including appeals.