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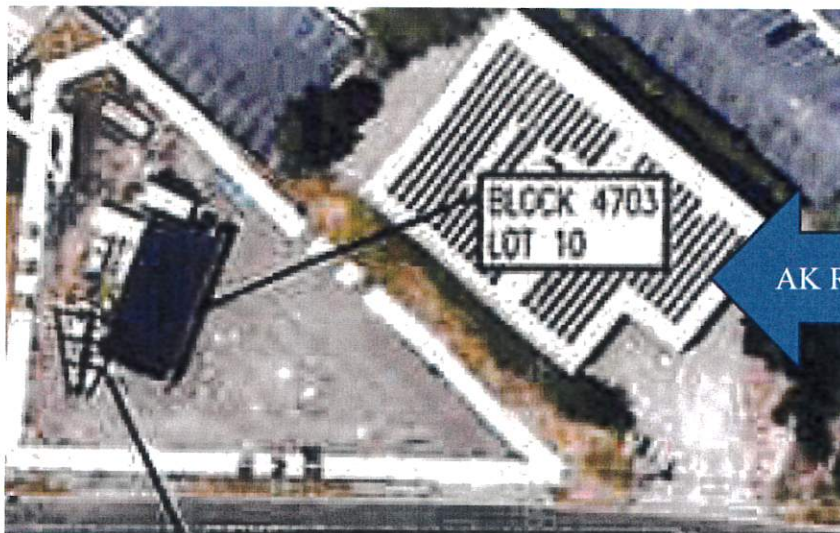
June 5, 2024

Village of Ridgewood Zoning Board of Adjustment Chair and Members  
131 N. Maple Avenue  
Ridgewood, NJ 07450

Re: Objector's Memo to the Application of Outfront  
Media, LLC Use Variances  
P/A: 500 Route 17  
Block: 4703 Lot: 10  
Your Application No.: ZBA21-16

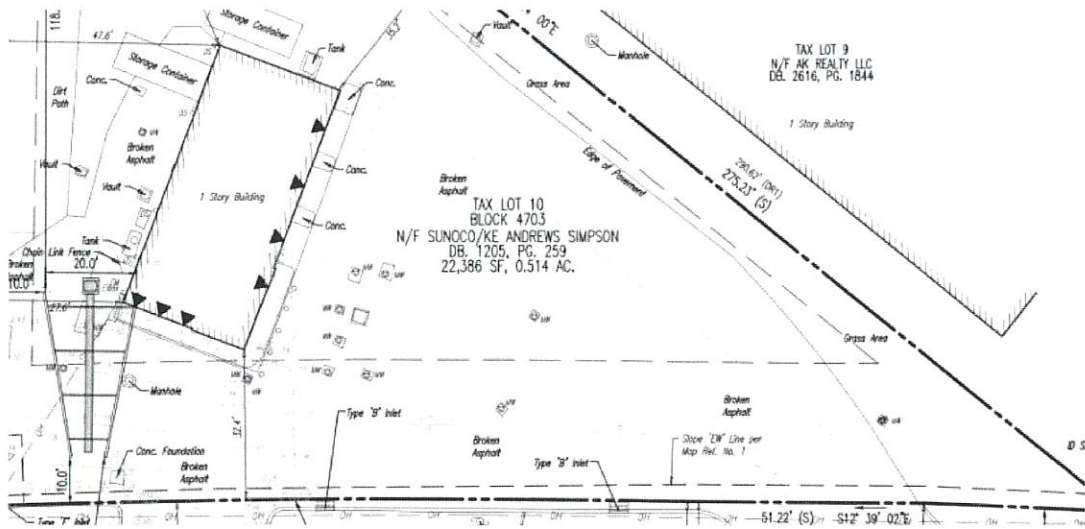
### **Introduction:**

The Applicant seeks to construct and operate a large multmessage lighted billboard on the property of a tire/auto repair center located at 500 Route 17. This Brief is submitted on behalf of objector AK Realty, LLC, (hereinafter referred to as "AK Realty") who owns the property located at 545 Route 17, Block 4703, Lot 9, immediately to the north of the Subject, which is Block 4703, Lot 10.



The Subject parcel is an irregular shape, akin to a right triangle, with the AK Realty building lying along the longest stretch of the triangle, the hypotenuse. Because of the shape of

the Subject, the AK Realty building is only approximately 125 feet from the proposed location of the billboard. (See Objector Exhibit 3, a true and correct copy of which is below.)



Objector respectfully requests this Board deny the application as the applicant has not met their burden of proof; the use will impact historic preservation areas, cause traffic and safety issues, will impact nearby residential properties in a negative way, the use will be a non-conforming use on pre-existing nonconforming use, the positive/negative criteria for the 'd' variances have not been met, and the use will cause substantial impairment to master plan. The use creates absolutely no benefit to the Village.

**Use Variance Application:**

The Applicant seeks numerous variances, D(1), D(2), D(6), C(1), and C(2), each of which are discussed in further detail below.

**Relief Requested**

**D(1) Use Variance.**

The applicant has requested a variance pursuant to N.J.S.A. 40:55D-70(d)(1), for a use or principal structure in a district restricted against such use or principal structure. Village Ordinance §190-122(B)(1)(a) specifically prohibits “Billboard or billboard signs, except display signs ordinarily and customarily erected on the premises of a railroad station or on the railroad right of way in the vicinity of such station.”

**D(2) Use Variance.** Expansion of non-conforming use.

The subject currently has a preexisting non-conforming use. (See Village Planner report, Page 2). The Subject lies within the OB-2 Office Building District. (See Village Code, Section 190-113A stating permitted principal uses and structures.) The Village Code section 190-126(C)(1) specifically prohibits expansion of the preexisting nonconforming use. The Code states: “Any nonconforming use or structure which is nonconforming because of use shall not be enlarged, extended or structurally altered in any manner whatsoever.

**D(6) Use Variance.** Height restriction requirements.

The proposed billboard would be a second principal use on the site which, if the board determines the billboard is considered a “building,” would be subject to the height restrictions imposed by Village Code Section 190-113. The proposed billboard is 40’ and the maximum building height permitted in OB-2 Office Building District is 30’ pursuant to the Village Code Section 190-113.

**C(1) Bulk Variance.**

The applicant seeks a variance pursuant to N.J.S.A. 40:55D- 70(c)(1). The setback requirements for the OB-2 Office Building District require a 12’ minimum side yard setback pursuant to the Village Code Section 190-113. The proposed billboard would be set back 10’ from both the side yard.

Additionally, should the Board determine that the billboard is not a “building,” but is a “sign,” Village Code Section 190-122.F permits only one exterior sign, with only one name, logo, or activities carried on at that site. 190-122.F also contains a maximum 60 square feet of sign area, with a maximum of 15’ height of the sign. Bulk variances will be required for same as the proposed billboard will be the second sign on the property, featuring multiple names and logos, will be 749 square feet of sign area, at a 40’ height.

**C(2) Bulk Variance**

The applicant is requesting a variance pursuant to N.J.S.A. 40:55D-70(c)(2), commonly known as a "(c)2" variance. Should the Board determine the Applicant does not qualify for a C(1) variance regarding the setbacks and signage requirements, the applicant is seeking a C(2) variance in the alternative.

Applicant’s Planner Testimony:

The Board heard testimony from Outfront Media’s Planner, John McDonough on June 27, 2023, September 12, 2023, and November 28, 2023. Mr. McDonough indicated that as a planner he completes a four-part analysis which includes the following (for the sake of brevity, portions of Mr. McDonough’s testimony have been summarized and reproduced below):

1. Existing conditions – “The subject site consists of a single tax lot...” “It’s identified as Block 4703, Lot No. 10. It is developed as an auto repair facility with a three-bay garage and paved areas.” “The site has an irregular shape...it creates limitations on some of the development potential.”
2. Proposed conditions - The sign will be comprised of double-faced display panels. “Each panel is going to measure 10-and-a-half-feet-wide-by-35-feet-8-and-a-quarter-inches-high at 375 feet and at a height of 40 feet on the top.” The sign will have louvers obscuring the view beyond to the “narrow cone of vision” targeting the public driving on the highway. The sign will use LED technology and will change in eight second intervals which is what is permitted by the DOT. The property is in an OB-2 Office Building District zone which is aimed at commerce and economic development.
3. Zoning criteria – For the sake of brevity, objector repeats the information contained above in the Relief Requested section.
4. Applicable Municipal Land Use Law (positive and negative criteria)

- a. D(1) Use Variance. Applicant seeks a D(1) use variance as a billboard is prohibited in the zone. The criteria for evaluating whether or not to grant D(1) relief is outlined in *Medici v. BPR Co.*, a case decided in 1987. Positive criteria - the applicant must demonstrate that it promotes the general welfare because the site is particularly suitable for the proposed use. Negative criteria - the applicant must demonstrate the requested relief can be granted without substantial detriment to the public and without substantial impairment to the zone plan. The *Medici* analysis also requires requisition of the omission of the use from the zone.
- Positive criteria - Mr. McDonough alleges the billboard promotes the general welfare as it is form of communication, promotes business, and can create awareness. Educational institutions and healthcare facilities can advertise on it. Emergency messages can be displayed on it. Mr. McDonough further stated that case law considers the promotion of business and economic development as inherently beneficial. He further indicated that the site is particularly suitable for the billboard as it is in a commercial area on the highway and the homes in the vicinity “are well buffered from the highway and the site.” He further stated the site is well-suited to the use, will minimal earthwork required, and it will not interfere with any operations of the existing site.
- Negative criteria - Regarding the negative criteria, Mr. McDonough indicates that the zone plan recognizes the Route 17 corridor is distinctive from the rest of the community, and that a new Master Plan was adopted in 2022 which is “loaded with references to protect the downtown and maintain the small town feel of the community.” He also states that the Master Plan specifically references this portion of Route 17 and limits, but does not outright ban billboards, with the purpose of protecting against “out-of-scale visual intrusions.” He stated the billboard will not be an out-of-scale visual intrusion and that the size and height of the sign along with the narrow-view technology with the louvers limits the visual impact of the sign. His opinion in interpreting the Master Plan is that billboards should be permitted with limitations in place. He also states the billboard “does not have the bulk of a building,,” and would be less bulky than some of the structures permitted in the zone.
- He also indicates there are constitutional implications of a town-wide ban on this land-use, and there is no reasoning behind why this specific use is not permitted in the Master Plan.
- b. D(2) The applicant seeks a D(2) variance as the existing property is a nonconforming use. The Village Code states: “Any nonconforming use or structure which is nonconforming because of use shall not be enlarged, extended or structurally altered in any manner whatsoever.” Mr. McDonough indicated in his testimony that the existing property is not being expanded or changed, but that the land associated with the use is actually being reduced, which becomes an expansion *per se*. The site where the billboard is to be constructed is currently unused by the auto body shop, so it will have no effect on operations.
- c. D(6) The applicant seeks a D(6) variance as the height restriction is 30’ and the applicant seeks to construct a 40’ billboard. Mr. McDonough stated that for a billboard to be an effective communication device, a certain height is required. He stated that the additional height will not block any scenic views or create any

negative shadows, and it will not create any additional population density or traffic.

- d. C(1) The applicant seeks a C(1) variance for noncompliance with the 12' setback. The proposed billboard would be at 10'. Mr. McDonough essentially stated in the scheme of things 2' is very minor, and the billboard was positioned this way to minimize interference with the surrounding businesses. He indicated there is a balancing test which is used when determining whether or not to grant a C(1) variance, which requires analysis of whether the benefits of the application as a whole would substantially outweigh the detriments. Mr. McDonough relies on his earlier benefit/detriment analysis with regard to the D(1) variance.

#### Objectors' Planner's Testimony:

Two planners testified on behalf of the Objector AK Realty. The Board heard testimony from Objector AK Realty's planners, Joseph Burgis and Brigitte Bogart, on February 27, 2024.

Mr. Burgis indicated that Mr. McDonough, the applicant's planner, failed to affirmatively address the criteria for variance relief. Mr. Burgis stated that there is a two-fold test on the positive criteria side wherein the applicant has to show special reasons in support of the application, and that there are two options the applicant has with respect to that: they can either show particular suitability for the use OR that the proposed use is an inherently beneficial use and that it would warrant the affirmative positive criteria. In addition to the foregoing, the negative criteria requires the applicant to show there is no substantial detriment to the public good and no substantial impairment to the intent and purpose of the Master Plan.

In his testimony, Mr. Burgis highlighted several goals within the master plan:

1. Municipality's intent to work to keep the small town village feel in the community and adapt to change in ways that maintain or compliment that feel.
2. The area within the Route 17 corridor containing the cemetery, Schedler property, and Old Paramus Reformed Church is an important part of Ridgewood's history and the views associated with these properties should be protected from out-of-scale visual intrusions. The Master Plan specifically references billboards, power lines, and poorly designed and inappropriately located buildings an inadequately screened, unsightly land uses as visual intrusions. This goes to the heart of the substantial impairment.

Mr. Burgis also references something that Mr. McDonough did not, and that is the impervious coverage of the site. The ordinance permits a maximum of 70% of the site to be devoted to impervious material, while the site plan submitted by the applicant indicates 76.2% of the site is to be covered by building or other impervious material.

Mr. Burgis then examined Mr. McDonough's analysis of the purposes of the Municipal Land Use Law. Arguably the most important part of this portion of the testimony is Mr. Burgis' clarification regarding "inherently beneficial." Mr. McDonough had stated that the billboard is inherently beneficial because education and healthcare businesses can advertise on it, it can be used as an emergency alert system, etc., whereas Mr. Burgis stated that the inherently beneficial question is regarding the billboard structure itself, not what can be advertised on it. Contrary to Mr. McDonough's testimony, Mr. Burgis indicated that there is no way a billboard in itself can be inherently beneficial and promote general welfare. Similarly, Mr. Burgis was of the opinion that Mr. McDonough's testimony regarding the public benefit was also flawed, as there is no direct benefit to the public of a billboard.

Mr. Burgis' recommendation was that the application be denied as the applicant has not affirmed either the positive criteria or the negative criteria.

Ms. Bogart then testified that she does not believe the site is suitable for the applicant's proposed use for the following reasons:

1. Impact to historic preservation areas
2. Traffic and safety
3. Proximity to residential properties
4. Non-conforming use on pre-existing nonconforming use
5. Positive/Negative criteria for D1 and D2 has not been met
6. Substantial impairment to master plan

Ms. Bogart's recommendation was that the application be denied as the applicant has not met either the positive or negative criteria, the site is not particularly suited for this use, there is a substantial detriment to the public good, and perhaps most importantly, the proposed use is a substantial impairment to the Master Plan.

### **Applicant's Application Should Be Denied in its Entirety**

The Applicant's application should be denied in its entirety because the applicant has failed to meet its burden of proof.

The Municipal Land Use Law (MLUL) outlines the rules for granting a zoning variance. A Zoning Board of Adjustment can grant a 'd' variance for special reasons if the applicant meets both "positive" and "negative" criteria.

Positive Criteria: The applicant must show that the variance aligns with the MLUL's goals the local master plan.

Negative Criteria: To address the "negative criteria," the applicant must demonstrate that the proposed variance can be granted "without substantial detriment to the public good" and that the granting of the variance will not "substantially impair the intent and the purpose of the zone plan and zoning ordinance" of the municipality.

Additionally, following the *Medici v. BPR, Co.* case, the applicant must demonstrate that special reasons are satisfied by either showing that the proposed use is one which "inherently serves the public good" or that the proposed use promotes the general welfare because it is particularly suitable for the site. The special reasons are provided in N.J.S.A. 40:55D-2. They must also provide strong evidence that the variance supports the intent and purpose of the Master Plan and Zoning Ordinance.

1. D1. The Board can grant "d(1)" variances to allow non-permitted uses or structures according to N.J.S.A. 40:55D-70(1) if there are special reasons. This is the "positive criteria." Courts have said that promoting general welfare is the key to "special reasons" (*Medici v. BPR Co.*, 1987). Some uses are "inherently beneficial," meaning they automatically promote general welfare. The billboard itself is not inherently beneficial and does not promote general welfare. The applicant's planner claimed the billboard is

inherently beneficial and thus promotes the general welfare due to the fact that local businesses can advertise on it and draw business to the Village downtown, as well as the fact that education and healthcare facilities can advertise on it. This has nothing to do with the billboard itself, only the display messages. Additionally, there is no guarantee that only Ridgewood businesses will advertise on it. The applicant's planner did not provide any testimony regarding whether the billboard structure itself is inherently beneficial or promotes general welfare. For other uses, the benefit comes from the site being particularly suitable for the proposed use. The billboard is also not particularly suitable to the site. The applicant argues that the billboard is particularly suitable to the site because it is on a highway in a commercial area. This is basically applicant's only argument for particular suitability. Our Court's have held that in order to prove particular suitability, the applicant must show there is no other appropriate location in the Village for the proposed use, AND that the specific property is uniquely suited for the proposed use. The applicant has not proven that. Further, according to N.J.S.A. 40:55D-70, the variance must not harm the public good or impair the master plan (*Medici v. BPR Co.*, 1987). The applicant must provide strong evidence that the variance won't substantially harm the master plan and must explain why the proposed use fits despite not being permitted by the zoning ordinance. The applicant has not proven that the variance won't substantially harm the master plan. The master plan makes specific reference to billboards and visual intrusion. A billboard is exactly that, a visual intrusion, which is a substantial impairment to the intent of the master plan.

2. D2. Expansion of pre-existing nonconforming use. An applicant requesting a D(2) variance must show special reasons. Courts say that special reasons include showing that the variance supports the goals of the MLUL. Expanding a preexisting nonconforming use is generally prohibited by Ridgewood Code section 190-126(C)(1), which states that nonconforming uses or structures cannot be enlarged, extended, or altered. In addition, the billboard would become a "second principal use" on the site. Neither use, the auto facility or the billboard, is permitted by the Village Code in the OB-2 zone. According to planner Joe Burgis, it would be "an additional use that which is not allowed as of right and which the Master Plan says that the governing body doesn't want to see happen here." Mr. Burgis further stated the only rational the applicant's planner provided was that "the second use does not have a significant adverse effect on the property," which is not the burden of proof. There is no special reason that shows this variance would support the goals of the MLUL, in fact, there are only reasons that show this variance would not support the goals of the MLUL, and would in fact impair the intent of the Master Plan.

3. D6. The Board can grant "d(6)" variances to allow a building to be 10 feet or 10% taller than the zoning limit if there are special reasons.

Positive Criteria:

If the use or building is not allowed in the zone, the applicant must show that the taller building benefits the public and fits the site well. The Board will consider if the building needs to be that tall and if there are other locations where a shorter building could work (*Smart SMR v. Fair Lawn*, 1998).

Negative Criteria:

If the building is not allowed, the applicant must provide strong evidence that the taller building won't harm the zoning plan (*Medici v. BPR Co.*, 1987). The applicant must also explain why the height fits despite being prohibited.

The Board must ensure any variance won't harm the public good or disturb the intent of the zoning ordinance and master plan.

Again, the applicant has not met its burden with regard to the height variance. The billboard, which would be 10' taller than everything else in the area, would stick out like a sore thumb and be a visual intrusion to all businesses and residences in the vicinity.

This clearly causes substantial impairment to the master plan which makes specific reference to visual intrusion in this specific area.

4. C1. The applicant has requested a variance pursuant to N.J.S.A. 40:55D- 70(c). An applicant requesting a c(1) variance must demonstrate where (a) by reason of exceptional narrowness, shallowness or **shape of a specific piece of property**, or (b) by reason of exceptional topographic conditions or **physical features uniquely affecting a specific piece of property**, or (c) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the **structures lawfully existing thereon**, the strict application of any regulation pursuant to article 8 of the MLUL would result in peculiar and exceptional practical difficulties, or exceptional and undue hardship upon, the developer of such property.

The applicant has not and cannot meet its burden of proof with regard to this variance. A business already exists on the site. While the site is oddly shaped, strict application of the MLUL would not result in peculiar and exceptional practical difficulties, or exceptional and undue hardship upon the applicant. The applicant's planner Mr. McDonough relied on his testimony regarding the benefits of the D1 variance for the C1 variance as well, which is not the correct burden of proof to apply. The applicant has not met its burden because it has not demonstrated that by reason of exceptional narrowness, shallowness, or shape of the specific piece of property, or by reason of exceptional topographic conditions or physical features uniquely affecting the piece of property, or by reason of extraordinary and exceptional situation uniquely affect the piece of property or the structures lawfully existing thereon, that strict application of the MLUL would result in peculiar and practical difficulties or exceptional and undue hardship upon the developer. The applicant has not provided any testimony with respect to any of aforementioned.

5. C2. The applicant requesting a variance pursuant to N.J.S.A. 40:55D-70(c)(2), commonly known as a "(c)2" variance. An applicant requesting a c(2) variance must prove the following: 1) that the granting of the variance will advance the intents and purposes of the Municipal Land Use Law; 2) that the benefits of granting the variance substantially outweigh any potential detriments; and 3) address the negative criteria. Pursuant to court decisions concerning the c(2) variance, the applicant must show how the proposal represents a better zoning alternative for the property than the existing requirements of the district. In addressing this issue, the applicant must show how the deviation would benefit the surrounding neighborhood or community as a whole. One factor for the board to consider is the character of the surrounding neighborhood including the size and configuration of the lots in the area.

Applicant has not and cannot meet this burden of proof. The granting of the variance does not advance the intents and purpose of the MLUL, the benefits do not substantially outweigh the detriments, in fact, the detriments far outweigh the benefits. The use does

not advance the intents and purpose of the MLUL, as it is not inherently beneficial for reasons set forth above. The benefits do not outweigh the detriments as the only benefit is to the applicant, while there are numerous detriments to the Village and its residents and businesses which are more thoroughly set forth herein. The proposal does not represent a better zoning alternative for the property than the existing requirements of the district as the deviation does not benefit the surrounding neighborhood or community as a whole, in fact the proposal would impair the surrounding neighborhood and community as a whole.

**Additional Questions and Issues of Concern**

1. Residences nearby

There are two residential properties within 200 feet of the subject property. They are the Linda Marticek property, which is directly across Route 17 from the proposed sign, and 581 Franklin Turnpike which lies just to the west of the subject. Ms. Marticek testified to living at the property for over 70 years (11/28/23, page 154). Ms. Marticek also commented at the 2/23/24 meeting that she opposed the application. Again, both residential properties are within the 200 foot notice zone, and billboards are not appropriate in residential areas.

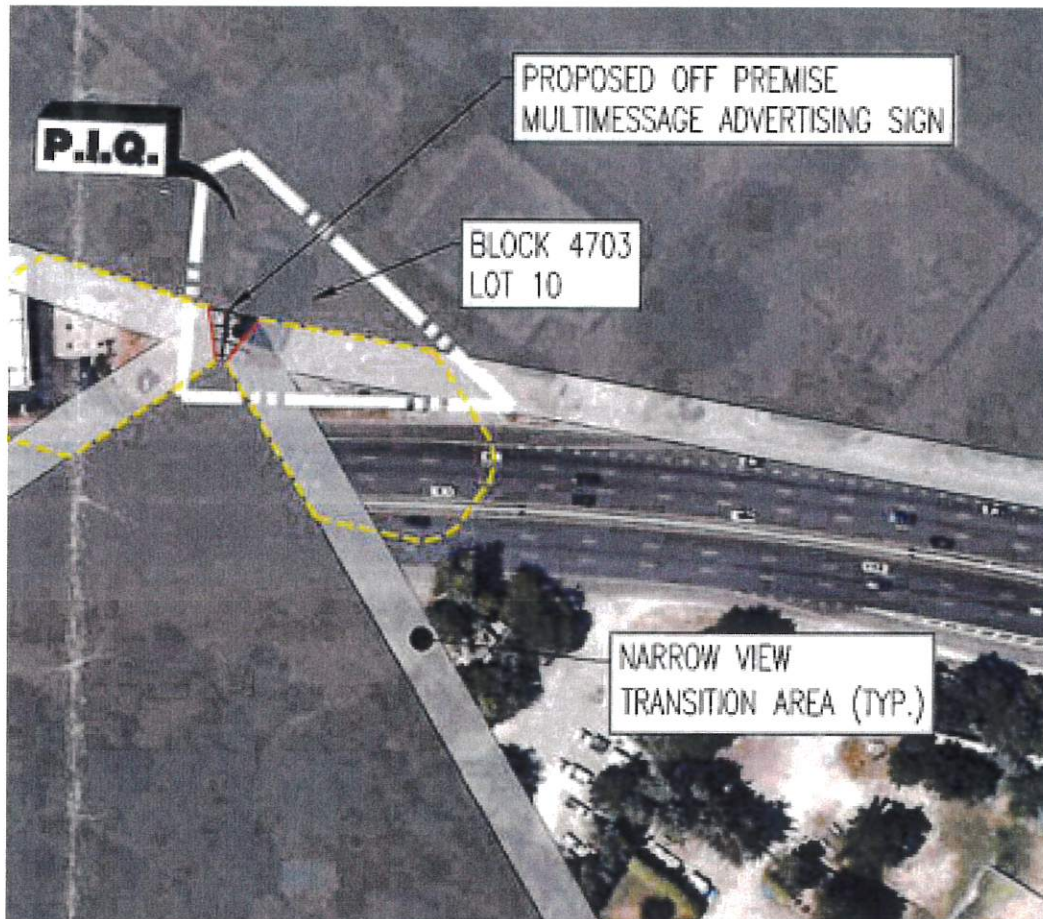
The applicant submitted Exhibit A-20 during the 4/11/2023 hearing to show the “narrow View Technology,” which uses louvers to shield the image on the billboard from a portion of the viewing area.



During that same hearing, applicant submitted Exhibit A-23, which shows the location of various residents who spoke against the billboard.



However, Linda Marticek was not included in the objector’s location table. This may be because the applicant was unaware that the home was occupied. In any event, a closer look at Exhibit A-20 indicates that Ms. Marticek’s home is not only “inside” the angle where one will see the actual advertisement on the billboard, her home is not that far from the “limit of maximum candles” (the yellow parabola on Exhibit A-20).



The snapshot above shows Ms. Martiek’s house immediately to the right of the black circle. Thus, not only is Ms. Marticek close to the proposed billboard, the advertisements (again, running 24 hours per day, changing every 7-8 second) will be visible from her home.

2. Traffic safety

The proposed sign will have a negative impact upon traffic safety. Dr. Kurpis, who owns a dental practice immediately to the North of the subject testified to the numerous curb cuts and the difficulty entering and exiting the nearby properties, which include the Ridgewood Park and Ride to the North, and a busy Exxon station immediately South of the proposed site. (11/28/23, page 173-178) Planner Bogart pointed out the same issues, and discussed the applicant’s testimony about the number of accidents in the area. (2/27/24, page 61-66, and see Exhibit AK-19).

3. Master Plan and Historic Corridor

Applicant’s witness, Jon Antal was asked if, when choosing the location of the billboard, whether applicant took into consideration the proximity of any historic properties. Mr. Antal responded “No.” (Hearing May 10, 2022, p. 41-42).

19           **Q.**     Okay.  
20                     In considering a suitable property for  
21 a billboard, did you consider the proximity of any  
22 historic structures to this property?  
23           **A.**     **No.**  
24           **Q.**     Do you know if there are any historic  
25 structures near this property?


42

1           **A.**     **I do not.**  
2                     MR. D'ARMINIO: We have a planner that  
3 will go through that testimony and the sighting  
4 relating to that testimony, that question.  
5                     MR. STANDIFF: Okay.

### Conclusion

Objector respectfully requests this Board deny the application as the applicant has not met their burden of proof; the use will impact historic preservation areas, cause traffic and safety issues, will impact nearby residential properties in a negative way, the use will be a non-conforming use on pre-existing nonconforming use, the positive/negative criteria for the 'd' variances have not been met, and the use will cause substantial impairment to master plan. The use creates absolutely no benefit to the Village and will have only have a negative impact on neighboring businesses and residences.

Very Truly Yours,

  
Douglas M. Standriff

CC: Louis D'Arminio, Esq.  
Bruce Whitaker, Esq.