180-14-A
APPLICANT – Fried Frank Harris Shriver and Jacobson LLP, for EXG 332 W 44 LLC c/o Edison Properties, owner.
SUBJECT – Application August 1, 2014 – Appeal challenging the Department of Building's determination that the subject façade treatment located on the north wall is an impermissible accessory sign as defined under the ZR Section 12-10. C6-2SCD zoning district.
PREMISES AFFECTED – 332 West 44th Street, south side West 44th Street, 378 west of the corner formed by the intersection of West 44th Street and 8th Avenue and 250' east of the intersection of West 44th Street and 8th Avenue, Block 1034, Lot 48, Borough of Manhattan.
COMMUNITY BOARD #4M
ACTION OF THE BOARD – Appeal Denied.
THE VOTE TO GRANT –
Affirmative: ……..……..0
Negative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ……....4
THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to a Final Determination, dated July 3, 2014, by the Department of Buildings ("DOB") (the "Final Determination"); and

WHEREAS, the Final Determination states, in pertinent part:

> The request to accept the proposed façade treatment that reads "BRAVO!" located on the north wall of a public parking garage located in the C6-2 zoning district as a display that is not a "sign" as defined by New York City Zoning Resolution 12-10, is hereby denied; and

WHEREAS, a public hearing was held on this appeal on December 9, 2014, after due notice by publication in *The City Record*, with a continued hearing on March 3, 2015, April 21, 2015 and April 28, 2015, and then to decision on June 16, 2015; and

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

WHERAS, this appeal is filed on behalf of EXG 332W44, LLC (the "Appellant"), which owns 332 West 44th Street, Manhattan; the Appellant contends that DOB's issuance of the Final Determination was erroneous; and

WHEREAS, DOB and the Appellant have been represented by counsel throughout this appeal; and

WHEREAS, the subject site is located on the south side of West 44th Street, between Eighth Avenue and Ninth Avenue, within a C6-2 zoning district, within the Special Clinton District; a portion of the site extends to West 43rd Street, making a portion of the site an interior lot and a portion of the site a through lot; and

WHEREAS, the site has 172 feet of frontage along West 44th Street, 25 feet of frontage along West 43rd Street, and approximately 19,783 sq. ft. of lot area; and

WHEREAS, the site is occupied by a three-story public parking garage (Use Group 8) for 273 automobiles; the Appellant notes that the garage levels are currently open to the air and covered by half-height metal cladding; and

PROCEDURAL HISTORY

WHEREAS, on January 7, 2014, the Appellant submitted a determination request to DOB, seeking confirmation that a design treatment on the north façade of the building incorporating the word "BRAVO!" would not constitute a "sign" per the Zoning Resolution ("ZR") § 12-10 definition; and

WHEREAS, on January 21, 2014, DOB issued a determination stating that the proposed installation constituted a "sign" according to ZR § 12-10; and

WHEREAS, on April 7, 2014, the Appellant submitted a second determination request seeking reversal of the January 21, 2014 determination; DOB responded by issuing the Final Determination on July 3, 2014; and

WHEREAS, accordingly, the narrow question on appeal is whether the BRAVO! installation is a "sign," as that term is defined in ZR § 12-10; and

WHEREAS, the Appellant asserts that it is not; DOB maintains that it is; both parties claim support for their position in the Zoning Resolution; and

WHEREAS, by letter dated January 29, 2015, the Department of City Planning ("DCP") states that it supports DOB's position; and

PROVISIONS OF THE ZONING RESOLUTION

WHEREAS, the Appellant and DOB agree that the Zoning Resolution provision at issue is the definition of "sign" set forth in ZR § 12-10, which provides in pertinent part:

> Sign
> A "sign" is any writing (including letter, word, or numeral), pictorial representation (including illustration or decoration), emblem (including device, symbol, or trademark), flag, (including banner or pennant), or any other figure of similar character, that:
> (a) is a structure or any part thereof, or is attached to, painted on, or in any other manner represented on a building or other structure;
> (b) is used to announce, direct attention to, or advertise; and
> (c) is visible from outside a building.1

DISCUSSION

A. THE APPELLANT'S POSITION

WHEREAS, the Appellant asserts that the BRAVO! installation does not satisfy subsection (b) of the ZR § 12-10 definition of "sign," which provides that

1 Neither party disputes that the BRAVO! installation satisfies subsections (a) and (c) of the definition in that the word "bravo" is a writing and that the installation would be attached to and incorporated as an element within the façade of the subject building and, therefore, would be visible from outside the subject building.

an installation must, among other things, be "used to announce, direct attention to, or advertise" in order to be classified as a sign; and

WHEREAS, the Appellant states that the BRAVO! installation does not "announce, direct attention to, or advertise" anything other than itself; therefore, it is not a "sign"; and

WHEREAS, the Appellant states that DOB's position is that 'all words announce'; thus, the Appellant contends that DOB is erroneously conflating subsection (a) of the Zoning Resolution's definition of "sign," which states that a "sign" is "any writing (including letter, word, or numeral)," with subsection (b) of the definition, which requires that the writing is "used to announce, direct attention to or advertise," rendering subsection (b) superfluous; and

WHEREAS, the Appellant notes that according to standard principles of statutory construction, a statute should be construed so as to give effect to all its provisions, so that no part will be inoperative or superfluous; the Appellant asserts that DOB's position directly contradicts this fundamental principle; and

WHEREAS, the Appellant observes that in BSA Cal. No. 90-12-A (111 Varick Street, Manhattan), the Board determined that in order for a sign to be an advertising sign, there must be a "reasonable nexus" between the installation (the alleged sign) and something other than the installation itself (in that case, a use located off the zoning lot); and

WHEREAS, the Appellant also notes that in BSA Cal. No. 90-12-A, the Board acknowledged that "there are examples of writing, pictorial representation, emblems, flags or other characters which announce, direct attention to, or advertise and there are those that do not do any of those things yet may satisfy the other elements of the definition" and the Board found that "the complete criteria for signs is enumerated so as to make clear that a writing or pictorial representation along with being located on a wall alone [i.e., without satisfying requirement (b) of the definition] do not meet the criteria for a sign and would fit into some other category not regulated by DOB"; and

WHEREAS, the Appellant contends that implicit in the Board's decision in BSA Cal. No. 90-12-A is the idea that some writings, pictorial representations, emblems, etc. announce, direct attention and/or advertise, and some do not; accordingly, the Appellant states that the Board properly adopted a "reasonable nexus" test to determine whether the writing, pictorial representation or emblem has an *identifiable relationship* with—i.e., announces, directs attention or advertises—something other than itself; and

WHEREAS, the Appellant states that while the issue presented in this appeal is not whether the installation at the subject site is an "advertising sign," the Board's reasoning that there must be a "reasonable nexus" between an installation and something other than the installation itself, in order for it to qualify as a "sign," is equally valid here; and

WHEREAS, the Appellant contends that proper application of the Board's reasonable nexus standard requires a case-by-case determination; and

WHEREAS, the Appellant asserts that there is no reasonable nexus between the BRAVO! installation and anything other than itself, including the public parking garage that operates at the site; thus, the Appellant likens the BRAVO! installation to the art installation at issue in BSA Cal. No. 90-12-A, which DOB argued directed attention only to itself;2 and

WHEREAS, the Appellant states that although there may be some relationship or association between the word bravo and the theater or Theater District (the site is in close proximity to the Theater Subdistrict of the Special Midtown District), such relationship is too attenuated to constitute a reasonable nexus between the BRAVO! installation and parking, even if the parking garage may be utilized by theater patrons; and

WHEREAS, likewise, the Appellant asserts that DOB did not demonstrate that subsection (b) could be satisfied by an installation that uses a word that refers to or celebrates a particular neighborhood, industry or general notion, such as "congratulations, you made it to Manhattan" or "congratulations, you have found parking"; and

WHEREAS, the Appellant also disagrees with DOB that the word "bravo" by its very nature is a "congratulatory remark between a business and its customer or potential customer" and therefore inherently has a reasonable nexus with any business located on a site at which the word is displayed; and

WHEREAS, the Appellant rejects DOB's assertion that the BRAVO! installation is, at a minimum, subject to regulation as a non-commercial sign which directs attention to the Theater District or announces a general congratulatory statement; rather, the Appellant contends that the BRAVO! installation is an art and design piece, akin to other decorative façade treatments or artistic expressions; and

WHEREAS, in response to DOB's position that, pursuant to the 1998 amendment to the Zoning Resolution, DOB is required to regulate artwork or other displays on buildings that include words, the Appellant notes that, historically, non-commercial signs were treated as advertising signs if they related to an activity conducted off the zoning lot; however, in *City of New*

2 On appeal pursuant to Article 78 of the CPLR, the court disagreed with DOB that the art installation directed attention only to itself and found that it directed attention to the work of the artist, making the installation a "sign," *see Van Wagner Communications, LLC v. Board of Standards and Appeals*, Sup. Ct. N.Y. County, July 22, 2014, Rakower, J., Index No. 10085/2014; however, nothing in Judge Rakower's decision suggests that BSA erred in applying a "reasonable nexus" standard in determining whether subsection (b) was satisfied. The City of New York appealed from Judge Rakower's July 22, 2014 decision. The City's appeal is currently pending before the Appellate Division, First Department.

York v. Allied Outdoor Adv. Inc., 172 Misc 2d 707, 659 N.Y.S. 2d 390 (Sup. Ct. Kings Co. 1997), the court held that by regulating non-commercial copy more stringently than commercial business signs, the Zoning Resolution ran counter to constitutional prohibitions favoring commercial speech over non-commercial speech; consequently, in 1998, the Zoning Resolution was amended to make a distinction between advertising signs and all other signs; in effect, the amendments made it clear that signs with non-commercial copy could be regulated only as stringently as business signs (signs promoting an activity occurring on the zoning lot, which have come to be known as accessory signs); and

WHEREAS, the Appellant disputes that the purpose or effect of the 1998 amendments was to expand the coverage of the sign regulations to include artwork or design displays that include words on the basis that words, by definition, announce something, even when such words are non-commercial, and therefore disagrees with DOB's position that the BRAVO! installation may be regulated as non-commercial speech; and

WHEREAS, to the contrary, the Appellant states that, viewed in their historical context, the 1998 amendments had no effect on subsection (b) of the sign definition; and

WHEREAS, in short, the Appellant contends that DOB's classification of the BRAVO! installation as a non-commercial sign ignores that the installation is not a sign in the first instance because, the Appellant argues, despite its use of a word that is commonly known, the installation does not announce, direct attention to or advertise any readily identifiable thing and, therefore, is not a sign, non-commercial or otherwise; and

WHEREAS, the Appellant states that the BRAVO! installation is not intended to serve as a logo or emblem to advertise or announce the PARK*FAST* brand that operates the subject parking garage; likewise, the Appellant asserts that the installation is not an extension of the broader PARK*FAST* marketing campaign; and

WHEREAS, the Appellant disagrees with DOB's assertion that the use of yellow and black in the BRAVO! installation and in the PARK*FAST* branded accessory signage suggests that the BRAVO! installation is an extension of the PARK*FAST* branding efforts; and

WHEREAS, in response to DOB's assertion that both the PARK*FAST* logo and the BRAVO! installation employ a version of the Helvetica typeface, the Appellant notes that Helvetica is widely acknowledged as the most commonly used typeface in all of graphic design; further, the Appellant notes that the BRAVO! installation actually employs Helvetica-Neue rather than Helvetica; and

WHEREAS, the Appellant states that the use of a color and font for the BRAVO! installation that are similar to those of the PARK*FAST* logo was an aesthetic decision made by a design architect, whose intent was to create a pleasing view of a parking garage façade; and

WHEREAS, in addition, the Appellant states that it does not conduct or market its parking operations under the name "bravo" and the word "bravo" is not a trademark of the Appellant, its parent company or the Appellant's affiliates; accordingly the Appellant asserts that any similarities between the BRAVO! installation and the PARK*FAST* branding (including the accessory signage at the site) are coincidental and inconsequential on the question of whether the BRAVO! installation satisfies subsection (b); and

WHEREAS, the Appellant contends that the accessory signage is distinguishable from the BRAVO! installation primarily on the ground that the accessory signage announces, directs attention to, and advertises the availability of parking at the site and the BRAVO! installation announces, directs attention to, and advertises itself alone; the Appellant states that while the existing signs and the BRAVO! installation may share a whimsical quality and a sense of humor, the installation is categorically distinct in that it does not direct attention to the availability of parking or to the existing signs; the Appellant also notes that the accessory signage is temporary and will be removed in connection with the design upgrades that include the construction of the BRAVO! installation; and

WHEREAS, the Appellant contrasts the word "bravo" with the words DOB identifies in various signs displayed at other sites operated by the PARK*FAST* brand and submits that in each instance, the PARK*FAST* brand sign expressly announces, directs attention to or advertises the availability of parking; and

WHEREAS, finally, the Appellant contends that DOB's apparent approach to determining whether a particular installation that includes words is a form of speech within its regulatory authority: (1) is unconstitutionally vague and contrary to the Fourteenth Amendment of the United States Constitution; (2) a prior restraint on speech in violation of the First Amendment of the United States Constitution; and (3) a content-based restriction on protected non-commercial speech in violation of the First Amendment; the Appellant identifies various United States Supreme Court cases in support of this contention; and

B. DOB'S POSITION

WHEREAS, DOB states that that the Final Determination was properly issued because the BRAVO! installation satisfies subsection (b) of the definition of "sign," in that: (1) the word "bravo" is a congratulatory sentiment which necessarily relates to any on-premises commercial use and, in this context, states "congratulations, you have found parking"; (2) the word "bravo" is used to announce, direct attention to, and advertise the public parking garage that operates at the site which is within the vicinity of the Theater District; (3) the word "bravo" is a celebratory remark that, due to the installation's proximity to the Theater District, evokes, celebrates or draws attention to the Theater District itself; and (4) that the installation of the word "bravo" is part of a marketing strategy by the owner of the subject premises to promote the parking use located within the premises; and

1. DOB's argument that the word "bravo" necessarily relates to any on-premises commercial use

WHEREAS, with respect to DOB's assertion that

the word "bravo" is a congratulatory sentiment which, when displayed at a premises containing a commercial use, necessarily relates to such commercial use and, as such, is a writing which, under any circumstances, announces said commercial use so as to satisfy subsection (b) of the ZR § 12-10 definition of sign, DOB argues, the BRAVO! installation is akin to signs stating "Welcome," "Thank you," "Have a nice day," "Open," and "Closed" all of which DOB states are subject to the zoning regulations governing commercial signs; and

WHEREAS, DOB further maintains that even if there is *no* nexus between the word displayed and a particular business, profession, commodity or idea, it has the authority to regulate the word's display as non-commercial speech, citing the 1998 amendments to the sign regulations and case law; and

WHEREAS, thus, DOB observes that even if use of the word "bravo" in this case has no nexus to a particular business, the word is akin to broad policy statements such as "End Illiteracy!" and "Smoking Kills!," hence it is a "sign" because it is a word that announces and directs attention to something; DOB notes that even the symbol for "peace"—because its meaning is so well-established—constitutes a "sign" because its announcement can be understood; and

2. DOB's argument that the word "bravo" announces and directs attention to the parking use at the premises because it speaks to theater-going motorists

WHEREAS, with respect to DOB's assertion that the BRAVO! installation announces, directs attention to, and advertises the public parking garage at the site, DOB states that the word "bravo" conveys a particular and universally comprehended message that relates to theater and, therefore, directs the attention of motorists whose destination is the Theater District to the parking use at the subject premises; and

WHEREAS, DOB notes that the site is located in close proximity to the Theater District and asserts that the BRAVO! installation is not an example of a work of art that could have varying meaning depending on the interpreter but that, to the contrary, it communicates to the viewer a universally accepted meaning and directly relates to the Theater District location of the parking garage; and

WHEREAS, further, DOB observes that the Appellant concedes that the word "bravo" was chosen because it is a well-known theater term and that the garage's proximity to the Theater District makes it a likely choice for motorists going to the theater; and

WHEREAS, based upon the foregoing, DOB contends that the proposed installation—the word "bravo" in bold, capital letters with an exclamation point at the end of the word, attached to and forming a part of the façade with a surface area of approximately 4,650 sq. ft., with voids in the façade revealing parked cars—is an attempt to arouse the desires of potential Theater District customers in need of parking who may be familiar with the word's connection to the theater and performance arts in general; and

WHEREAS, as such, DOB contends that there is a reasonable nexus between the word "bravo" and the parking garage at the site; and

3. DOB's argument that the word "bravo" celebrates a neighborhood, the Theater District, and, as such, announces or directs attention to something as contemplated in subsection (b) of the ZR § 12-10 definition of sign

WHEREAS, DOB contends that subsection (b) could be satisfied by an installation that uses a word that refers to or celebrates a particular neighborhood, industry or general notion, such as "congratulations you made it to Manhattan" or "congratulations, you have found parking"; and

WHEREAS, with respect to its argument that the word "bravo" satisfies subsection (b) of the ZR § 12-10 definition of sign in this instance, DOB maintains that in addition to the purported nexus between the BRAVO! installation and the parking garage at the site, there is a reasonable nexus between the word "bravo" and the Theater District in general; and

WHEREAS, specifically, DOB argues that the well-established connection between the word "bravo" and the theater, even if insufficient to form a reasonable nexus with a parking garage that caters to Theater District patrons, is a reasonable nexus to the district or neighborhood itself and, as such, the BRAVO! installation falls within the sign regulations of the Zoning Resolution; and

WHEREAS, DOB maintains that nothing about the text of subsection (b) requires that the announcement take the form of a specific identifiable use, business, or idea, and that as such, making reference to—announcing—a neighborhood (here, the Theater District) is sufficient to satisfy the text of subsection (b); and

4. DOB's Argument that the Bravo! installation is part of a marketing strategy by the owner of the subject premises

WHEREAS, with respect to its argument that the word "bravo" is part of a marketing scheme to promote parking at the subject premises, DOB asserts that the BRAVO! installation is intended to serve as an emblem to advertise or announce the PARK*FAST* brand that operates the subject parking garage, and that similarities between the branding for the latter and the former further demonstrates the reasonable nexus between the installation and the parking garage; and

WHEREAS, DOB observes that both the PARK*FAST* logo and the BRAVO! installation employ a version of the Helvetica typeface and a highlighter yellow and black motif; and

WHEREAS, DOB asserts that the use of the same color and typeface in the BRAVO! installation and in the PARK*FAST* branded accessory signage suggests that the BRAVO! installation is an extension of the PARK*FAST* branding efforts; and

WHEREAS, DOB contends that the similarities between the BRAVO! installation and the PARK*FAST* branding are striking, cannot be a mere coincidence, and

are, contrary to the Appellant's explanations, a thinly-veiled attempt to invoke the PARK*FAST* brand without using the word "parkfast"; and

WHEREAS, in addition, DOB identified accessory signage—namely, a sign that states "park here for: Times Square, theaters, hotels" and another that states "save the drama for the stage"—that DOB asserts gives further context to the use of the word "bravo" in the façade installation and demonstrate the reasonable nexus between the BRAVO! installation and the parking garage; and

WHEREAS, lastly, as to the Appellant's arguments based on the United States Constitution, DOB asserts that its ability to regulate signage, including in instances where a subjective judgment must be made, is well-established, and DOB cited a number of cases in support of this assertion; and

WHEREAS, based on all of the foregoing arguments, DOB requests that the Board deny the appeal and affirm the Final Determination; and

C. DEPARTMENT OF CITY PLANNING'S POSITION

WHEREAS, as noted above, by letter dated January 29, 2015, the Department of City Planning ("DCP") states that it supports DOB's position; and

WHEREAS, in pertinent part, DCP's letter provides that

> DCP agrees with DOB's determination that the façade treatment which is the subject of this appeal announces, directs attention to and attracts people to the building as a public parking garage location, and thus is a #sign#. The façade treatment conveys a message and discernibly makes a connection to the commercial enterprise of the garage. We do not agree that the use of the word "Bravo!" as set forth in the Karnovsky submission of 12/23/14 "simply evokes the building's location in the Theater District, but is not an advertisement or promotion of anything whatsoever." Nor do we agree that it "simply draws attention to itself as an art or design object."
>
> Appellant acknowledges that the parking garage is located close to the Theater Subdistrict and that "Bravo!" is a "theater term," but refutes [sic] that the use of such term therefore advertises the availability of parking to theater patrons.
>
> * * *
>
> [A]lthough BSA need not reach the question of whether the use of words <u>in and of themselves</u> creates a #sign#, since in this case, the word "Bravo!" does announce, direct, or advertise the parking garage, it is DCP's position that words are not always signs. We do not agree with Appellant that in this instance, DOB has improperly conflated the portion of the ZR Section 12-10 definition of #sign# . . . . Rather, here each prong is individually met, under the facts set forth.
>
> * * *
>
> If the Board were to accept Appellant's argument, it could have far reaching and severe consequences. Furthermore, this drastic change in the application of sign regulations across all boroughs of the City would have occurred absent the City-wide public review process which would normally accompany such a change. (emphasis in original); and

<u>CONCLUSION</u>

WHEREAS, the Board notes its agreement with DOB and the Applicant that the BRAVO! Installation satisfies subsections (a) and (c) of the ZR § 12-10 definition of "sign"; and

WHEREAS, thus, the Board finds that the BRAVO! installation is a sign because it satisfies subsection (b) of the ZR § 12-10 definition of "sign" and as such, the Final Determination is affirmed and the appeal is denied; and

WHEREAS, the Board notes that it previously examined the meaning of subsection (b) of the ZR § 12-10 definition of "sign" in BSA Cal. No. 90-12-A; in that case, the Board observed that while writings often do announce, direct attention to, or advertise, sometimes they do not; implicit in the Board's observation is the notion that the first paragraph of the definition (which brings within the ambit of the sign definition "any writing") and subsection (b) (which requires that the writing be "used to announce, direct attention to, or advertise") both have meaning; and

WHEREAS, the Board finds that interpreting the definition so as to give meaning to all portions of the provision is consistent with standard principles of statutory construction; and

WHEREAS, thus, the Board identifies the issue as whether or not the BRAVO! installation is "used to announce, direct attention, or advertise" within the meaning of the definition; and

WHEREAS, the Board notes that in BSA Cal. No. 90-12-A, it examined whether painted plywood on a building wall announced, directed attention to, or advertised; in answering that question, the Board determined that there must be a connection—a reasonable nexus—between the painted plywood and something else, be it an idea, a profession, or a commodity; the Board found none and thus determined that the plywood directed attention only to itself; and

WHEREAS, the Board agrees with the Appellant that the Board's reasoning in BSA Cal. No. 90-12-A applies with equal force in the instant appeal; thus, the Board finds that the issue is whether or not there is a reasonable nexus between the BRAVO! installation and something other than the BRAVO! installation that would satisfy subsection (b) of the "sign" definition and bring the installation within the purview of the sign regulations; and

WHEREAS, ultimately, the Board rejects DOB's arguments that the BRAVO! installation is a sign because

of its purported congratulatory sentiment, because of its purported direction of attention to parking for patrons of the Theater District, and because of its purported celebration of theater or the Theater District, but credits and finds dispositive DOB's argument that the BRAVO! installation, by virtue of its design, including color, text and placement on the façade, is a deliberate textual and visual reference to the existing signage at the premises and the PARK*FAST* marketing program, which signage is directly related to the parking use at the premises and as such, constitutes a sign; and

WHEREAS, the Board finds that the BRAVO! installation is not, as the Appellant contends, purely self-referential, with no direct relationship to any profession, commodity, use, or idea located on or off the zoning lot; and

WHEREAS, the Board agrees with the Appellant that the word "bravo" has a nexus to a multitude of things, including the theater and performing arts (and thus has no reasonable nexus to any one thing); however, the characteristics of the BRAVO! installation at this site create the reasonable nexus that the Board has identified as an element of subsection (b) of the definition of "sign"; and

WHEREAS, specifically, the Board is persuaded that the font, color, and whimsical nature of the BRAVO! installation are too similar to the PARK*FAST* branding and marketing campaign to be a coincidence; the Board finds particularly illustrative DOB's pictorial comparison of the PARK*FAST* brand signs and the BRAVO! installation and the visual and textual relationship between the signage currently displayed at the garage and the BRAVO! installation;in that context, the similarity between the BRAVO! installation and the PARK*FAST* logo and signage is striking; and

WHEREAS, accordingly, the Board finds that because the BRAVO! installation evokes the well-established PARK*FAST* brand, there is a reasonable nexus between the installation and the parking garage use at the site; thus, the installation satisfies subsection (b) of the ZR § 12-10 definition of "sign"; and

WHEREAS, the Board emphasizes that it is not the word "bravo" but the manner in which it is displayed that is dispositive; and

WHEREAS, the Board reiterates its disagreement with DOB's position that whenever a writing is visible from outside a building and has an identifiable relationship with *anything*, including even the neighborhood in which the writing is located, such writing necessarily directs attention as contemplated in subsection (b) and is therefore a "sign"; and

WHEREAS, indeed, to the contrary, and as the Board observed in BSA Cal. No. 90-12-A, there must be a reasonable nexus between the writing and the alleged referent – where there is sufficient ambiguity, the writing does not direct attention within the meaning of ZR § 12-10; and

WHEREAS, thus, the Board reiterates its previous reasoning that in order to determine if a writing satisfies subsection (b) of the definition of "sign," it must (1) direct or refer the reader's attention to something other than itself and (2) must have a reasonable nexus to the alleged referent; and

WHEREAS, the Board does not accept DOB's position that the word "bravo" is inherently commercial in nature and, as such, is a "writing" which, under any circumstance, "announces" so as to satisfy subsection (b) and explicitly rejects any interpretation of the Zoning Resolution which renders a particular word a "writing" on those grounds as an improper conflation of subsections (a) and (b) of the definition of "sign"; and

WHEREAS, as to the Appellant's assertion that the United States Constitution and federal case law prohibit regulation of the BRAVO! installation, the Board disagrees and acknowledges DOB's well-established authority to regulate signs; and

WHEREAS, for the reasons set forth above, the Board finds that the proposed BRAVO! installation is a "sign"; and

Therefore it is Resolved, that the subject appeal, seeking a reversal of the Final Determination, dated July 3, 2014, is hereby *denied*.

Adopted by the Board of Standards and Appeals, June 16, 2015.

A true copy of resolution adopted by the Board of Standards and Appeals, June 16, 2015.
Printed in Bulletin Nos. 25-26, Vol. 100.
Copies Sent
To Applicant
Fire Com'r.
Borough Com'r.