



DEPARTMENT OF BUILDINGS

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Issuance # 579

**OPERATIONS
POLICY AND PROCEDURE NOTICE # 10/99**

TO: Distribution
FROM: Barry G. Cox
DATE: December 30, 1999
RE: Sign Applications and Permits

PURPOSE: To ensure that signs in proximity to and within view of arterial highways and public parks comply with applicable zoning resolution and building code provisions.

SUPERSEDED: OPPN #1/97

REFERENCE: Zoning Resolution of the City of New York (ZR) §§12-10 (sign definition), 32-66 and 42-53

EFFECTIVE: IMMEDIATELY

SPECIFICS:

I. Applications for Signs and Sign Structures¹

All applications for signs and sign structures shall be filed and examined as follows:

1. In addition to the other information required on the PW-1 and all other requirements regarding illuminated signs, all applications for sign permits must contain the following:

¹ Sign structures include wall structures, roof structures, ground structures and flex sign structures.

(a) a statement in the description of proposed work indicating whether the application is for an “advertising sign, changeable copy permitted” or for a sign other than an advertising sign (a “non-advertising sign”),

(b) the proposed copy of the sign,

(c) a plot plan showing the zoning lot and exact location and size of the proposed sign, as well as the location, size and permit numbers for all other signs on the zoning lot with their size in square feet noted, AND

(d) a statement indicating whether the proposed sign will be within view of any public park or any road designated as an “Arterial Highway” (which includes “principal routes” “parkways” and “toll crossings”) on Appendix C of the Zoning Resolution or on the Master Plan of Arterial Highways for the City of New York, and the distance² of the sign from such public park or arterial highway.

2. All permit applications for sign structures must state whether the sign to be displayed will be an advertising sign or a non-advertising sign. No permit for a sign structure shall be issued unless there is an approved sign application for the particular location on the zoning lot.

3. Sign applications must be signed and authorized by the owner of the zoning lot.

4. All professionally certified applications for permits for any sign that will be located within 200 feet of an arterial highway or a public park or for a sign that will be larger (in square feet) than it is distant (in linear feet) from an arterial highway or a public park* (hereafter referred to as “a sign(s) in proximity to an arterial highway or a public park”) must be examined for compliance with zoning regulations and this PPN prior to issuance of a permit. (*E.g., a sign that is 400 square feet in size that is not more than 400 feet away from an arterial highway is a sign in proximity to an arterial highway.)

With respect to applications that are not professionally certified, all applications for permits for signs in proximity to an arterial highway or a public park must be examined for compliance with zoning regulations and this Policy and Procedure Notice prior to approval.

EXCEPTION: Proposed signs that are not more than 150 square feet in size and are not located higher than three feet (3') above the floor of the 2nd story of the building on which the sign is to be located are exempt from provisions pertaining specifically to signs in proximity to an arterial highway or a public park.

5. For all sign applications required to be examined because of the proximity of the sign to an arterial highway or a public park, the applicant must also provide a signed Restrictive Declaration in the form set forth in Exhibit 1, attached hereto. Such Restrictive Declaration must be reviewed by the plan examiner, signed by the owner of the zoning lot and recorded in appropriate county office prior to issuance of the permit. A certified copy of the recorded Restrictive Declaration must be retained within the Department’s application file.

² Distance is to be measured horizontally, from the nearest street line of the arterial highway or boundary line of the public park to the nearest point on the sign or sign structure.

II. Application of Zoning Regulations Pertaining to Signs in Proximity Of An Arterial Highway or A Public Park

Before approving or issuing a sign permit for an application for a sign that is required to be examined or audited because of the proximity of the sign to an arterial highway or public park, the applicant must demonstrate that the sign is not an advertising sign. That is, the applicant must demonstrate that the sign is either a non-commercial sign or that the sign is accessory to a use on the zoning lot, as defined in section 12-10 of the Zoning Resolution.

1. Non-commercial Signs ((Non-Advertising Signs)

A sign that contains copy regarding a governmental, charitable, religious, civic, philanthropic and/or educational organization, event or message and that does not prominently or primarily feature or make reference to a for-profit entity and/or its product(s) will be presumed to be a non-advertising sign.

2. Accessory Signs (Non-Advertising Signs)

For all other signs, the applicant must establish the accessory relationship between the proposed sign and the use on the zoning lot for which the sign is being erected (the "principal use"). The application may be approved if the applicant provides information sufficient for the plan examiner to determine that either (1) the proposed sign is clearly incidental to the principal use; (2) that the sign is of a type and size customarily found in connection with such use AND (3) that the sign does not direct attention to a business, profession, commodity, service or entertainment conducted, sold or offered elsewhere than on the same zoning lot.

Documentation Establishing That A Proposed Sign is Accessory

- (a) The name of the owner of the principal use (i.e., the name of the business owner) and the "doing business as" name of such business.
- (b) A written description of the existing or proposed business operation, signed and notarized by a principal or officer of the business.
- (c) An approved alteration application and/or a Certificate of Occupancy or satisfactory historical evidence acceptable to the Borough Commissioner demonstrating that the specified use is permitted on the zoning lot.
- (d) A lease demonstrating the amount of space leased at the zoning lot by the owner of the principal use and how the space is to be used. (If the owner of the principal use is the owner of the zoning lot, a deed should be provided.)
- (e) A detailed description and/or a drawing of the proposed sign, including the proposed copy.

(f) Evidence that the proposed sign will be owned or paid for by the owner of principal use for which the sign is being erected, including but not limited to, a contract to purchase said sign or receipts for the purchase of said sign.

(g) A statement of the size and type of sign that is to be erected.

Signs Presumed to be Not Accessory / Advertising

In the following instances, there will be a rebuttable presumption that the proposed sign is not accessory, i.e., there will be a rebuttable presumption that the sign is an advertising sign.

(a) A sign proposed in connection with a principal use whose activity on the zoning lot consists primarily of storage or a warehouse for its business activities conducted off the zoning lot and where the principal use occupies less than the full building on the zoning lot.

(b) Billboard signs, flexible face signs and all signs larger than 300 square feet, unless it is apparent from the copy and/or depictions on the sign that it is used to direct the attention of vehicular and pedestrian traffic to the zoning lot (i.e., the name of the business on the zoning lot, the address of the business on the zoning lot and directional words and/or symbols are prominently featured on the sign).

3. If the plan examiner cannot determine from the evidence provided and/or if the plan examiner determines that the proposed sign is not an accessory sign, then the application may be referred to the Borough Commissioner for additional review. The Borough Commissioner may request additional evidence to determine, among other things: (1) that the use identified as the principal use is in fact a bona fide business (e.g., a business plan, purchase orders and receipts for merchandise or service equipment, copies of advertisements and/or phone listings identifying the business at the zoning lot, sales or other accounting/financial records (if the business is an existing business), request for a site inspection to show planned or existing business operations, etc.) and/or (2) that the proposed sign is accessory to the identified principal use (e.g., evidence that the actual or anticipated revenue generated by the business or the expense of operating the business on the zoning lot at least equals or exceeds the cost of purchasing or leasing and maintaining the sign).

III. Issuance of Permits for All Signs and Supporting Ground Structures

1. At the discretion of the Borough offices, inspections will be conducted prior to issuance of a permit for a sign in proximity to an arterial highway or a public park. Such inspection will confirm that there is an existing, bona fide business on the zoning lot, to which the proposed sign will be accessory.

2. All permits issued for signs and/or for sign ground structures shall state whether the permit is for an "advertising sign, changeable copy permitted" or for a "non-advertising sign."

3. Change of copy on a sign that received a permit for a "non-advertising sign", without prior approval of the Department, may result in a violation for "work contrary to approved plans."

SAMPLE

Information in [brackets] is included for the benefit of the drafter; it is not intended to be included in the final draft.

Underlined portions are for information to be filled in by the drafter.

RESTRICTIVE DECLARATION FOR ACCESSORY SIGNS

DECLARATION, made this [day] day of [month] , 19 at [location of execution of declaration].

WHEREAS, Declarant is the fee owner of certain real property ("the Premises") in the City of New York, Borough of _____, designated as Block _____, Lot _____ on the Tax Map of the City of New York, and more particularly described in Exhibit A [metes and bounds description] annexed hereto;

WHEREAS, the Premises is located in a _____ zoning district and has a principal use which consists of _____.

WHEREAS, Declarant proposes to erect a sign on the Premises at a location within 200 feet of [name the arterial highway or public park] and has applied to the Department of Buildings (the "Department") for a permit in connection therewith; and

OR

WHEREAS, Declarant proposes to erect a sign that is _____ square feet in size on the Premises at a location that is within _____ feet of [name the arterial highway or public park] and has applied to the Department of Buildings (the "Department") for a permit in connection therewith; and

WHEREAS, Section [32-66 or 42-53] of the Zoning Resolution of the City of New York prohibits the erection of an advertising sign, as defined by Section 12-10 of the Zoning Resolution of the City of New York, within 200 feet of [an arterial highway or a public park of one-half acre or more] if such advertising sign is within view of such [arterial highway or public park]

OR

WHEREAS, Section [32-66 or 42-53] of the Zoning Resolution of the City of New York prohibits the erection of an advertising sign, as defined by Section 12-10 of the Zoning Resolution of the City of New York, that is not more than the same number of linear feet in distance from [an arterial highway or a public park of one-half acre or more] than it is square feet in size, if such advertising sign is within view of such [arterial highway or public park]

WHEREAS, the Department of Buildings ("the Department") has advised Declarant that in order to insure compliance with Section [32-66 or 42-53] of the Zoning Resolution of the City of New York, one of the conditions for obtaining a permit for the erection of such sign is that Declarant must execute a declaration setting forth certain conditions under which the sign must be removed;

NOW, THEREFORE, Declarant does hereby declare the following:

1. The sign shall at all times be maintained as a(n) [accessory sign/non-commercial sign] as defined by Section 12-10 of the Zoning Resolution. If at any time the principal use of the premises is changed or an occupant of the premises ceases to occupy the premises such that the existing sign becomes an advertising sign as defined by Section 12-10 of the Zoning Resolution of the City of New York, the sign must be removed.

2. If the sign is at any time the subject of an action in a civil or criminal proceeding and it is adjudicated or determined that the sign is in violation of the Zoning Resolution for in that it is an advertising sign in a zoning district where advertising signs are not permitted, the Declarant agrees to remove the sign immediately. If the Declarant fails to remove the sign, the Declarant consents to allow the City to enter onto Declarant's property and to remove the sign by the City and the Declarant agrees to reimburse the City of New York for all actual costs associated with such removal. Nothing contained herein shall limit the City from exercising any other remedies available by law at such time as the adjudication or determination is made.

3. This declaration may not be modified, amended or terminated without the prior written consent of the Department.

4. The covenants set forth herein shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

5. The failure to comply with the terms of this declaration may result in the denial or revocation of a permit or certificate of occupancy.

IN WITNESS WHEREOF, Grantor has made and executed the foregoing Restrictive Declaration as of the date hereinabove written.

By