Chapter 2
Interpretations and Variances

(12/15/61)

72-00
POWERS OF THE BOARD OF STANDARDS AND APPEALS

(2/2/11)

72-01
General Provisions

The Board of Standards and Appeals (referred to hereinafter as the Board) shall have the power, pursuant to the provisions of the New York City Charter and of this Resolution, after public notice and hearing:

(a) to hear and decide appeals from and to review interpretations of this Resolution;

(b) to hear, decide, and determine, in a specific case of practical difficulties or unnecessary hardship, whether to vary the application of the provisions of this Resolution;

(c) to hear and decide applications for such special permits as are set forth in this Resolution and are more specifically enumerated in Section 73-01 (General Provisions);

(d) to adopt, amend, or repeal such rules or regulations as may be necessary to carry into effect the provisions of this Resolution;

(e) to hear and decide applications for such authorizations as are set forth in this Resolution and enumerated in Section 72-30; and

(f) to make such administrative determinations and findings as may be set forth in this Resolution or pursuant to Section 72-40 (AMORTIZATION OF CERTAIN ADULT ESTABLISHMENTS AND SIGNS FOR ADULT ESTABLISHMENTS) or to Section 72-41 (Continuation of Certain Adult Establishments).

(g) to waive #bulk# regulations affected by unimproved #streets#
where a #development#, #enlargement# or alteration consists in part of construction within such #streets# and where such #development#, #enlargement# or alteration would be #non-complying# absent such waiver, provided the Board has granted a permit pursuant to Section 35 of the General City Law and has prescribed conditions which require the portion of the #development# or #enlargement# to be located within the unimproved #streets# to be compliant and conforming to the provisions of this Resolution. Such bulk waivers shall only be as necessary to address #non-compliance# resulting from the location of the #development# or #enlargement# within and outside the unimproved #streets#, and the #zoning lot# shall comply to the maximum extent feasible with all applicable zoning regulations as if such unimproved #streets# were not mapped. Where such #zoning lots# with #private roads# access fewer than 20 #dwelling units#, such #bulk# waivers may be granted by the Board only where the #zoning lots# are fully compliant with the regulations for #private roads# set forth in Article II, Chapter 6. However, for #zoning lots# with #private roads# that access at least 20 #dwelling units#, or for #zoning lots# with #private roads# that access fewer than 20 #dwelling units# for which a modification or waiver of the requirements for #private roads#, pursuant to Section 26-26, is necessary, such #bulk# waivers shall be permitted only by authorization of the City Planning Commission, pursuant to Section 26-27 (Waiver of Bulk Regulations Within Unimproved Streets).

(12/15/61)

72-10
APPEALS FOR INTERPRETATION

(12/15/61)

72-11
General Provisions

The Board of Standards and Appeals shall hear and decide appeals from or may, on its own initiative, review any rule or regulation, order, requirement, decision or determination of the Commissioner of Buildings, of any duly authorized officer of the Department of Buildings, or of the Commissioner of any agency which, under the provisions of the New York City Charter, has jurisdiction over the #use# of land or over the #use# or #bulk# of #buildings or other structures#, subject to the requirements
of this Resolution.

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

However, there shall be no appeal to or review by the Board from an interpretation of this Resolution made by the Board of Environmental Protection of the Department of Environmental Protection, or any other agency for which the New York City Charter establishes a board empowered to adopt rules and regulations for such agency.

(12/15/61)

72-12
Street Layout Varying From Maps

Where the street layout actually on the ground varies from the street layout as shown on the #zoning maps#, the designation as shown on such maps shall be applied by the Board of Standards and Appeals, after public notice and hearing, in such a way as to carry out the intent and purpose of this Resolution.

(12/15/61)

72-20
VARIANCES

(2/2/11)

72-21
Findings Required for Variances

When in the course of enforcement of this Resolution, any officer from whom an appeal may be taken under the provisions of Section 72-11 (General Provisions) has applied or interpreted a provision of this Resolution, and there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of such provision, the Board of Standards and Appeals may, in
accordance with the requirements set forth in this Section, vary or modify the provision so that the spirit of the law shall be observed, public safety secured and substantial justice done.

Where it is alleged that there are practical difficulties or unnecessary hardship, the Board may grant a variance in the application of the provisions of this Resolution in the specific case, provided that as a condition to the grant of any such variance, the Board shall make each and every one of the following findings:

(a) that there are unique physical conditions, including irregularity, narrowness or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to and inherent in the particular zoning lot; and that, as a result of such unique physical conditions, practical difficulties or unnecessary hardship arise in complying strictly with the use or bulk provisions of the Resolution; and that the alleged practical difficulties or unnecessary hardship are not due to circumstances created generally by the strict application of such provisions in the neighborhood or district in which the zoning lot is located;

(b) that because of such physical conditions there is no reasonable possibility that a development, enlargement, extension, alteration or change of use on the zoning lot in strict conformity with the provisions of this Resolution will bring a reasonable return, and that the grant of a variance is therefore necessary to enable the owner to realize a reasonable return from such zoning lot; this finding shall not be required for the granting of a variance to a non-profit organization;

(c) that the variance, if granted, will not alter the essential character of the neighborhood or district in which the zoning lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare;

(d) that the practical difficulties or unnecessary hardship claimed as a ground for a variance have not been created by the owner or by a predecessor in title; however, where all other required findings are made, the purchase of a zoning lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship; and

(e) that within the intent and purposes of this Resolution, the variance, if granted, is the minimum variance necessary to afford relief; and to this end, the Board may permit a
lesser variance than that applied for.

It shall be a further requirement that the decision or
determination of the Board shall set forth each required finding
in each specific grant of a variance, 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. Reports of other City agencies made as
a result of inquiry by the Board shall not be considered hearsay,
but may be considered by the Board as if the data therein
contained were considered by personal inspection.

(12/15/61)

72-22
Conditions or Restrictions

The Board of Standards and Appeals may prescribe such conditions
or restrictions applying to the grant of a variance as it may
depth necessary in the specific case, in order to minimize the
adverse effects of such variance upon other property in the
neighborhood. Such conditions or restrictions 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.

(7/18/95)

72-23
Lapse of Variances

A variance granted under the provisions of this Resolution shall
automatically lapse if substantial construction, in accordance
with the plans for which such variance was granted, has not been
completed within four years from the date of granting such
variance by the Board of Standards and Appeals or, if judicial
proceedings have been instituted to review the Board’s decision
to grant any variance, the four-year lapse period shall commence
upon the date of entry of the final order in such proceedings,
including appeals.
72-30
AUTHORIZATIONS

72-31
General Provisions

The Board of Standards and Appeals shall have the power to issue authorizations on such matters as are set forth in this Section. The Board shall hear and decide applications for authorizations in an administrative proceeding in the same manner in which it hears appeals for interpretation pursuant to Section 72-10.

72-40
AMORTIZATION OF CERTAIN ADULT ESTABLISHMENTS AND SIGNS FOR ADULT ESTABLISHMENTS

The Board of Standards and Appeals may permit any #non-conforming adult establishment# or any #non-conforming sign#, other than #advertising signs#, for an #adult establishment# to continue for a limited period of time beyond that provided for in Sections 52-734 (Non-conforming signs for adult establishments) or 52-77 (Termination of Adult Establishments), provided that:

(a) an application is made by the owner of such establishment to the Board of Standards and Appeals at least 120 days prior to the date on which such establishment or #sign# must terminate;

(b) the Board shall find, in connection with such establishment or #sign#, that:

(1) the applicant had made, prior to the #non-conformity#, substantial financial expenditures related to the #non-conformity#; and

(2) the applicant has not recovered substantially all of the financial expenditures related to the #non-conformity#; and
(3) the period for which such establishment or sign may be permitted to continue is the minimum period sufficient for the applicant to recover substantially all of the financial expenditures incurred related to the non-conformity.

For the purpose of this Section, "financial expenditures" shall mean the capital outlay made by the applicant to establish the adult establishment or sign, exclusive of the fair market value of the building in which such use or sign is located and exclusive of any improvements unrelated to the non-conforming adult establishment or non-conforming accessory business sign for adult establishments.

This Section shall not apply to commercial establishments described in Section 72-41 (Continuation of Certain Adult Establishments).

(2/2/11)

72-41
Continuation of Certain Adult Establishments

Any commercial establishment in existence as of August 8, 2001 which: (i) subsequent to September 18, 1995, and prior to August 8, 2001, made financial expenditures so as to avoid becoming subject to the provisions of Section 32-01 or 42-01 (Special Provisions for Adult Establishments); and (ii) is defined as an adult establishment pursuant to the amendments to the definition of adult establishment in Section 12-10 adopted on October 31, 2001, shall terminate as an adult establishment within one year from October 31, 2001. Notwithstanding the foregoing, the Board of Standards and Appeals may permit such adult establishment to continue for a limited period beyond such one year period, provided that:

(a) an application is made by the owner of such establishment to the Board of Standards and Appeals at least 120 days prior to the date on which such establishment must terminate;

(b) the Board shall find, in connection with such establishment, that:

(1) the applicant had made, subsequent to September 18, 1995 and prior to August 8, 2001, substantial financial expenditures so as to avoid becoming subject to the provisions of Section 32-01 or 42-01;
the applicant has not recovered substantially all such financial expenditures; and

the period for which such establishment may be permitted to continue is the minimum period sufficient for the applicant to recover substantially all of such financial expenditures.

For purposes of this Section, "financial expenditures" shall mean the following: (i) any capital outlay for improvements made in connection with the configuration or reconfiguration of the amount of floor area and cellar space within such establishment accessible to customers either: (a) containing books, magazines, periodicals or other printed matter or photographs, films, motion pictures, video cassettes, slides or other visual matter characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas"; or (b) allocated to one of the activities described in paragraphs (1)(b), (1)(c) or (1)(d) of the definition of adult establishment in Section 12-10; and (ii) any purchases of books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, slides or other visual matter, which are not characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas."

The provisions of Sections 52-77 (Termination of Adult Establishments) and 72-40 (AMORTIZATION OF CERTAIN ESTABLISHMENTS AND SIGNS FOR ADULT ESTABLISHMENTS) shall not apply to commercial establishments subject to this Section.