

Commercial District Aesthetic Regulation in New York City

by
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"Each passing year, never failing to exact its toll, keeps altering what was sublime into the stuff of comedy. Is something eaten away? If the exterior is eaten away, is it true, then, that the sublime pertains by nature only to an exterior that conceals a core of nonsense? Or does the sublime indeed pertain to the whole, but a ludicrous dust settles upon it?"

Yukio Mishima

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The opinions of this author presented in this paper are personal and do not necessarily reflect the opinions of my employer, the City of New York.

INTRODUCTION

If tourists decide on New York for their vacations only as a second choice after a theme park, then maybe it's just right the way it's going but if people still come here from all over the world to experience a New York sense of place, then something should be done to preserve it. Tourism is one of New York's major industries. Shopping, dining, museums and entertainment are some of the things that bring visitors to New York. Reports of bad weather and crime don't stop them because it's New York they're coming to and they're willing accept some of the bad with the good. But what if New York stops looking like New York and becomes like anyplace else? Why come here for sightseeing when you can see the same sights anywhere? And it's not just tourists. With recent advances in electronic communications, businesses no longer have to be located in major cities. We need to provide and maintain our particular New York sense of place to continue to attract both business travelers and new businesses as well as tourists. The tradition and craftsmanship of New York's inventory of buildings and neighborhoods creates the New York sense of place that is as distinct an attraction as a Broadway play or the Brooklyn Bridge. To preserve it, the aesthetics of public places in New York City's commercial areas need to be more carefully regulated by the Department of City Planning through the Zoning Resolution. The Landmarks Preservation Commission is doing its best to protect and enhance the historic structures and districts in New York but unfortunately many worthy buildings and districts are not under their protection. On the other hand, the Department of City Planning has a much wider jurisdiction and urban design is certainly an important part of urban planning. The question is not whether aesthetics should be regulated but how this should be accomplished.

Throughout this report, I use examples of Manhattan's commercial districts but the same ideas hold true in the other boroughs. Fortunately, they haven't yet been as devastated as Manhattan has by commercialism. The following discussion doesn't particularly apply to residential districts where as a rule facades aren't changed with each new tenant and business signs aren't a major issue. In the following pages I will expand on the issues raised above, explain why regulation is necessary, give a brief review of court cases concerned with aesthetic regulation and provide recommendations for preserving the New York sense of place.

All court cases and laws are referenced in the text. All other references are included in the endnotes. The Zoning Resolution's commercial district sign regulations can be found in the appendix. I've included concepts inspired by interviews, observation and my personal experience as a member of the Certificate of Appropriateness Committee of Landmark West! and as an inspector with the Mayor's Office of Midtown Enforcement.

1. THE NEED FOR REGULATION

In some areas of the city the urban streetwall's first two stories resemble a suburban commercial strip. A visual clutter of business and advertising signs, awnings and canopies and "modernized" storefronts hides the underlying structures that house the businesses that are calling attention to themselves. There are whole buildings where one can see only signs and window displays and no architecture (photo 1.1). Perhaps worse than that are the building where remnants of wood, masonry or cast iron craftsmanship still peek through, teasingly suggesting what once was (photo 1.2).



1.1



1.2

New York is not L.A.. New York is a vertical city of pedestrians and not a sprawl designed around cars. Studies have been done to determine the size, height and type of graphics that need to be incorporated in a sign in order for it to be seen by drivers traveling at various speeds on multi-lane highways. As speed increases and a drivers concentration becomes more intense, signage must also increase in order to be seen. At 45 to 55 mph on an expressway, a 200 square foot sign and 12 seconds (or 1056 feet of travel) are required for a driver to see it, read it and respond by turning off the road.¹ What we are now experiencing in New York is national chains using the same market analysis signage and design that was developed for use in suburbs to attract motorist's and not pedestrian's attention (photo 1.3). This method may be necessary for the speed and distance of highways along strip plazas but certainly not for the pedestrian or even vehicular speed of New York City streets. Smaller New York businesses that have no connection with the suburbs or national chains are being seduced by this attention getting method.



1.3

These large-scale, projecting and garish commercial displays are sucking the architectural diversity out of the city's public spaces. As smaller towns and cities throughout the country try to restore and revitalize their Main Streets, we New Yorkers are covering ours with vinyl and aluminum (photo 1.4). Concealing our architectural treasures in this way is like draping a museum's dioramas and display cases with dust covers. Why go to a museum if you can't see what's on display? Why go to New York if you can't see what makes it New York?



1.4

Travelers don't pick airports based on their architecture and ambiance but on their convenience so it's alright if all airports look and feel pretty much alike. Cities have a different purpose and shouldn't be like airports. They should have a character and a flavor that distinguishes one from the other. Despite the electronic revolution that allows back office functions to be located miles from any city and lets almost anyone with an on line personal computer conduct their business from a mountain cabin or a beach house, some businesses still require face to face interaction. Cities are the best place for this interaction and New York is one of the best of these cities. New York, one of the oldest modern cities, is centered on business the way it used to be conducted, face to face. If it's is going to remain a business center we must compete by using what makes our City unique. It shouldn't be allowed to look like any place else. Street aesthetics should be regulated because good design is good for New York. In rural areas power lines and billboards detract from the beauty of the natural environment. In New York the built environment is being devastated by the effects of poor design.

Not everyone feels the aesthetics of a streetscape can or should be regulated. Some people say aesthetics are unimportant and doesn't concern them. But if they'd give it some thought they'd see their favorite places are what they are because of the aesthetic qualities of those places. Good design affects more than the appearance of a place, it also contributes to how it feels. It makes it why we want to be there. In the case of New York, it's why many businesses want to be here. The design of a city contributes to its character.

Other people say aesthetic considerations are too costly. Good design doesn't necessarily mean expensive materials and high priced architects. A well-designed window display can do a tremendous amount to attract business and still be less expensive than flashy signs and awnings. Modest materials and a well thought out plan can be economical and better quality materials pay for themselves in the long run. Wood and stone age while plastic and vinyl just get dirty. Grinding away original architectural details to facilitate the mounting of signs is not cost effective (photos 1.5 & 1.6).



1.5



1.6

Another argument against civic aesthetics is that money would be better spent on more important quality of life issues. Yes, there is a serious problem with homelessness, schools are deteriorating, drug use is at an all time high and money is needed to combat these problems. Rather than adding to the problem, good design can be part of the solution. Paying attention to aesthetic considerations and good design is another way of improving quality of life. If the commercial areas of the city were more aesthetically pleasing, more and better quality businesses would locate there. Increased jobs and a broadened tax base can help any city.² Tourists and business travelers visiting New York want to come to an attractive city with well designed streets and neighborhoods. They want to experience a New York sense of place that some effort must be expended to maintain.

2. POSITIVE AND NEGATIVE SENSE OF PLACE

Different sections of the city, whether they are old or new, sophisticated or gritty, gaudy or subdued, have their own character and each produces a different effect on us. As each area is developed this effect is too often determined by commercialism rather than aesthetics. Commercial areas of the city can be both financially successful and aesthetically pleasing. The following are examples of areas with a positive or negative sense of place.

Positive

Almost any block on Madison Avenue from 60th to 96th Street can be described at the very least as pleasant. Whether shopping, dining, going to work or just passing through, being in this section of the city is a pleasurable experience. The building heights relate well to the width of the avenue making the street scale more human than in other areas and even where there are larger buildings the pedestrian environment is still agreeable. Some of these larger buildings, both the older ones and the more recent additions, have installed matching awnings or sign bands running the length of their frontage where shop owners identify their establishments with low key lettering. Even where this method isn't used, awnings and signage are understated and there are few canopies or projecting signs. Signs are kept parallel and close to the building whether for a ground floor or second story shop and some use no advertising except their name painted on a window. They rely on creative window displays to attract attention. Taken together, all this eliminates the clutter and confused look of many commercial streets.

Many of the storefronts throughout this section of Madison Avenue make use of the original wood and metal framing that has existed since these buildings were erected. Where a more contemporary look is called for, similar quality materials are used in creative ways that compliment rather than clash with the rest of the building. There are some four and five story 19th century residential buildings whose ground and second floors appear to have been converted to commercial uses early in the building's history. These conversions provide a low retail streetwall with apartments set back above and don't so much hide the original architecture as add to it (photo 2.1).



2.1

Madison Avenue is not all luxury shopping. Heading north, the upscale restaurants, boutiques and galleries give way somewhat to more "neighborhood" street level uses like local restaurants, house ware stores and dry cleaners, which for the most part have well designed storefronts and discreet signage. Because of the comfortable feeling on the street, many restaurants, even those without sidewalk seating, in good weather open their fronts to the street, creating a very intimate feeling for a public place. The diners are at ease with the street and the pedestrians feel the same about the restaurants.

It feels like the storefronts, awnings and business signs which make up the retail streetwall in this stretch of Madison Avenue weren't constructed so much to advertise and attract attention because like other works of fine craftsmanship, they are pleasing to look at in themselves. Through the use of good design, which includes giving consideration to materials and the surrounding built environment, the building owners and commercial tenants of Madison Avenue have thrived. I see this as evidence that far from doing any financial harm; good design can be good for business. The look of the area discussed is in part governed by standard city-wide zoning regulations and its status as a special purpose district as well as some landmark designation. All of these regulations are more than needed to determine the feel of the street level environment. Just a small portion of them applied to other districts can create a similar pedestrian ambiance.

Negative

There aren't many places left in New York with the positive look and feel of Madison Avenue. Unfortunately, there are too many with the opposite effect. Here are just a few.

- West 34th Street, once the home of New York's most famous department stores, has become a quasi-bazaar. In addition to the Coney Island-like design of the store fronts and fast food restaurants, some stores have no fronts at all. Their tee-shirts, knock-off perfumes and handbags spill out onto the sidewalk past the roll down metal gates that are closed only at night. Low rents and high pedestrian traffic have attracted the type of store where the marketing philosophy is "do anything to get customers into the store". Signs, flags, flashing lights and balloons are typical. The 34th Street Partnership, with the help of the Mayor's Office of Midtown Enforcement, has brought suit against many of these businesses to remove signs that are too large and too glaring and to install storefronts.³ It will take a miracle on 34th Street to restore the ambiance that once existed there (photos 2.2 & 2.3).



2.2 & 2.3

- West 72nd Street, with its beaux arts row houses, was once the dignified main street of the Upper West Side. Now it's a forest of canopies and signs. These shopkeepers don't realize that once a saturation point is reached we can only see the forest and not the individual trees (photo 2.4). Part of the Upper West Side/Central Park West Historic District, the ground floors of these residential buildings are so commercialized they don't bear any resemblance at all to their upper stories (photo 2.5). Landmark West!, a local historic preservation group, recently reported 63 zoning and building code violations involving signs and storefronts to the Department of Buildings. All of these violations were on just one block face, the north side of 72nd Street, between Columbus and Amsterdam Avenue.



2.4 & 2.5

- The section of Canal Street east of the Holland Tunnel is part of the Soho Cast Iron Historic District, but you'd have to look very closely to see any of it (photo 2.6). There are dozens of illegal signs, giant awnings, demolished storefronts and destroyed architectural details. The Landmarks Preservation Commission issues violations here that are either routinely ignored or result in drawn-out legal actions.⁴



2.6

- Until recently, when you said "57th Street" people thought of the Russian Tea Room and Tiffany's but now its more likely that Porky Pig and Planet Hollywood would come to mind. Tourist oriented chain stores and theme restaurants are fine when they're located in traditional tourist areas like Times Square but on 57th Street, with their projecting banners and illuminated signs they're an intrusion on a quintessential New York thoroughfare (photo 2.7). Being inside the Hard Rock Cafe in New York is the same as being inside the Hard Rock Cafe anyplace else, so why put it on 57th Street? Herbert Muschamp, the architectural critic for the New York Times got to the heart of the matter when he said "Who wants to see Manhattan drained as if it were a cocktail, and replaced with an extension of Sunset Strip? Other cities faced with rapid skyscraper development, used to complain about creeping 'Manhattanization'. Now Manhattan is at risk of being L.A.'d."⁵



2.7

- Fifth Avenue is the world's dream shopping street, but things are changing there too. Lax or non-existent design regulations have altered the Fifth Avenue shopping experience. Cheap electronic stores and faux-antique galleries are perpetually going out of business with huge "LOST OUR LEASE" signs (photos 2.8 & 2.9). The Fifth Avenue Merchants Association, with the help of the Department of Consumer Affairs and the Mayor's Office of Midtown Enforcement, are doing what they can but the character of the street has already changed. Upscale stores like Chopard, Etro and Barneys have given up on it and are opening their flagship stores on Madison Avenue where quality is more of an attraction than flash.⁶



2.8 & 2.9

Sections of many other cross-town streets (Chambers, 14th, 23rd, 79th, 86th, etc) and some commercial avenues (the numbered avenues as well as Lexington, Broadway, Columbus and Amsterdam), are other examples of streets in danger of having their distinct character and sense of place masked by hodge-podge commercialism.

Possible Exceptions

A recent reaction against some forms of aesthetic regulation has been based on what I'll call the "ethnic" argument. In essence it says historic preservation and zoning regulations for miscellaneous commercial districts are a racist attempt to drive immigrant shop owners out of business.⁷ These shop owners make claims of harassment and selective enforcement and say that other's tastes and design guidelines shouldn't be imposed on them. They feel advertising and business methods that were allowed in their home countries should also be permitted for their use here. This is like saying that if your home country didn't have an income tax, you shouldn't be required to pay one here. As most people in law enforcement know, a charge of selective enforcement is a good way to lose an otherwise airtight case. Great care is taken to prevent such a

charge and the best way to prevent it is to enforce the law "across the board". Agencies like the Department of Buildings, the Mayor's Office of Midtown Enforcement and the Landmarks Preservation Commission who are charged with the enforcement of the city's aesthetic regulations respond to complaints, generally from merchant's or neighborhood associations. Such a complaint might specify a block or commercial strip where signage violations have gotten out of hand. The signs of merchants who are in compliance with the law are hidden by non-complying larger and higher signs giving the law breakers an unfair business advantage as well as contributing to the visual clutter of the neighborhood.

The ethnic makeup of the city is changing but that's been true since New York was New Amsterdam. For example, in 1970 78% of the population of Queens was white and only 2% Asian, but according to a recent City Planning Department report, by the year 2000 the white population will have dropped to 34% and the Asian risen to 18%.⁸ The influx of immigrant groups today is similar to what went on in the Lower East Side around the turn of the century. The impact of Italian, Chinese and Jewish settlement is still very much a part of the look of that area. Nonconventional storefronts and flashy signage isn't always bad. Mulberry Street, East Broadway and Orchard Street on the Lower East Side are examples of hectic confusion and things out of context somehow working (photos 2.10, 11, 12, 13, 14 & 15). Italian and Jewish immigration to the area tapered off long ago but immigrants from China are still arriving. The open storefront and signage styles of Chinatown are spreading north into Little Italy and east to the old Jewish commercial district. Packing crates, produce and merchandise displays on the sidewalk in front of shops with brash, colorful advertising displays is typical. The lettering and advertising messages may be different but the look and feel of the streets hasn't changed much since the early days of the Lower East Side.



2.10 & 2.11
Little Italy



2.12 & 2.13
China Town



2.14 & 2.15
Orchard Street

The General Central Commercial District (C6) zoning of these streets allows open storefronts and liberal signage.

Less strict regulations such as these should of course be applied in certain areas. A candidate for some sort of special zoning might be "Little Korea", which is centered on W. 32nd Street between Broadway and 5th Avenue. The owners and employees of the many Korean run business's in the upper stories of the buildings in this area have created a need for Korean oriented street level uses. Groceries, restaurants and homeopathic apothecaries line the streets, almost all with colorful signs, some in English but most in Korean (photo 2.16). New York needs diversity and all commercial streets shouldn't look alike. We must allow for change and avoid a frozen city. When I was a child I saw the city as something that



2.16

was here today and would be here in the same way tomorrow. It was only as I grew older that I realized the city changes with time. It's dynamic, not static and exists in time as well a space. As a work of art New York is more like a performance than a painting. Although there is certainly room for change and diversity, there are sections of the city that shouldn't bear the dominant imprint of any particular group or style but remain as the historic mix that is simply and distinctly "New York". Perhaps after standing the test of time the appearance of the Lower East Side's neighborhoods should be preserved as an historic duty. I don't believe this duty applies to many other commercial streets throughout the city where this flamboyant commercial style is being arbitrarily applied.

Like certain streets on the Lower East Side, Times Square is another special case. Along with the Las Vegas strip, Piccadilly Circus and the Ginza, commercialism in the form of signs is why many people want to go there. Broadway crosses Seventh Avenue at 45th Street and the effect of the buildings at this intersection, "the crossroads of the world," is what tourists write home about. It isn't the architecture but the signs. On the north-east and the south-west there are towers set back on bases and the bases are covered with signs. The block on the south-east is a two story building with four stories of signs. The two blocks flanking Duffy Square are both low and open with more of the usual colorful signs. On the north side of the square is a tall and narrow facade with signs stacked up on it like building blocks. Whoever advertises here has their product's name in snap shots and post cards that find their way around the world. Visitors walk from 43rd Street to 47th Street on one side of Broadway or Seventh Avenue and then back on the other.

This promenade is a New York tourist event and it's especially appealing at night (photos 2.17 & 2.18).



2.17 & 2.18

Except for the "Fuji Film" neon at the south-west corner of 43rd and Seventh Avenue and the video screen and "Zipper" on the Times Building the south square is comparatively dark for "Times Square" but still exceptional. Between 43rd and 44th Street, the staid Paramount and bland No.1500 Broadway don't do much to light up the street. It all begins to happen at 44th Street. The street starts to light up and at the crossroads on 45th Street you're surrounded by five to seven stories of brilliant facades. Even the Marriot Marquis looks good at night because you can no longer feel its bulk in the dark but you can see its neon, alive and moving. From here on up to 47th Street, Broadway and Seventh Avenue appear to be one street illuminated by blazing colored images. Duffy Square is lit by five stories of illuminated signs on each side and the center building where Broadway and Seventh Avenue separate, is all light and no building. The lights continue uptown on both sides of the Broadway - Seventh Avenue fork.

The Zoning Resolution limits the size and height of signs throughout the city with especially strict limitations on illuminated signs but from 43rd to 50th Streets buildings with frontage on Broadway and Seventh Avenue are required to have illuminated signs. Special Purpose District zoning is generally enacted to help maintain the character of a particular neighborhood. In the case of the Special Midtown District (81-73) which encompasses these squares, the zoning specifies that each building must have illuminated signs and it allows them to be higher, cover more square footage and extend over the sidewalk further than in any other area of the city. Instead of giving maximums, minimum limits are set for Times/Duffy signage to enhance their world wide image.

These regulations have achieved their goal. People come here from all over the world to see and to be seen.

Regulations can vary to leave New York room for a Lower East Side and the type of zoning that enhances Times Square can be applied in other areas but some space must be left for quieter moods.

3. THE COURTS AND AESTHETICS

At the beginning of the century it was considered inappropriate to regulate aesthetics under the police power. Later the courts began to see a need for some regulation and based their rulings partially on aesthetics and partially on other issues such as public welfare and safety. In the 1932 decision in *Perlmutter v. Greene* (259 N.Y.327) the Court of Appeals wrote "Beauty may not be queen, but she is not an outcast beyond the pale of protection or respect. She may at least shelter herself under the wing of safety, morality and decency". Today some cases are determined exclusively on aesthetic issues although this concept is still evolving. The following is a brief listing of court cases regarding signs, architecture, historic designations and aesthetics in general that have affected the regulation of aesthetics and show the variety of legal attitudes from 1905 to the present.

Signs

In *City of Passaic v. Paterson Bill Posting & Sign Painting Co.* 73 N.J.L. 285, 62 A. 267 (1905), a sign company was charged with, and convicted of, violating an ordinance prohibiting billboards less than ten feet from the street line and within eight feet of the ground. The defendant appealed and the appellate court found that the statute allowed the municipality to regulate the structure of the billboard as it might affect the safety of the public but it appeared that it was enacted more for aesthetic considerations than for safety. The court ruled that aesthetics and matters of taste were not sufficient reasons to take private property without just consideration and reversed the lower court conviction. This case was decided in 1905 and thankfully we've come a long way from this era's laissez faire capitalism and the idea that private property didn't necessarily entail at least some public responsibility.

Seventy-five years later...

Metromedia, Inc. v. City of San Diego

26 Cal. 3d 848, 610 P.2d 407, 164 Cal. Rptr. 510, *prob. juris.noted*, 101 S. Ct. 265 (1980)

The City of San Diego enacted an ordinance prohibiting all off-site advertising display signs. The sign company filed an action against the city attacking the ordinance as unconstitutional. The court agreed and ruled the ordinance invalid as an unreasonable exercise of police power and an abridgement of First Amendment rights to freedom of speech and press. The city then appealed this decision and countered the sign company's argument that the main purpose of the ordinance wasn't the promotion of

traffic safety but aesthetics. The court agreed and added "... to improve the appearance of the community, such a purpose falls within the city's authority under the police power."

In addressing the First Amendment issues, the court pointed out that the US Supreme Court dismissed appeals by sign companies using free speech defenses in three cases where billboards were banned (Suffolk Outdoor Advertising v. Hulse, Newman Signs Inc. v. Hjelle and State v. Lotze). Furthermore, the San Diego ordinance doesn't suppress the content of the advertisers message and it does promote traffic safety and the appearance of the community. It also leaves open other means of conveying the advertisers message such as publications and on-site advertising. The court concluded its ruling in reversing the lower court decision with a poem by Ogden Nash:

I think that I shall never see
A billboard lovely as a tree.
Indeed, unless the billboards fall,
I'll never see a tree at all.

Architecture

State ex. rel. Stoyanoff v. Berkely 458 S.W.2d 305 (Mo. 1970)

The City of Laduc, Missouri has an Architectural Board whose duty is to determine if buildings in the city "conform to certain minimum architectural standards of appearance and conformity with surrounding structures, and that unsightly, grotesque and unsuitable structures, detrimental to the stability of property, structures, and residents, and to the general welfare and happiness of the community, be avoided, and that appropriate standards of beauty and conformity be fostered and encouraged." The Board has three members, all of whom must be architects. Any application for a building permit which will affect the exterior of a building must be submitted to the Board along with detailed drawings and specifications. The Chairman of the Board determines if the new structure will be in context with surrounding structures. If so, the application is approved and returned to the Building Commissioner. If it is not approved, notice is given to the applicant and a full Board meeting, which is open to the public, is called. The Board can disapprove the application if it finds the building will be "unsightly, grotesque or unsuitable." The application is then returned to the Building Commissioner with or without recommendations and suggestions. The applicant can either comply with the recommendations, if any, or appeal.

The builders in this case were denied a building permit because their application wasn't approved by the Architectural Board and they challenged the ordinances which enacted the board. They said the law was invalid and unconstitutional in that it provided no

"standard nor uniform rule by which to guide the architectural board" and that "they are based entirely on aesthetic factors." The court pointed out that through aesthetics the ordinances also address "... the welfare of the surrounding property...and the general welfare and happiness of the community." The court ruled in favor of contextual design saying the ordinances can call for "a factual determination of the suitability of any proposed structure with reference to the character of the surrounding neighborhood" and upheld the validity of the Architectural Board.

Historic Preservation and Aesthetics

- In Manhattan Club v. Landmarks Preservation Commission 51 Misc. 2d 556, 273 N.Y.S.2d 848 (1966), the Landmarks Preservation Commission prevented the sale of the club's building which would have resulted in its demolition. The club charged that this was a regulatory taking. The court ruled that "The law was not confiscatory as applied to the Club for it was free to do as it pleased with the interior of the building and was guaranteed a reasonable return on its investment.... To be confiscatory, the ordinance must preclude use of the property for any purpose for which it is reasonably adapted."
- In Penn Central Transportation Co. v. New York City 438 U.S. 104 (1978), Penn Central sued the City Of New York saying the landmark law that prevented them from changing its facade or building over Grand Central Station constituted a regulatory taking. The United States Supreme Court, applying principles from zoning cases, ruled the law did not effect a taking and "the restrictions imposed are substantially related to the promotion of the general welfare ..."
- In A-S-P Associates v. City of Raleigh 298 N.C. 207, 258 S.E.2d 444 (1979), the court upheld the validity of an ordinance that required the owner of a vacant lot be required to build on it in a style congruous with the historic buildings in the surrounding area. That this resulted in some loss of the value of the property didn't render the ordinance invalid.

Aesthetics in general

- In Cochran v. Preston, 108 Md. 220, 229, 70 A. 113, 114 (1908), the court stated, "It may be that in the development of a higher civilization, the culture and refinement of the people has reached the point where the educational values of the Fine Arts, as expressed and embodied in architectural symmetry and harmony, is so well recognized as to give sanction, under some circumstances, to the exercise of this power even for such purposes."

- In State v. Diamond Motors, Inc., 50 Haw. 33, 429 P.2d 825 (1967), in ruling in favor of an ordinance prohibiting a sign from exceeding seventy-five square feet and being higher than sixteen feet above the ground the court said "We accept beauty as a proper community objective, attainable through the use of the police power."
- In Scenic Hudson Preservation Conference v. Federal Power Commission 453 F.2d 463 (2d Cir. 1971), responding to the Federal Power Commission's argument for the construction of the Storm King power station Justice Hays said, "Two scenic wrongs do not necessarily make a right. On the basis of the commission's thesis, wherever you have one billboard you can put two, wherever you have one overhead transmission line you can put another, you can add blight to blight. That a responsible federal agency should advance that proposition in the form of a finding...seems to me shocking."
- In People v. Mobil Oil Corp. 48 N.Y.2d 192, 397 N.E.2d 724, 422 N.Y.S. 2d 33 (1979), the court addressed a "truth in advertising" issue and then went further to say "One valid purpose for regulation ... would be the improvement of the aesthetics of the community."
- In People of the State of NY v. Stover 12 N.Y.2d 462, 191 N.E.2d 272, 240 N.Y.S.2d 734 (1963), the Stovers erected a clothesline in their front yard as a protest against their tax assessment. The city enacted an ordinance prohibiting front yard clotheslines and the Stovers were issued a violation for their clothesline. They appealed saying the ordinance was unconstitutional as an infringement of their free speech and as a deprivation of property. The court held that the ordinance was designed to promote the aesthetics of the community and that this consideration alone warranted the exercise of the police power. In its ruling the court cited Berman v. Parker (3-38 U.S., at p. 33, 75 S Ct., at p. 102) where Justice Wm. O. Douglas said "The concept of the public welfare is broad and inclusive... The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy..."

So after an initial setback where an ordinance against ugliness is considered a taking of property, the courts have found:

- Aesthetic considerations can justify the use of the police power.
- First Amendment guarantees of free speech don't apply to the commercial content and placement of signage.
- Statutes regulating aesthetics are valid.
- Municipalities can appoint boards to review the design of structures that will be visible in the community.
- Statutes requiring structures to be built in a style that's in context with surrounding structures are valid.
- Design restrictions are not takings.

4. THE CITY OF NEW YORK AND AESTHETICS

Positive Outcomes

The City of New York v. County Seat, The Jeans Store et.al.

Notice of Motion, Index No. 401686/95

In December of 1992, County Seat was served a notice of violation for having a sign with an area greater than three times the street frontage of the zoning lot and at a height exceeding twenty-five feet above the curb line. County Seat's frontage measures thirty feet for which the zoning allows a ninety square foot sign. They had prior nonconforming vertical and horizontal business signs which brought their allowable total to two hundred twenty-five square feet. The sign which brought about the violation was an approximately 2500 square foot sign painted on the surface of most of the six story building. As it was being painted in 1992, the defendants received complaints from neighboring businesses which were ignored. They were notified by The 34th Street Partnership, the Business Improvement District (BID) for West 34th Street, that the sign was in violation of the zoning. Their response to the BID claimed competitive necessity for the sign and they refused to voluntarily comply, pointing out that Macy's also had a very large sign and the same standards should apply to everyone. (The Macy's sign in question was prior non-conforming and therefore exempt for the regulation.) Similar requests to Levi Strauss Inc. (whose product was featured in the sign) were not responded to.

As a violation of the Zoning Resolution is a public nuisance, the Mayor's Office of Midtown Enforcement filed a suit in civil court for a preliminary injunction under the nuisance abatement law on County Seat, Levi Strauss and the building owner. (Nuisance Abatement Law section 7-701 - "the operation of certain commercial establishments...in flagrant violation of the building code... [and] zoning resolution...all of which interfere with the interest of the public in the quality of life and total community environment, the tone of commerce in the city, property values and the public health, safety and welfare...")

The argument presented by the City cites City v. Lewis Foods of 58th Street, Inc., (Sup. Ct., N.Y. Co., index No. 4370/86, July 8, 1986) where the defendants displayed a flag bearing the name "McDonalds" and the "golden arches" which was a violation of the Zoning Resolution. The Court, in Lewis Foods, *infra.*, said "...zoning laws are designed, on a planned basis, to serve as a vital tool for maintaining a civilized form of existence for the benefit and welfare of an entire community... Defendants claim that their revenue will fall by 20% is of little moment. Defendants should not be able to claim a loss to business because they are now required to remove a zoning violation." Responding to the

defendants claim regarding the difficulties of complying, the court said "...the realities of the situation require that we are dealing with a flag, albeit a large one. We are not dealing with the dismantling and possible re-building of the pyramids... A flag pole with its pulleys and other mechanical advantage devices will not be too difficult to remove...the colors of Ronald McDonald are to be removed."

The city also argued that "The defendants...are exercising an unfair commercial advantage over their law abiding competitors" by not complying with the zoning and "In the legislative declaration which prefaces the Nuisance Abatement Law, the City Council recognized that violations of the Zoning Resolution, including those which affect the quality of life, are per se harmful to the public."

The defendant settled, paying a \$40,000. fine and removing the sign (photos 4.1 & 4.2). The New York Times and Real Estate Weekly praised the 34th Street Partnership and the Mayor's Office of Midtown Enforcement for their effort in the fight to preserve aesthetics.⁹



4.1 & 4.2

The People of the State of New York v. Record Explosion

N.Y. Co. Part JP-10, Doc. 95N660088X /95N660087X July 6, 1995

A record store on W. 34th Street received notice of violation for having a sign larger and mounted higher than was allowed by the Zoning Resolution in that district. The prosecution was charged with proving that the square footage and height estimates were accurate and in violation of the underlying district zoning. The defense was based on the premise that the neighborhood had changed, the zoning law was enacted to preserve the character of a neighborhood that was long gone, the law ceased to exist in its practical aspect and it would be in the furtherance of justice to dismiss the case. In addition, they

said the sign in question wasn't the worst sign on the street. This argument was presented as a Clayton defense¹⁰ (People v. Clayton, 41 A.D.2d 204, 342 N.Y.S.2d 106, 2d Dep't 1978) which requires that the court rule on: the seriousness and extent of harm caused by the offence, evidence of guilt (even if inadmissible at trial), the character of the defendant, any misconduct by law enforcement personnel involved in the case, the effect of imposing sentence, the impact of dismissal on the safety or welfare of the community and the public's confidence in the criminal justice system, and any other fact indicating a judgment of conviction would serve no useful purpose.

After addressing all of the above, the court's response was strongly worded.

"Who gives a damn what 34th Street looks like, with all these schlock stores and signs, is that your argument?. I find no compelling reason to dismiss the case in the furtherance of justice. I find a compelling reason not to dismiss. I think that the Zoning Resolutions is one of the most important methods that the city has to protect itself against inappropriate or garish or ugly signage...[a sign too large and too high] denigrates the architecture of the building for the purpose of attracting business...I can't blame a business for trying to do business, but you don't do it to the detriment of the architecture...[the purpose of the Zoning Resolution] is to preserve a measure of good taste of the original architecture of the building...the court finds the defendant guilty..."

The defendant paid a \$1,000. fine and removed the sign.

Negative Outcomes

McDonalds

In 1994 a McDonald's on 3rd Avenue received a notice of violation for having signage in excess of the limits set by the Zoning Resolution. This is the same McDonald's that in 1986, was required by the court to remove an oversized banner (City v. Lewis Foods of 58th Street, Inc., et al Sup. Ct., N.Y. Co., index No. 4370/86, July 8, 1986.) An architect hired by McDonald's responded to the notice of violation saying the C5-2 zoning designation, went into effect for this district in 1983 and that the signage was lawfully installed prior to that time when the district was C6-4. In a C6-4 district the area of allowable signage is five times the street frontage of the zoning lot as opposed to three in a C5-2 district and the C6-4 allowable height is forty feet rather than twenty-five in a C5-2.

Since the New York City Zoning Resolution doesn't require the amortization of nonconforming signs (except in certain cases) this was a valid argument. Nevertheless, the prior nonconforming signs more than met the maximum square footage allowed for this location and any additional newer signage was still in violation. A summons was issued and the case went to court. Before the trial started the defense attorney pointed out to the judge a "defect" in the summons. The excess signage in question was mounted on the interior of a large window above the entrance. As defined by the Zoning Resolution a sign in a window, which is of course visible from the outside of a building, is not legally a sign unless it's "designed to give forth any artificial light or reflect such light from an artificial source" (Zoning Resolution sect. 12-10 definitions, *Sign; Sign, Illuminated; Sign with indirect illumination*). This doesn't include natural light by day or artificial ambient street light at night. There were spotlights mounted on the exterior of the building that lit these signs but since the summons cited *section 32-642 Non-illuminated signs* and not *section 32-643 Illuminated non-flashing signs* the case was dismissed and McDonalds got to keep all of its signs.

The first point this case makes clear is that if an amortization period was incorporated into the sign regulations of the Zoning Resolution when it was written there would have been no case. The second point is that the definition of "sign" should be clarified and refined. As it is written, any lettering or graphics etc. mounted on the exterior of a window is a sign but if the same lettering and graphics are mounted on the interior of the window it is no longer a sign. It seems that a quarter inch of plate glass can work magic.

Peepworld

Peepworld, an adult video store near the theater district received a notice of violation under section 32-64 of the Zoning Resolution which states "Illuminated *non-flashing* business signs located in a window within a building, with a total surface area *not exceeding eight square feet...*" are permitted (italics added). Peepworld had two signs in their windows, each of which unquestionably exceeded



4.3

eight square feet. They didn't comply with the violation order and were given a criminal court summons. At a pre-trial conference they produced Department of Buildings permits which allowed square footage amounts in excess of eight feet for each of their signs. At first it appeared that the permits were issued in error but a closer examination showed they were issued for flashing signs. The signs in question were now covered by section 32-644 which allows up to five hundred square feet for flashing signs in the underlying

zoning district. To cure the violation the proprietor simply added electrical devices to convert his illuminated signs into flashing illuminated signs increasing their allowable square footage considerably. The case was dismissed. (photo 4.3)

The four previous cases show that although the City is trying, regulation is a time consuming and sometimes complicated process. Enforcement methods need to be streamlined and the Zoning Resolution's commercial sign regulations need to be carefully reviewed, re-evaluated and perhaps rewritten.

5. RECOMMENDED REGULATION METHODS

Zoning has the power to shape a city. Throughout the city the Zoning Resolution governs, among other things, bulk, streetwall height and setbacks. Although intended to control density, ventilation and light, this type of regulation also has an effect on the look and feel of public spaces. Walk down almost any street in Chicago's Loop. This is where the skyscraper was born and these world famous architectural gems go straight up from the sidewalk seemingly to the sky. As beautiful and well proportioned as these buildings are, they darken and sometimes oppress the street. Their builders were not required by Chicago zoning to provide setbacks. A pedestrian wouldn't have to know anything about architecture or zoning or even have to look up to feel the difference between a Loop street and one in Manhattan's midtown. For most of this century, our zoning's setbacks have given New York its distinctive "wedding cake" architecture (photos 5.1 & 5.2) allowing light and a sense of the open sky above to permeate the street. Without intent, zoning regulations determined the profile of many of New York's best buildings and streets. If it can do that, surely it can be used to regulate street level facades.



5.1 & 5.2

Existing Mechanisms

There are some zoning mechanisms already in operation that with some modification and perhaps stricter control would tip the balance from negative to positive streetscapes in New York. These existing mechanisms are included in special purpose districts and sign regulations.

Special Purpose Districts:

Special purpose districts were created to maintain and strengthen the distinct character of designated areas of the city. In some cases this means enhancing pedestrian and vehicular traffic flow. In others, permitted uses are sharply defined. Examples of this are the Special Garment Center District which was created to foster garment manufacturing or the Special City Island District which is intended to encourage nautical and waterfront activities. In addition to regulations that address the economic activities of an area, many special purpose district regulations also deal with design.

Two special purpose districts whose requirements would benefit many other areas of the city are the Special Atlantic Avenue District and the Fifth Avenue Subdistrict of the Special Midtown District. On Atlantic Avenue signage is carefully regulated. Total surface area as well as location of signs and window graphics is limited. If more than one establishment is located in the same building their signs must share a common band and not obscure cornices or parapets. Backgrounds for signs are limited to specific colors. Alterations to front walls or storefronts must comply with guidelines such as the following: awnings or canopies shall not obscure cornices, a minimum of 50% of the storefront area shall be glazed and finishes, textures and colors must be chosen from specified appendices. The Fifth Avenue Subdistrict has similar requirements: no sign below ten feet of curb level, at least 50% of street wall must be glazed and transparent, banners and pennants are prohibited.

Most neighborhoods have key commercial areas that are the equivalent of a "Main Street" or central business district. Guidelines for these key areas can be incorporated in special purpose district zoning where design is the only special purpose and in "design overlays" that would be similar to commercial overlays. This method can be used to maintain or enhance the architectural character of specified areas of the city. Although standard commercial district and special purpose district designations presently encompass much more than signage, storefront and facade regulations, these new designations would apply only to commercial streetwall design.

Sign regulations:

An awning used to be a flexible canvass device that was employed by shopkeepers before the use of air conditioning to keep interior temperatures down and prevent window displays from fading by shading windows from the summer sun. Awnings with this function can be seen in old photographs taken in the summer of luxury apartment buildings as well as stores. Due to advances in air conditioning and glazing technology, they are no longer as necessary as they once were so they are now used primarily as a background for advertising (photos 5.3 & 5.4). Canopies went through a similar evolution (photos 5.5 & 5.6). They were originally intended as a form of protection from the weather between the curb and the entrance of the establishment. Section 32-653 of the Zoning Resolution treats awnings and canopies as a type of projecting business sign but restricts the size of letters on them to twelve inches high, total signage to twelve square feet and also limits any sign to the name and address of the establishment. Illuminated signage is prohibited. The intent of this regulation, which was written before the "waterfall" or "fixed" type of awning was developed, is to allow the awning or canopy to be used to identify the business in the simplest possible way. Now with some basic lighting this type of awning or canopy acts like a translucent lamp shade and becomes a huge illuminated sign at night (photo 5.7). With their new commercial function, awnings and canopies have enlarged to sizes that cover architectural details as high as the third story so they can accommodate more graphics and lettering to "identify" and attract attention to shops and businesses. Marquees have also evolved to a point where they have become very large projecting signs (photos 5.8 & 5.9). Even if the letter of the law regarding lettering is adhered to, the intent is not when a brightly colored expanse of vinyl or metal the width of the storefront runs up to the second story from somewhere out over the sidewalk just over the pedestrian's head.



5.3 & 5.4 - awnings



5.5 & 5.6 - canopies



5.7 – illuminated awning



5.8 & 5.9 - marquees

According to section 32-652 of the Zoning Resolution, in most commercial districts a double or multi faced (perpendicular to the building) sign can project eighteen inches over the sidewalk and all other signs (parallel to the building and single faced) can project twelve inches. The overall area of the sign is governed by a number given in section 32-642, which in most districts is three or five. This number is used to multiply the street frontage of the zoning lot or individual establishment to determine the square footage of the sign. For example, if a store is twenty feet wide and the number for the district is three, then the total area of the sign can be no more than sixty square feet (3 X 20 foot width = 60 square feet). Place this example in a district where signs can extend to a height of twenty-five feet above curb level, and the sign can be imagined as a three foot high band of letters and graphics running across the width of the store somewhere between the top of the store window and the twenty-five foot height limit. That might have been the intent of the regulation but a shop owner can cover an area much larger than sixty square feet with glaringly colored sheet metal or vinyl, put his sign on it and still be within the limits of the regulation arguing that the background is part of the storefront and not part of the sign.

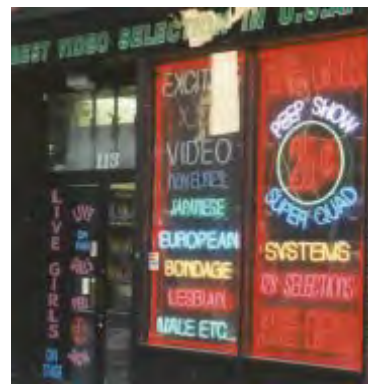
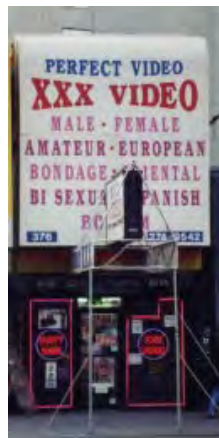
Another problem that wasn't envisioned when the sign regulations were written is the roll-down security gate. These gates require a box to contain them in the rolled up position that is approximately 14 by 14 inches and the length of the shop. The simplest installation method is to mount the box on the exterior of the facade above the shop window. When mounted this way, any wall sign installed over the gate box is already in violation of the twelve inch projection regulation (photo 5.10). With a little more effort the box can be mounted on the interior of the store with the gate still functioning as an exterior security device. This would result in a neater general appearance and a sign mounted flat on the exterior of the building.



5.10

As is made clear by the above, the sharp distinctions between awnings, canopies and signs that existed when the zoning regulations were written have become blurred and this ambiguity is being taken advantage of by commercial establishments. If the Zoning Resolution more precisely defined allowable dimensions and other physical aspects of the structures that can impinge on public space these structures would be less intrusive and perhaps more understated.

Currently, to properly determine what constitutes an awning sign, a number of sections of the Zoning Resolution and Building Code have to be examined. Start under Section 12-10 of the Zoning Resolution for the definition of a "Sign", then go to Section 32-653 for "Additional regulations for projecting business signs" then back to Section 12-10 for the definition of "Surface area (of a sign)" to determine what the limits are on an awning. At this point a reasonable person might begin to wonder why what is called an awning in Section 32-653 shouldn't really be included in Section 32-652 "Permitted projection in all other Commercial Districts" which limits "all other signs" to a projection of only twelve inches across a street line. Or is it allowed an eighteen inch projection because it's "double- or multi-faceted"? And since it's actually parallel to the store front can it really be considered "projecting" at all? But then again, the Building Code (Section 27-313) allows awnings to project eight feet over the street line without addressing signage. If all this sounds confusing that's because it is. A regulation written in this way makes it difficult for someone who wants to comply and easy for someone who doesn't. A few words, like awning, canopy, marquee, projecting, parallel, simply but comprehensively defined in the Zoning Resolution would clarify an arcane issue for architects, sign installers, shop owners and inspectors. Adult-use special zoning might not have become the issue it did if signage was more carefully defined and closely regulated. Regarding the issue of restricting the location of adult-use businesses through an amendment to the Zoning Resolution, Manhattan Borough President Ruth Messinger said "There are other options, such as enforcing and strengthening existing signage laws..."¹¹ It seems that many people aren't as offended by the existence of sex-related business as they are by the garish signage that has become customary among these businesses (photos 5.11, 12 & 13).



5.11, 5.12 & 5.13

Design Review Board

In addition to making use of the above existing mechanisms and giving them a higher enforcement priority a Design Review Board can be established. Since the Zoning Resolution is primarily administered by the City Planning Commission logically the Board should be a part of the City Planning Department. The Board can function in a manner similar to the Landmarks Preservation Commission (LPC). The LPC is concerned only with historic districts and buildings. Likewise the Board will deal only with special design districts and "design overlays" where special guidelines have been instituted. It would not be involved with the many other areas covered by the Zoning Resolution.

The Board:

The goal of the Design Review Board would be to protect and enhance the city's appearance through a review process of applications for exterior alterations in specified public areas. These areas would be designated as special design districts or design overlays and mapped in the style now used for commercial districts and commercial overlays on the present zoning map. Generally the limits of the Board's authority would extend only to the commercial areas of a buildings exterior, usually the first and second story. Board members would come from a wide variety of fields including architecture, planning, law, development and real estate. The membership of the board should be well-balanced in order to facilitate an understanding of both the physical and business constraints of the applicant.

Legality:

The legality of an architectural or design review board has been established (see State ex. rel. Stroyanoff v. Berkely above). New York State General Municipal Law, Section 96-a allows aesthetic controls to be applied to architecturally significant sites. Municipal Home Rule Law, Section 10(1)(a)(11) allows New York State cities to enact local laws relating to the protection and enhancement of their physical and visual environment. The local law creating the design review board would indicate the limits of the board's powers, qualifications for membership, hearing procedures, accessibility of meeting locations, public notice, appeals, technical staff, etc.¹² With its guidelines included in the Zoning Resolution and therefore subject to the police power, enforcement will be accomplished through the existing Department of Buildings process and other methods discussed below under the section on "Enforcement".

Standards:

Perhaps the most difficult part of the creation a design review board is establishing the standards that they must work by. Proposed alterations that would include any facade, storefront, sign, awning, canopy or marquee would have to be evaluated. Consideration must be given to: materials, color, texture, symmetry, balance and overall composition, as these relate to the whole building and surrounding buildings.

Pre-approved generic plans and specifications can be used to simplify the procedure for some basic projects but many other projects would go beyond their scope. A method that might work for the more complicated projects would be to prepare a set of design guidelines like those used for Battery Park City.¹³ Here different architects were given a free hand to design the various building within well thought out design specifications. Many different building types were encouraged and what was produced is reminiscent of Manhattan's more attractive neighborhoods, such as Gramercy Park, Tudor City and Riverside Drive. Facades were required to be done in stone and brick and in a specified range of colors. Highly reflective surfaces such as certain types of glass and unpainted metal were prohibited. Parapets and complementary expression lines in streetwalls relate each building to its neighbors. The overall effect is a group buildings that are different from one another but still very compatible. These guidelines went well beyond the normal zoning requirements regarding bulk, streetwall, setbacks, etc. Incorporated into the Zoning Resolution, similar guidelines pertaining to facade, storefront or other renovations that are visible from public areas can be implemented and tailored to different sections of the city to help maintain their architectural character.

Other guidelines can be based in part on existing LPC standards although they need not be as stringent regarding historic accuracy and replication of "original texture, color, profiles and details". Current LPC guidelines state that since windows cover 30 to 40% of a building's surface, window details are an extremely important part of the overall look of a building's facade. By the same token, a storefront is at street and eye level, making this also an integral component of the building's appearance (photos 5.14, 15, 16 & 17).

Historic districts have a positive sense of place not only because of the quality or beauty of the historic architecture but also because the eye level base of the building is in context with its upper stories.



5.14 & 5.15
(façade and ground floor in context)



5.16 & 5.17
(clashing ground floor level design and upper stories)

When plans are submitted for a sign, awning, storefront or facade alteration, in addition to present Department of Building requirements, the following LPC type criteria should be included:¹⁴

- Detailed plans and elevations (not schematics) submitted for any part of a building's facade (storefront, sign, awning, etc.) should include the entire street wall facade, showing patterns and indicating colors.
- Any additions should follow the existing form (i.e. no rectangular awnings over arched windows).
- Significant architectural details should not be removed or damaged.
- New designs should be based on and relate to the physical evidence of the building (i.e. align storefront mullions with details above storefront).

A general preservationist rule of thumb that should be encouraged is "repair rather than replace". This fundamental rule will keep new construction on existing buildings more in context with that building and neighborhood. Guidelines of this type should be included in the Zoning Resolution to apply to non-historic buildings and districts in design districts and overlays.

The Design Review Board Process:

The process for design review can be partially modeled on the current method used by the LPC. Applications would be made directly to the Board which could then forward them to community boards and interested community groups. Since commercial intrusions are imposed on the public their proposed construction should go through a public process. Most community boards have land use committees and some have landmark committees. A design committee could be appointed to assess proposals for the facade of any new development or changes to existing facades which can be seen from public places. The guidelines used by the Design Review Board and incorporated in the Zoning Resolution would be used by the design committee to make determinations. Like the Design Review Board, the ideal community board committee would be a balanced group including local business people and members of the real estate community as well as architects and designers. If the application is approved it would be passed on to the Design Review Board where a certificate of appropriateness would be issued. If not, the developer or architect could appeal and the Design Review Board would make the final determination regarding the project. When a certificate of appropriateness is issued it will be presented to the Department of Buildings by the applicant with all other necessary documentation to obtain permits. The pre-approved

generic plans would speed up applications for simple projects. The criteria involved in this process would not be as strict as the LPC process regarding historical accuracy. There would be no Board involvement in demolition or removal of structures. The Board would primarily deal with first and second story facades in commercial districts or overlays.

The Local Process:

Since the above process doesn't exist in New York City today, I can only compare how it might work on the local level to a similar process currently being used by city's historic preservation community. As an example I'll use Landmark West!. This is an Upper West Side non-profit community group working to preserve the architecture of the area between Central Park and Riverside Drive from 59th to 110th Streets. On a monthly basis, the LPC supplies Landmark West! with applications for changes to landmarked structures scheduled to come before it at a hearing to obtain a certificate of appropriateness. In a typical month there might be applications for the legalization of a shop awning that received a LPC violation, rebuilding a stoop on a residential row house or the installation of a sidewalk cafe extension to a restaurant. Members of Landmark West!'s Certificate of Appropriateness (C of A) Committee visit the sites to take notes and photographs. A meeting is held where the notes, photographs and, if available, architectural drawings are discussed. A statement is prepared based on the opinion of the committee recommending approval or disapproval and it is presented at the LPC hearing. Some issues first go to a Community Board hearing or a neighborhood or block association meeting at which Landmark West! members are present. The C of A committee is primarily made up of Upper West Siders whose backgrounds range from architecture, history and art to real estate. They expend their time and energy because they care about the appearance of the city in which they live and the LPC receives their input at no cost to the city. Various community groups could work along similar lines with the Design Review Board.

6. RECOMMENDED METHODS OF ENFORCEMENT

Education should be the first step in an enforcement effort. Any new guidelines or regulations governing aesthetics and design should be supplied to all concerned parties. These include community boards, community groups, business improvement districts, commercial tenants, property owners, developers, architects and sign companies/contractors, as well as any involved city agencies.

Department of Buildings

As the agency responsible for the enforcement of the Building Code and the Zoning Resolution the Department of Buildings (DOB) would be the primary source of enforcement for any new regulations regarding facades and signage. Commercial tenants and the property owners holding their leases are both responsible for curing DOB issued zoning violations. (Environmental Control Board or "ECB" violations cannot be used to cite signage infractions per section 26-126 of the Building Code so DOB violations must be used.) It's in the property owners best interest to remove violations because they remain on the property's title until they are corrected. The commercial tenant faces a series of fines until the violation is removed. Developers or builders involved in new building construction must have all necessary documentation and city agency approvals (including the Design Review Board approval that I suggest) before they can obtain DOB work permits. Proceeding without DOB permission results in stop work orders, fines and delays in receiving a Certificate of Occupancy.

Due to the recent downsizing at DOB compliance without a tremendous enforcement effort should be the goal. Hazardous construction violations still have the highest priority but zoning sign violations are perhaps the lowest. Currently, architects and engineers can self-certify construction plans and applications for DOB work permits. Twenty percent of all self-certifications are spot checked and if any information is falsified the applicant can lose his or her license under section 26-139 of the Administrative Code and short of that, lose all self-certification privileges at DOB. Companies that install signs, canopies and awnings are also licensed. Presently they are only held responsible for the structural aspects of their installation. They should also be accountable for the zoning violations resulting from excess lettering or square footage, illumination, projection, height and general failure to comply with design guidelines and risk the loss of their license for noncompliance. The self-certification process, including license revocation, should be applied to all sign companies and contractors who engage in store front/street wall renovations and installations. Self-certification greatly speeds up the

permit process and market forces will favor sign installers and contractors who do not lose this privilege.

DOB plans examiners will need supplementary training that goes beyond the building code. Permits for signs, awnings and storefronts should not be issued until all applicable zoning regulations are thoroughly checked. Similar guidance should also be furnished to the Corporation Counsel attorneys who will prosecute violators.

Department of City Planning

The Department of City Planning (DCP) can organize a small enforcement unit.

Learning from the difficulties faced by the Landmarks Preservation Commission (LPC), DCP enforcement methods can be set up differently. LPC Counsel, Valerie Campbell pointed out that LPC violations are often ignored and at present there are too many to go to court. They don't show on the property's title and architects and contractors can't be held responsible.¹⁵

Since the laws being enforced are the Zoning Resolution and the Building Code, DCP inspectors could be authorized by the Commissioner of Buildings to perform inspections and issue DOB notices of violation and criminal court summonses.¹⁶ LPC violations might be ignored or result in lengthy civil suits. DOB violations are taken more seriously than LPC or Environmental Control Board violations because they show on the property's title until they are cured and they can be prosecuted in civil or criminal court. This type of violation can be served on the contractor performing the illegal work, the commercial tenant and the property owner.

Community Groups & Business Improvement Districts

Community groups, such as neighborhood and block associations, merchant associations and BIDs are responsible to their members. It would be to their advantage to encourage compliance with any zoning regulations that affect quality of life in their communities and the unfair business advantage that results from non-compliance with regulations dealing with business advertising.

An example of a BID that gets involved in design is the Village Alliance BID. Honi Klein, its Executive Director, feels that good design is good for business and local property owners and merchants agree. When the BID was formed in 1994 an Urban Development Corporation grant was obtained and used to prepare an urban design program. A plan was created including price estimates. This plan addressed the building facades along 8th Street and was presented to the property owners. It dealt primarily with awnings, signs and lighting. Renovation suggestions, including fabrics,

colors and designs, were pre-approved by the LPC. Property owners are happy with this because it saves them the time of going through the LPC process. The BID closely monitors the look of the street and with the help of property owners, strongly encourages merchants to comply with design guidelines.¹⁷ In addition to BIDs, community groups like Landmark West! mentioned above, could be assets in an enforcement effort.

7. CONCLUSION

A city is more than commerce. What's done for economic reasons today might have to be paid for twenty or fifty years from now. When a building's architectural details are replaced with glass and metal panels in order to "modernize" it and raise rents, that rent increase is more than offset by an irreplaceable loss to the city. When a well crafted shopfront is demolished so that a franchise designed, mass produced facade can replace it, a small part of the city's personality is gone forever. By definition, commercial interests are interested in commerce and not design. The invisible hand of the market will never reach out and pull down a billboard. We should all realize that good design is a vital part of New York's economy but we shouldn't allow economics to dictate design. If you ask someone why they enjoy being in Soho, they might answer "the streetscape" or "its ambiance". They don't necessarily have to know anything about cast iron architecture or cobble stone paving to appreciate the experience of spending time and money surrounded by it.

Throughout New York's history it's always been the center of something, from ocean shipping to telecommunications with its built environment being adapted and re-adapted for new uses. To use the example of Soho again, it once consisted of dilapidated wood buildings and was known as the French Quarter¹⁸. When New York became a manufacturing center, the cast iron yarn and textile factories were built to supply the then nearby garment center. As manufacturing left the city artists began moving into the its vacated spaces and now Soho means galleries, upscale restaurants and boutiques. If these buildings were demolished or modernized when they were mostly vacant we wouldn't have one of the city's most lively art centers and tourist attractions today.

Something has to be done to assist New York in maintaining its status as an international cultural and commercial center. More stringent regulation and carefully thought-out design guidelines will help. Some of the areas that I discussed are in landmarked districts, but as we can see even that doesn't protect them. It will take the Department of City Planning and the Zoning Resolution with the enforcement power of the Department of Buildings to offer full protection to the places that make New York what it is. An area or building doesn't have to be historically or even architecturally significant to be worthy of preservation. It simply has to be designed in a way that makes people to want to be there. Whether it was planned, as in some areas, or it happened spontaneously, New York is filled with such places. Let's protect them.

Notes:

1. Daniel R. Mandelker and William R. Ewald, *Street Graphics and the Law*, (Chicago: Planners Press, 1988).
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Appendix

32-60 (12/15/61)
SIGN REGULATIONS

32-61 (5/22/63)
Definitions

Words in italics are defined in Section 12-10 or, if applicable exclusively to this Chapter, in this Section.

32-62 (10/25/95)
Permitted Accessory Business Signs

C1	C2	C3	C4	C5	C6	C7	C8
----	----	----	----	----	----	----	----

In all districts, as indicated, *accessory business signs* are permitted subject to the provisions of the following Sections:

- Section 32-64 (Surface Area and Illumination Provisions)
- Section 32-65 (Permitted Projection or Height of Signs)
- Section 32-67 (Special Provisions Applying along District Boundaries)
- Section 32-68 (Permitted Signs on Residential Buildings).
- †Section 32-69 (Additional Accessory Business Sign Regulations for Adult Establishments)

32-63 (12/15/61)
Permitted Advertising Signs

	C6-5 C6-7	C7	C8
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In the districts indicated, *advertising signs* are permitted subject to the applicable provisions of the following Sections:

- Section 32-64 (Surface Area and Illumination Provisions)
- Section 32-65 (Permitted Projection or Height of Signs)
- Section 32-66 (Additional Regulation for Advertising Signs)
- Section 32-67 (Special Provisions Applying along District Boundaries)
- Section 32-68 (Permitted Signs on Residential Buildings).

32-64 (12/15/61)
Surface Area and Illumination Provisions

C1	C2	C3	C4	C5	C6	C7	C8
----	----	----	----	----	----	----	----

In all districts, as indicated, all permitted *signs* shall be subject to the restrictions on *surface area* and *illumination* as set forth in this Section, provided that the following *signs* shall be exempted from such restrictions on *surface area*:

Illuminated non-flashing business signs located in a window within a *building*, with a total *surface area* not exceeding eight square feet on any *zoning lot* and limited to not more than three such *signs* in any window.

For the purpose of determining permitted *surface area* of *signs* for *zoning lots* occupied by more than one establishment, any portion of such *zoning lot* occupied by a *building* or part of a *building* accommodating one or more establishments on the ground floor may be considered as a separate *zoning lot*.

32-641 (12/15/61)
Total surface area of signs

C1	C2	C3	C4	C5	C6	C7	C8
----	----	----	----	----	----	----	----

In all districts, as indicated, the total *surface area* of all permitted *signs*, including *non-illuminated* or *illuminated signs*, shall not exceed the limitation established for *non-illuminated signs*, as set forth in Section 32-642 (Non-illuminated signs).

32-642 (1/20/65)
Non-illuminated signs

C1	C2	C3	C4	C5	C6	C7	C8
----	----	----	----	----	----	----	----

In all districts, as indicated, *non-illuminated signs* with total *surface areas* not exceeding those shown in the following table are permitted:

Maximum Surface Area (in square feet)	District
50 square feet	C3
Three times the <i>street</i> frontage of the <i>zoning lot</i> (in feet), but in no event more than 150 for <i>interior</i> or <i>through lots</i> or 150 on each frontage for <i>corner lots</i> .	C1 C2
Three times the <i>street</i> frontage of the <i>zoning lot</i> (in feet), but in no event more than 200 for <i>interior</i> or <i>through lots</i> or 200 on each frontage for <i>corner lots</i> .	C5-1 C5-2 C5-3 C5-5
Five times the <i>street</i> frontage of the <i>zoning lot</i> (in feet), but in no event more than 500 for <i>interior</i> or <i>through lots</i> or 500 on each frontage for <i>corner lots</i> .	C4 C5-4 C6-1 C6-2 C6-3 C6-4 C6-6 C6-8 C6-9
Six times the <i>street</i> frontage of the <i>zoning lot</i> (in feet), but in no event more than 750 for each <i>sign</i> .	C8
No restrictions as to size	C6-5 C6-7 C7

32-643 (12/15/61)
Illuminated non-flashing signs

C1	C2
----	----

In the district indicated, *illuminated non-flashing signs* are permitted with a total *surface area* (in square feet) not exceeding three times the *street* frontage of the *zoning lot* in feet, but in no event shall the total *surface area* exceed 50 square feet for *interior* or *through lots* or 50 square feet on each frontage for *corner lots*.

Italicized words are defined in Section 12-10.

Effective dates of Sections are indicated in parentheses.

32-644 (6/21/73)

Illuminated or flashing signs in C4, C5-4, C6 or C7 Districts

	C4	C5-4	C6	C7
--	----	------	----	----

In the districts indicated, *illuminated or flashing signs* with total *surface areas* not exceeding those shown in the following table are permitted:

Maximum Surface Area (in square feet)	District
Five times the <i>street</i> frontage of the <i>zoning lot</i> (in feet), but in no event more than 500 square feet for <i>interior or through lots</i> or 500 square feet on each frontage for <i>corner lots</i> .	C4 C5-4 C6-1 C6-2 C6-3 C6-4 C6-6 C6-8 C6-9
No restrictions as to size	C6-5 C6-7 C7

However, in a C6-1A District *flashing signs* are not permitted.

32-645 (12/15/61)

Illuminated or flashing signs in C8 Districts

	C8
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In the district indicated, *illuminated or flashing business signs* or *advertising signs* with indirect illumination are permitted, provided that the total *surface area* of all such *signs* (in square feet) shall not exceed five times the *street* frontage of the *zoning lot* (in feet) and that the *surface area* of each *sign* shall not exceed 500 square feet.

32-65 (12/15/61)

Permitted Projection or Height of Signs

C1	C2	C3	C4	C5	C6	C7	C8
----	----	----	----	----	----	----	----

In all districts, as indicated, all permitted *signs* are subject to the applicable regulations of this Section.

32-651 (11/21/62)

Permitted projection in C6-5, C6-7 or C7 Districts

	C6-5	C7
	C6-7	

In the districts indicated, except as otherwise provided in Section 32-653 (Additional regulations for projecting business signs), no permitted *sign* shall project across a *street line* more than eight feet.

32-652 (1/20/65)

Permitted projection in all other Commercial Districts

C1	C2	C3	C4	C5	C6-1	C8
					C6-2	
					C6-3	
					C6-4	
					C6-6	
					C6-8	
					C6-9	

In the districts indicated, except as otherwise provided in Section 32-653 (Additional regulations for projecting business signs), no permitted *sign* shall project across a *street line* more than 18 inches for double- or multi-faceted *signs* or 12 inches for all other *signs*.

32-653 (11/21/62)

Additional regulations for projecting business signs

C1	C2	C3	C4	C5	C6	C7	C8
----	----	----	----	----	----	----	----

In all districts, as indicated, permitted *accessory business signs* may be displayed as follows:

(a) *Non-illuminated signs* may be displayed on awnings or canopies permitted by Section 27-313(b) of the Administrative Code, with a *surface area* not exceeding 12 square feet and with the height of letters not exceeding 12 inches, provided that such *signs* shall be limited to identification of the name or address of the *building* or an establishment contained therein.

(b) *Signs* may be displayed on marques permitted by Section 27-313(b) of the Administrative Code, provided that such *signs* conform to the provisions of Section 26-182 of the Administrative Code, and provided further that no such *sign* in a district other than a C6-5, C6-7 or C-7 District shall project more than 48 inches above nor more than 12 inches below such marquee.

32-654 (12/15/61)

Height of signs in C8 Districts

	C8
--	----

In the district indicated, permitted *signs* shall not extend to a height greater than 40 feet above *curb level*, provided that *non-illuminated signs* or *signs with indirect illumination* may extend to a maximum height of 58 feet.

32-655 (1/20/65)

Height of signs in all other Commercial Districts

C1	C2	C3	C4	C5	C6	C7
----	----	----	----	----	----	----

In the districts indicated, no permitted *sign* shall extend above *curb level* at a height greater than the following:

Maximum Height (in feet)	Districts
25	C1 C2 C3 C5-1 C5-2 C5-3 C5-5
40	C4 C5-4 C6-1 C6-2 C6-3 C6-4 C6-6 C6-8 C6-9
No restriction as to height	C6-5 C6-7 C7

32-656 (1/20/65)

Height of signs above roof

C1	C2	C3	C4	C5	C6-1
					C6-2
					C6-3
					C6-4
					C6-6
					C6-8
					C6-9

In the districts indicated, no *sign* displayed from the wall of a *building* or *other structure* shall extend above the parapet wall or roof of such *building* or *other structure*, except that a vertical *sign*, the horizontal width of which, parallel to the wall, does not exceed 28 inches, may extend no higher than 15 feet above the roof level.

32-657 (3/11/65)

Roof signs

C1	C2	C3	C4	C5	C6-1
					C6-2
					C6-3
					C6-4
					C6-6
					C6-8
					C6-9

In the districts indicated, no signs shall be permitted on the roof of any building.

32-66 (2/21/80)

Additional Regulations for Advertising Signs

C6-5	C7	C8
C6-7		

In all districts, as indicated, no advertising sign shall be located, nor shall an existing advertising sign be structurally altered, relocated or reconstructed within 200 feet of an arterial highway or of a public park with an area of one half acre or more, if such advertising sign is within view of such arterial highway or public park. For the purposes of this Section, arterial highways shall include all highways which are shown on the Master Plan of Arterial Highways and Major Streets, as "principal routes," "parkways," or "toll crossings," and which have been designated by the City Planning Commission as arterial highways to which the provisions of this Section shall apply. Beyond 200 feet from such arterial highway or public park, an advertising sign shall be located at a distance of at least as many linear feet therefrom as there are square feet of surface area on the face of such sign. However, in all districts as indicated, the more restrictive of the following shall apply:

- (1) Any advertising sign erected, structurally altered, relocated or reconstructed prior to June 1, 1968, within 660 feet of the nearest edge of the right-of-way of an arterial highway, whose message is visible from such arterial highway, shall have legal non-conforming use status pursuant to Section 52-83, to the extent of its size existing on May 31, 1968.
- (2) Any advertising sign erected, structurally altered, relocated or reconstructed between June 1, 1968 and November 1, 1979, within 660 feet of the nearest edge of the right-of-way of an arterial highway, whose message is visible from such arterial highway, and whose size does not exceed 1200 square feet in surface area on its face, 30 feet in height, and 60 feet in length, shall have legal non-conforming use status pursuant to Section 52-83, to the extent of its size existing on November 1, 1979. All advertising signs not in conformance with the standards set forth herein shall terminate.

32-661 (7/23/64)

Advertising signs on waterways

No moving or stationary advertising sign shall be displayed on a vessel plying waterways adjacent to Commercial Districts and within view from an arterial highway. For the purposes of this Section, arterial highways shall include all highways which are shown on the Master Plan of Arterial Highways and Major Streets as "principal routes," "parkways," or "toll crossings" and which have been designated by the City Planning Commission as arterial highways to which the provisions of this Section shall apply.

For the purposes of this Section advertising sign is a sign which directs attention to a profession, business, commodity, service or entertainment conducted, sold, or offered elsewhere than upon the premises of the vessel, and shall not include signs, symbols or flags identifying the vessel, its owner or operators.

32-67 (12/15/61)

Special Provisions Applying along District Boundaries

C2	C3	C4	C5	C6	C7	C8

In the districts indicated, and within 100 feet of the street line of any street or portion thereof in which the boundary of an adjoining Residence District is located, or which adjoins a public park of one-half acre or more, all signs which face at an angle of less than 165 degrees away from such Residence District or park boundary shall be limited to accessory business signs and shall conform with all the sign regulations applicable in C1 Districts as set forth in Sections 32-61 to 32-68, inclusive, relating to Sign Regulations.

32-68 (7/16/72)

Permitted Signs on Residential or Mixed Buildings

C1	C2	C3	C4	C5	C6

In the districts indicated, any use listed in Use Group 1 or 2 shall conform to the sign regulations for Residence Districts set forth in Sections 22-31 to 22-34, inclusive. In residential or mixed buildings, residential sign regulations shall apply to a building or part of a building used for residential purposes.

Where non-residential uses are permitted to occupy two floors of the building, all signs accessory to non-residential uses located on the second floor shall be non-illuminated business signs, and shall be located below the level of the finished floor of the third story.

†**32-69** (10/25/95)

Additional Accessory Business Sign Regulations for Adult Establishments

C6-4	C7	C8
C6-5		
C6-6		
C6-7		
C6-8		
C6-9		

Accessory business signs for adult establishments are permitted only as set forth in this Section and are limited to locations in the districts indicated.

All permitted accessory business signs for adult establishments shall conform with all the sign regulations applicable in C1 Districts as set forth in this Chapter, except that the provisions of Section 32-64 (Surface Area and Illumination Provisions) shall not apply. In lieu thereof, the maximum surface area of all accessory business signs for adult establishments shall not exceed, in the aggregate, three times the street frontage of the zoning lot, but in no event more than 150 square feet per establishment, of which no more than 50 square feet may be illuminated non-flashing signs.

Italicized words are defined in Section 12-10.

Effective dates of Sections are indicated in parentheses.

12-10 (continued)

Sidewalk widening — see Urban open space

Side yard — see Yard, side

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, which:

- (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*. A *sign* shall include writing, representation, or other figure of similar character within a *building* only when illuminated and located in a window.

The following shall not be subject to the provisions of this Resolution:

- (a) Signs of a duly constituted governmental body: including traffic or similar regulatory devices, legal notices, or warning at railroad crossings.
- (b) Flags or emblems of a political, civic, philanthropic, educational, or religious organization.
- (c) Temporary signs announcing a campaign, drive, or event of the above organizations.
- (d) Memorial signs or tablets.
- (e) Signs denoting architect, engineer, or contractor when placed on construction sites and not exceeding 25 square feet in area.
- (f) Signs required to be maintained by law or governmental order, rule, or regulation, with a total *surface area* not exceeding ten square feet on any *zoning lot*.
- (g) Small signs displayed for the direction or convenience of the public, including signs which identify rest rooms, freight entrances, or the like, with a total *surface area* not exceeding five square feet on any *zoning lot*.

Sign, advertising

An "advertising sign" is a *sign* which directs attention to a business, profession, commodity, service, or entertainment conducted, sold, or offered elsewhere than upon the same *zoning lot*.

Sign, business

A "business sign" is an *accessory sign* which directs attention to a profession, business, commodity, service, or entertainment conducted, sold, or offered upon the same *zoning lot*.

Sign, flashing

A "flashing sign" is any *illuminated sign*, whether stationary, revolving, or rotating, which exhibits changing light or color effects, provided that revolving or rotating *signs* which exhibit no changing light or color effects other than those produced by revolution or rotation, shall be deemed *flashing signs* only if they exhibit sudden or marked changes in such light or color effects.

Illuminated signs which indicate the time, temperature, weather, or other similar information shall not be considered *flashing signs*, provided that:

- (a) the total *surface area* of such *sign* is not greater than 16 square feet;
- (b) the vertical dimension of any letter or number is not greater than 24 inches; and
- (c) color or intensity of light is constant except for periodic changes in the information displayed, which occur not more frequently than once every minute.

Sign, illuminated

An "illuminated sign" is a *sign* designed to give forth any artificial light or reflect such light from an artificial source.

Sign, surface area of — see Surface area (of a sign)

Sign with indirect illumination

A "sign with indirect illumination" is any *illuminated non-flashing sign* whose illumination is derived entirely from an external artificial source and is so arranged that no direct rays of light are projected from such artificial source into *residences* or *streets*.

Single-family residence — see Residence, single-family

Sky exposure plane or front sky exposure plane

A "sky exposure plane" or "front sky exposure plane" is an imaginary inclined plane:

- (a) beginning above the *street line* (or, where so indicated, above the *front yard line*) at a height set forth in the district regulations; and
- (b) rising over a *zoning lot* at a ratio of vertical distance to horizontal distance set forth in the district regulations.

Sky exposure plane, rear

A "rear sky exposure plane" is an imaginary inclined plane:

- (a) beginning above a line at a distance from and parallel to the *street line* and at a height set forth in the district regulations; and
- (b) rising over a *zoning lot* at a ratio of vertical distance to horizontal distance set forth in the district regulations.

12-10 (continued)

Surface area (of a sign)

The "surface area" of a *sign* shall be the entire area within a single continuous perimeter enclosing the extreme limits of writing, representation, emblem, or any figure of similar character, together with any material or color forming an integral part of the display or used to differentiate such *sign* from the background against which it is placed. In any event, the supports or uprights on which such *sign* is supported shall not be included in determining the *surface area* of a *sign*.

When two *signs* of the same shape and dimensions are mounted or displayed back to back and parallel on a single free-standing structural frame, only one of such *signs* shall be included in computing the total *surface area* of the two *signs*.

When a double-faced *sign* projects from the wall of a *building*, and its two sides are located not more than 28 inches apart at the widest point and not more than 18 inches apart at the narrowest point, and display identical writing or other representation, the *surface area* shall include only one of the sides. Any additional side of a multi-faced *sign* shall be considered as a separate *sign* for purposes of computing the total *surface area* of the *sign*.

Through block arcade

A "through block arcade" is a continuous area within a *building* connecting one *street* with another *street*, *plaza* or *arcade* adjacent to the *street*. This area may be enclosed in whole or in part and must have a minimum width of 20 feet and a minimum average height of 20 feet. Such a *through block arcade* shall at either end be at the same level as the *street*, *plaza* or *arcade* which it adjoins.

Through lot — see Lot, through

Tourist cabin — see Motel

Trailer

A "trailer" is a vehicle standing on wheels or rigid supports which is used for living or sleeping purposes.

Trailer camp

A "trailer camp" is a tract of land used or designated for the use of two or more *trailers*.

Transient hotel — see Hotel, transient

Two-family residence — see Residence, two-family

Unenclosed sidewalk cafe — see Sidewalk cafe, unenclosed

Urban open space

An "urban open space" is a portion of a *zoning lot* which is open to the sky except as provided in paragraph (f) (Permitted obstructions), is accessible to the public, and which qualifies as one of the following *urban open space* types:

- A. *open air concourse*
- B. *sidewalk widening*
- C. *urban plaza*

All *urban open spaces* shall comply with the following basic requirements as set forth below and with additional requirements as specified for each type except as modified in accordance with the provisions of Section 74-91 (Urban Open Space Modifications).

No foundation permit shall be issued by the Department of Buildings for any *development* which includes an *urban open space* without certification of detailed design plan showing all features of the proposed urban space required in the Zoning Resolution by the Chairperson of the City Planning Commission. An application for such certification shall be filed with the Chairperson of the City Planning Commission showing all the required features of the proposed *urban open space* as set forth herein.

(a) **Frontage**

All *urban open spaces* shall adjoin either a *front lot line* or a *sidewalk widening*. An *urban open space* that adjoins a *sidewalk widening* is considered to front upon the *street line* which borders the *sidewalk widening*.

(b) **Restrictions on location of non-qualifying open area**

To preserve the intent of the definitions relating to the boundaries, proportions and obstructions of *urban open spaces*, on any one *zoning lot*, an open area which does not qualify for *bonus floor area* may not be located between two *urban plazas*, between an *open air concourse* and an *urban plaza*, or between an *urban plaza* or *open air concourse* and a building wall or *arcade* of the *development*.

(c) **Planting and trees**

(1) **Street trees**

Except where the Commissioner of Buildings determines that the following tree planting is infeasible, such as being precluded by subway tunnel or other subsurface conditions, trees are required to be planted in the *street* sidewalk area adjacent to a *zoning lot* which contains *bonus floor area* for *urban open space*. At least one tree of four inch caliper or more shall be planted for each 25 feet of the entire *street* frontage of the *zoning lot*. They shall be planted with gratings flush to grade in at least 200 cubic feet of soil per tree, with a depth of soil at least three feet six inches, species shall be selected, located and maintained in accordance with the specifications established by the Manhattan Street Tree Planting Division of the Department of Parks and Recreation and the Department of Highways. No trees may be planted within a *sidewalk widening*.

(2) **Trees within an urban open space**

Where trees are planted within an *urban open space*, they shall measure at least four inches in caliper at the time of planting. They shall be planted in at least 200 cubic feet of soil with a depth of soil of at least three feet six inches, and be planted either with gratings flush to grade, or in a planting bed with a continuous area of at least 75 square feet exclusive of bounding walls, and at a maximum spacing of 25 feet apart.

(3) **Planting**

When planting beds are provided, they shall have a soil depth of at least two feet for grass or other ground cover, and three feet for shrubs.

Where trees are planted pursuant to this Section prior to April 1, 1978, such planting may be undertaken in accordance with the tree caliper requirements existing prior to the effective date of the amendment.

(Continued next page)