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In re Application of OUTFRONT MEDIA LLC

On the Summation

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VILLAGE OF RIDGEWOOD
ZONING BOARD OF ADJUSTMENT
APPL NO. ZBA-21-16

SUMMATION

Introduction

Outfront Media LLC (“Outfront” or “Applicant”) proposes to construct a 10’6” x 35’8¼” LED, single pole, double-sided, v-shaped outdoor advertising sign at a height of 40 ft. at 500 N.J.S.H. Route 17 S in the Village of Ridgewood, referred to on the Tax Map as Block 4703, Lot 10 (the “Property”). The Property is located in Ridgewood’s OB-2 (Office Building-2) Zone and houses a commercial building that operates as a tire and wheel sales and auto repair center. Outdoor advertising signs, also known as billboards, are not permitted in that zone or in any other zone in the Village. However, the Applicant has demonstrated that the Ridgewood Zoning Board of Adjustment (the “Board”) should grant its application.

Outfront’s application was filed on April 16, 2021 and, as part of that application, Outfront is seeking and has presented proofs for the following variances from the Board: a (d)1 use variance for the non-permitted billboard use; a second (d)1 use variance for a second principal use on a site; a (d)2 use variance for expansion of a non-conforming use because the tire and wheel sales and repair center is not a permitted use in the OB-2 Zone; a (d)6 use variance for the height of the billboard because 30’ is the maximum permitted in the OB-2 Zone per §190-113 of the Village’s Municipal Code but the proposed billboard will be 40’ tall; and a (c) bulk variance for side yard setback because 12’ is the minimum required per §190-113 of the Code but Outfront is proposing that the side yard setback be 10’.

The Applicant also presented proofs in favor of granting (c) bulk variances for a few provisions of §190-122F of the Code, which include: (1) one sign permitted on any single property, but two signs are proposed; (2) on-premise advertising permitted, off-premise advertising proposed; (3) 60 s.f. maximum sign area permitted for a double-sided sign, 749.4 s.f. proposed; (4) 15’ maximum sign height permitted, 40’ proposed; and (5) sign illumination cannot extend onto the street or neighboring properties, but the proposed billboard’s illumination will do so. Outfront is not subject to §190-122F covering freestanding as the proposed billboard is not an accessory identification sign but is instead a principal use.

Nevertheless, Outfront provided proofs to grant all of the (c) variances in that the height and size of the billboard are necessary to effectuate the use, and the 10’ side yard setback does not create any light or air issues with respect to the neighboring gas station. Moreover, this relief would be included within the grant of any use variance because if an “application is for a use not permitted in the zone . . . the ‘c’ variances are subsumed in the ‘d’ variance.” Puleio v. North Brunswick Township Board of Adjustment, 375 N.J. Super. 613, 621 (App. Div. 2005).

Outfront has appeared in front of the Board in connection with this application 10 times so far: March 22, 2022; May 10, 2022; June 28, 2022; August 23, 2022; April 11, 2023; June 27, 2023; September 12, 2023; November 28, 2023; February 27, 2024; and April 23, 2024. At those appearances, Outfront has presented the testimony of five different witnesses, including:

- Jon Antal, General Manager of New Jersey for Outfront;
- Tiago Duarte, P.E., an expert engineering witness;
- Justin Taylor, P.E., an expert traffic engineering witness;
- Brett Skapinetz, P.E., an expert engineering witness; and
- John McDonough, P.P. L.A. AICP, an expert planning witness and professional landscape architect.

Their testimonies will be summarized in detail below.

Summary of Key Points to Consider

A common concern voiced by the objectors to Outfront's application regarded the historical character of the Village of Ridgewood and, more specifically, the Route 17 corridor. However, while the Applicant does not dispute that Ridgewood is a historic municipality, the Route 17 corridor in the area of the Property is not historic. On the same side of Route 17 as the Property are two office buildings (including one owned and operated by objector AK Realty LLC), two gas stations, a cell tower, an optometry office, a huge parking area and regional New Jersey Transit bus transfer station, and a Dunkin' – these are all highway service uses. Almost directly across from the Property on Route 17 N there is a construction yard. The proposed billboard use is entirely compatible with the highway service, transportation, telecommunications, and commercial uses that exist nearby. As a result, this is the best spot at which Ridgewood can meet its obligation to provide outdoor advertising as a form of constitutionally-protected First Amendment speech.

Furthermore, Outfront has taken every step it possibly can to accommodate the concerns of neighboring property owners and other Ridgewood residents. Those include the following:

- Relocating the proposed sign further away from the front property line to assuage the concerns of the neighboring gas station regarding possible interference with its identification sign, while also removing the need for a front yard setback variance;
- Updating the proposal to incorporate what Outfront calls “narrow view” light blocking technology to eliminate any view of the advertisements on the proposed billboard from the adjacent office building and the vast majority of the residential properties across Route 17;
- Orienting the proposed billboard such that it will not be visible from the cemetery located near the Old Paramus Reformed Church or the church itself;
- Offering to landscape the berm along Route 17 N near the Schedler-Zabriskie House (“Schedler”) to shield it entirely from the proposed billboard despite that Schedler is over 600 feet away from the Property and would not have any view of the advertisements on the proposed billboard due to the narrow view technology; and
- Offering to landscape any other properties at which residents believe they may be affected by the billboard, including the Marticek property at 548 N.J.S.H. Route 17 N.

Counsel for objector AK Realty LLC has argued that the proposed billboard offers no benefit to the Village, but as the Applicant has demonstrated through testimony, that is not true. In fact, the LED multimessage technology offers unique benefits to the Village and the surrounding area, including but not limited to the following:

First, the proposed billboard would be a gateway sign for the Village. What this means is that because the Property is located near the municipal border, motorists entering the Village via Route 17 will be presented with advertisements that will include those for many local businesses and will convince travelers to stop and conduct business in Ridgewood that they might otherwise not have. Mr. Antal estimated based on comparison to a similar sign in Denville Township that about 30% of the advertising on the billboard would be local businesses. (Transcript May 10, 2022, 12:11-19). The advertisements can also include municipal advertising, as the Applicant is offering the Village 90 minutes of non-emergency municipal messaging as a public service via what Outfront calls “Protocol

B,” as further described in Exhibit A-8. Municipalities often use this dedicated time to advertise municipal events, sports leagues, and information.

Second, the proposed billboard offers controlled lighting. As both Mr. Duarte and Mr. Skapinetz testified, the lighting is directed towards the roadway and will not exceed 0.3 footcandles over the surrounding ambient light more than 187 feet away from the sign faces. The proposed narrow view technology limits the light impact even further.

Third, the proposed billboard provides for emergency messaging and public service announcements as described in Exhibits A-7 and A-8. The presence of the billboard along a well-traveled highway like Route 17 allows for very prominent display of emergency and public service messaging.

Fourth, the proposed sign not only creates direct benefits to the Village, but to the surrounding region as well through directional and dynamic commercial advertising, as well as extensive public and emergency service messaging.

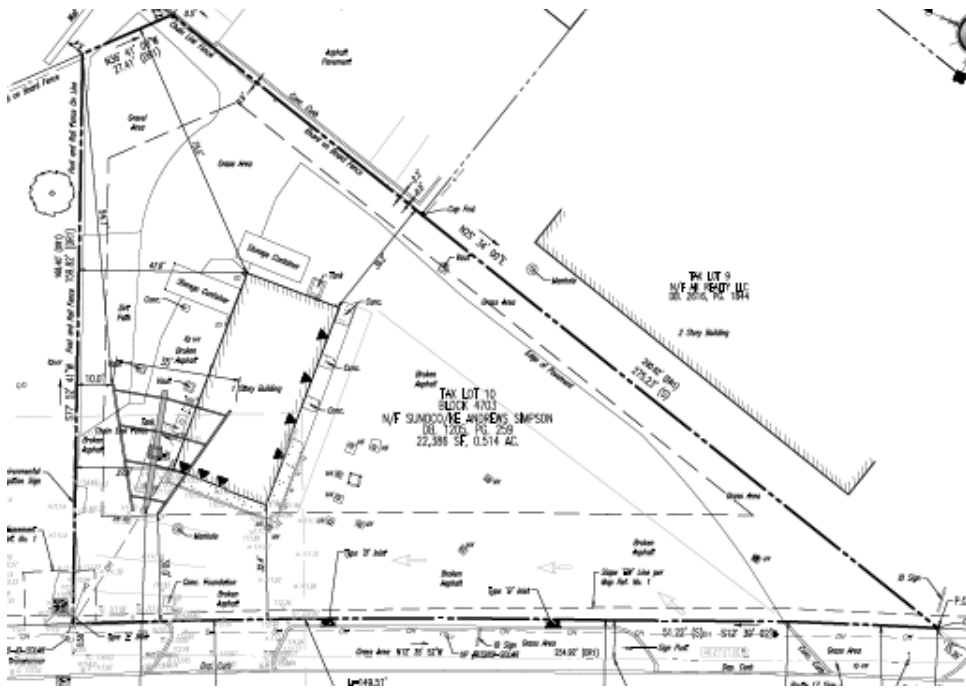
Finally, the proposed billboard allows for constitutionally-protected First Amendment communication, as under Bell v. Stafford, 110 N.J. 384 (1984) and related newer cases billboards trigger freedom of speech and expression considerations. Ridgewood should do what it can to find space for billboard speech in the Village, and the Property is the best spot at which to achieve that.

Review of Applicant’s Testimony

Jon Antal, General Manager of New Jersey for Outfront

Mr. Antal explained that he has been the General Manager of Outfront’s New Jersey market since 2012, and oversees sales, real estate, operations, graphic design, production, marketing, and government affairs. With respect to any individual location, Mr. Antal is in charge of developing new locations for outdoor advertising signs in the state. As for the company itself, Outfront has existed in some form or another since the 1940s and is a national outdoor advertising company that operates over 400,000 billboards in the U.S. and Canada, and at the time of his testimony operated more than 3,500 billboards in New Jersey, 85 of which were LED displays like what is proposed.

Per Mr. Antal’s testimony, the Applicant leases a portion of the Property for its project. Outfront chose the Property because the lot is suitable for a billboard, it is located near Route 17, it allows easy access for constructing and maintaining the sign, the surrounding area is commercial in nature, it would not interfere with the landlord’s operations, circulation, or access, and it meets all New Jersey Department of Transportation (“NJDOT”) and building code requirements including safety requirements. (March 22, 2022 Transcript, 13:9-20). The site plan (A-16) makes clear how little effect the proposed sign would have on the property:



As you can see, the billboard would be tucked away in a corner of the Property, almost as far away from the objector AK Realty LLC’s lot as possible, and as Mr. Antal testified would not affect circulation or operations on the Property.

Outfront holds a valid NJDOT permit for an LED billboard on the Property. NJDOT only issues a permit after reviewing a detailed application that includes various information about the proposed sign, including exact location, size, sign type, and height. NJDOT then performs a site review that includes an inspection of the location and surrounding area to ensure compliance with all safety regulations. The issuance of an NJDOT permit indicates that the proposal meets all of those requirements.

Mr. Antal also provided simulated views of the proposed sign to demonstrate the view from the roadway. The Board requested versions of the same with sample advertisements, and Outfront prepared the same and provided those to the Board at the May 10, 2022 meeting. The advertisements are visible from Route 17 and the billboard fits in with the surrounding area:



(A-9A: Southbound view from 500 feet)



(A-10A: Northbound view from 500 feet)

The Board also requested photographs of a similar sign in the area, in response to which Outfront provided photos of a billboard in Maywood that is also on Route 17 and is the same size as the proposed sign:



(A-11A: Maywood sign view from 500 feet)

Again, the advertisements are visible from the roadway but do not stand out from the surrounding area any more than other signs do.

Per Mr. Antal’s testimony, the sign’s digital copy is designed remotely via a computer program and is sent to the sign face. The sign face contains interior louvers that direct the advertisement towards traffic. Advertisements change instantaneously every eight seconds – there is no transition effect – as is required by NJDOT regulations, and remain static for that entire display period. There is no video, scrolling, or animation, and the light is automatically adjusted through a sensor on top of the sign based on the ambient light of the surrounding area. The sign is monitored at all times by camera and computer, will automatically go “dark” if there are any critical issues, and requires very little in-person maintenance. Mr. Antal testified that site visits would only be necessary about four times each year.

This technology provides many benefits to the Village, including through timely and relevant messaging, local advertising, emergency and public service announcements, and municipal use. Mr. Antal gave the example of a local restaurant running different advertisements based on the time of day to promote breakfast, lunch, or dinner specials. Upon questions by the Board about the percentage of local advertising on a billboard like the proposed sign, Mr. Antal reviewed Outfront’s historical records for its sign in Denville and found that about 30% of the advertising is local. This can provide a great benefit to Ridgewood, because the proposed sign would be located in such a way that it can act as a gateway to the downtown area and is an affordable option with a low barrier to entry as opposed to other traditional advertising avenues. In addition to local commercial and public service benefits, Mr.

Antal notes that outdoor advertising provides national and regional commercial and public service benefits.

Regarding emergency messaging and public service announcements, Mr. Antal detailed what Outfront calls “Protocol A” (A-8). Protocol A is used for highly emergent situations such as evacuation notices or homeland security info. If an emergency message will be displayed, it is shown on the sign faces for at least one hour with no other advertising, and then moves into rotation with the normal advertising until the emergency has passed.

Outfront also offered through “Protocol B” (A-8) advertising time on the sign faces for use by Ridgewood. The Applicant offers the same to every municipality it works with as a public service, as long as the municipality does not monetize the opportunity and only shows politically neutral ads. Outfront is offering the Village 90 minutes of advertising per day, and Ridgewood can change the advertisement whenever it wants as long as it gives some notice to Outfront. Mr. Antal presented some examples of what those ads could look like to the Board:

SPRING

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(A-7: Sample municipal ad)



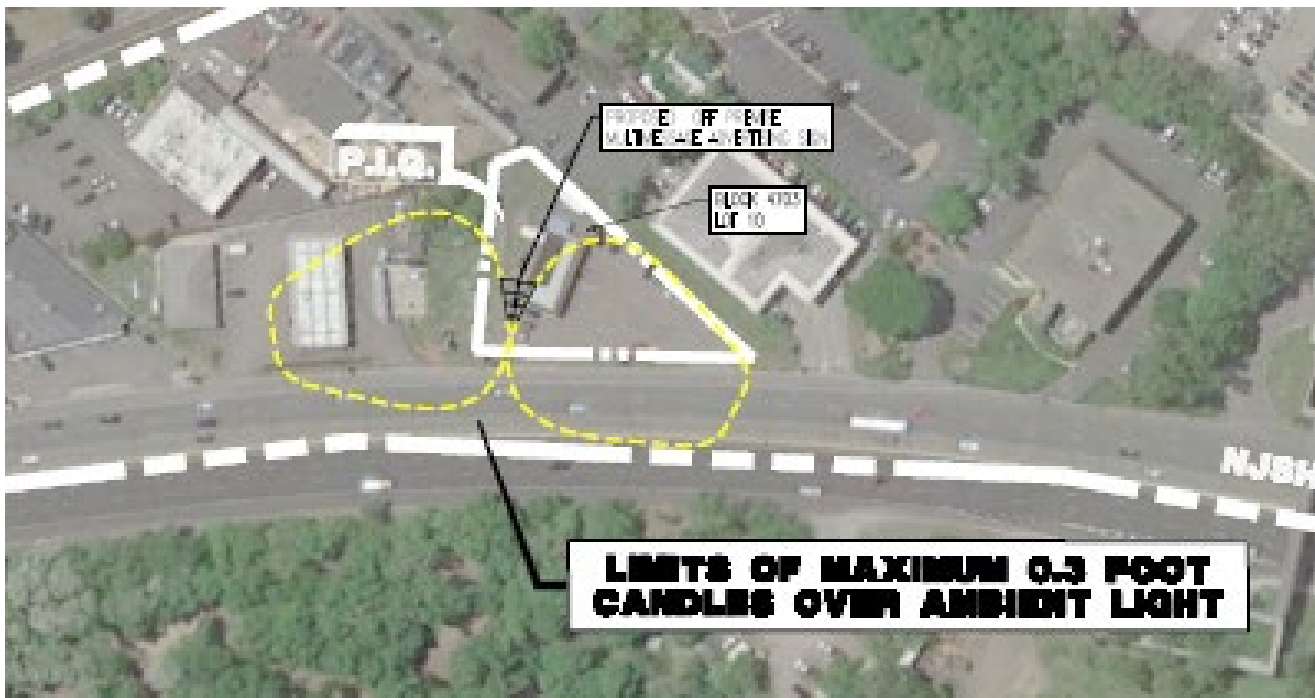
(A-7: Sample municipal ad)

Tiago Duarte, P.E., Dynamic Engineering

Mr. Duarte testified next and was qualified as an expert engineering witness. To prepare for his testimony and his work on Outfront's application, he visited the Property and surrounding areas, prepared exhibits, and analyzed the information he gleaned to come to his expert opinions.

Mr. Duarte began by discussing the surrounding area using an aerial view he prepared, which shows that the Property is surrounded by commercial uses on its side of Route 17 (A-1). The aerial was updated along with Mr. Duarte's site plan and resubmitted as part of A-16:





(A-14: Lighting exhibit)

In fact, according to Mr. Duarte, the light emitted by the proposed billboard will be considerably less than that of the gas station’s sign. (June 28, 2022 Transcript, 113:11-12).

Justin Taylor, P.E., Dynamic Traffic

Mr. Taylor was qualified by the Board as an expert engineering witness with a special expertise in traffic. He did a traffic analysis of Route 17 in Ridgewood and examined traffic data from NJDOT to opine that the area of Route 17 in which the proposed billboard would be viewable from the roadway is one of the safest parts of the highway. Specifically, he noted that Route 17 in Ridgewood is already much safer than the average highway in New Jersey – the average crash rate for highways in the state is 2.2-2.8 crashes per million vehicle miles, while the average crash rate for Route 17 in Ridgewood is 0.57-0.99 crashes per million vehicle miles. And per Mr. Taylor’s testimony, if one were to examine the 1000 feet of roadway approaching the billboard from each direction, the crash rate is only about 0.22 crashes per million vehicle miles, 50% lower than the rest of Route 17 in the Village. (August 23, 2022 Transcript, 34:12-36:15). Mr. Taylor’s expert opinion was that the billboard would be located in a spot that operates within reasonable parameters of public safety.

To demonstrate further the traffic safety of this location, Mr. Taylor also detailed for the Board two different studies conducted by the federal government to facilitate his determination that the proposed billboard would be in a safe location. According to a 2006 study conducted by the National Highway Traffic Safety Administration (“NHTSA”), which placed cameras in drivers’ cars to watch their eye movement, fixating on any object for more than two seconds while driving increases the potential for crashes or near crash events. The Federal Highway Administration (“FHWA”) followed that up with a 2012 study on digital billboards. Using the same methodology, FHWA determined that drivers fixate on multimessage billboards for an average of 0.379 seconds. Those same drivers may, if they are interested in the message on the billboard, fixate on the billboard multiple times, but the average dwell time (total of all fixations) was still only about one second, well below the threshold for

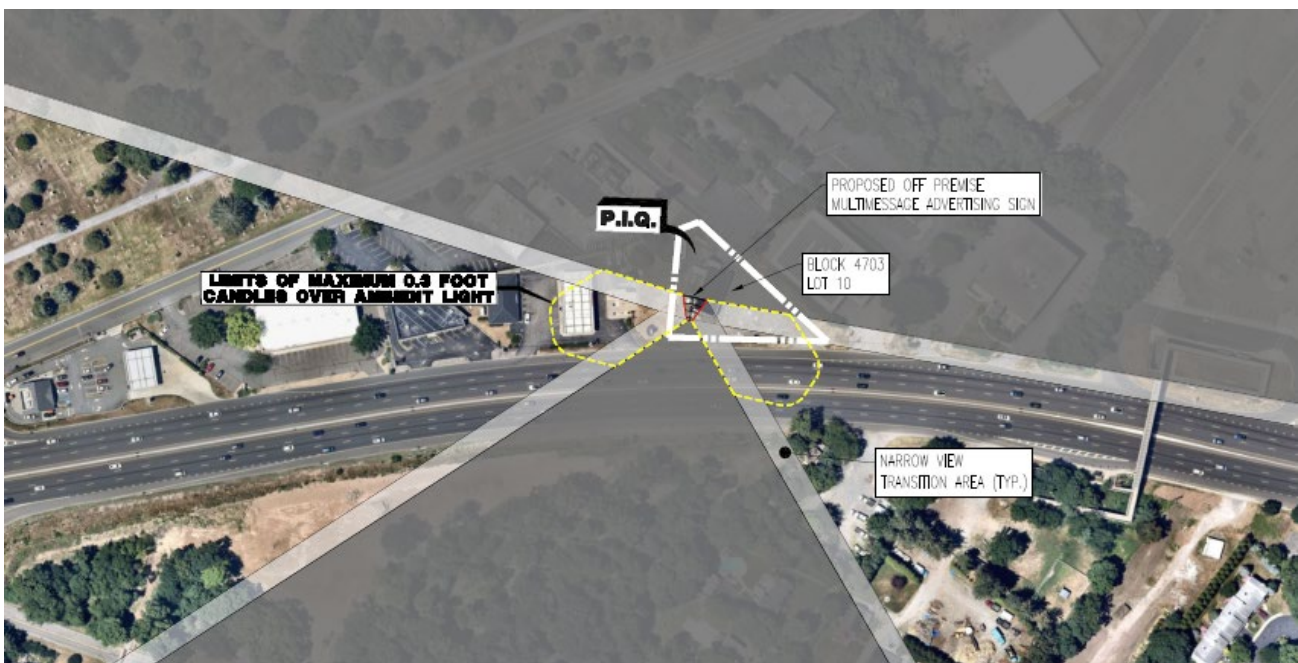
crash potential established by NHTSA. Furthermore, according to FHWA, a driver’s standard cone of vision – as in, things the driver can see without looking away from the road – is about 20 degrees in each direction from the center of vision, and the proposed billboard will be in that cone of vision for approximately 10.1 seconds traveling southbound, and about 8.7 seconds traveling northbound. The driver has those up to 10 seconds in each direction in which to spend an average of one second dwelling on the billboard without looking away from the road.

Mr. Taylor’s testimony regarding the traffic safety of the billboard was *unrefuted*.

Brett Skapinetz, P.E., Dynamic Engineering

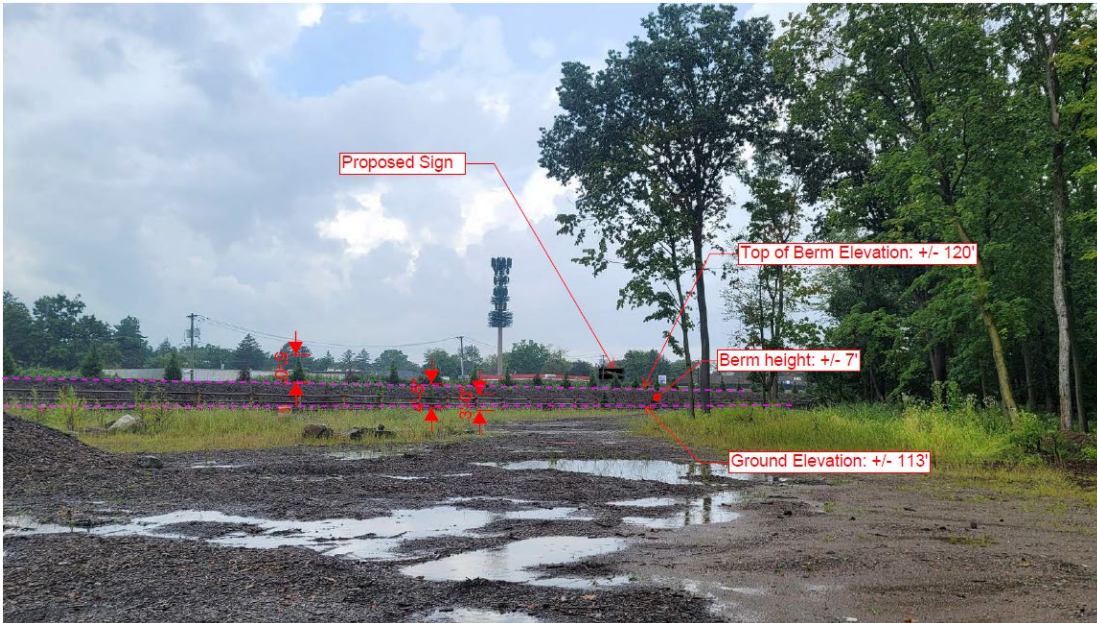
Mr. Skapinetz was qualified by the Board as an expert engineering witness. His testimony primarily concerned the introduction and exploration of what Outfront refers to as “narrow view” technology. The Applicant offered to install this technology on the proposed sign in response to concerns voiced by the objector AK Realty LLC and those raised by residents of the Village. Outfront originally intended to install the narrow view technology on the southbound face only to block the view of advertisements from the objector’s office building, but later agreed to install it on both faces to further ensure that no advertisements could be viewed from Schedler, despite the fact that Schedler is distantly located. Outfront also “kicked out” the southbound sign face, as Mr. Skapinetz testified, to guarantee no advertisement could be viewed from the office building.

As Mr. Skapinetz explained, the narrow view is accomplished through the use of different LED panels than those to which Mr. Antal and Mr. Duarte testified. These panels include – in addition to the horizontal louvers that prevent skyglow in the standard panels – vertical louvers that limit visibility of the advertisement on the sign face in each direction from the middle of the face. The standard LED panels allow for a larger viewshed in each direction.



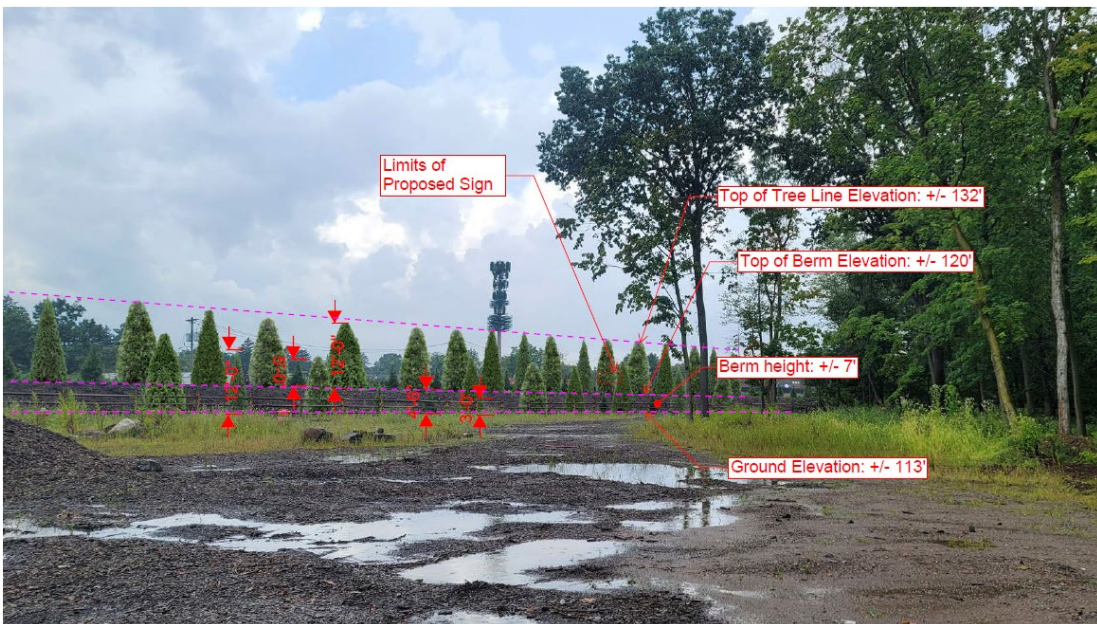
(A-20: Updated narrow view exhibit)

Outfront also developed simulations of the view of the proposed billboard with narrow view technology from Schedler. Mr. Skapinetz opined that based on these simulations, which were done in the same fashion as the roadway simulations as testified to by Mr. Duarte, the proposed sign structure itself even without the narrow view would barely be visible from Schedler due to the orientation of the sign, the distance from the sign, and the existing berm and vegetation. With the narrow view technology in place, the advertisement would not be visible at all.



(A-29A: Simulation from Schedler, existing conditions)

Despite this, Outfront also offered to plant more vegetation on the berm to completely obstruct Schedler from view of the proposed sign structure, though the Village has not consented to the same:



(A-29B: Simulation of view from Schedler, proposed condition)

Mr. Skapinetz also testified to the lack of impact on residential properties. He presented an exhibit showing that the homes of the closest residents are in areas that would not be able to view any advertisement due to the narrow view technology due to the substantial distances of each residence from the sign, the angle of view, and other obstructions, even if there were no obstruction by vegetation, which there is in each case:



(A-23: Objector location exhibit)

While this exhibit does not highlight the home of Ms. Marticek, located at 548 N.J.S.H. Route 17, Outfront offered on at least two occasions to plant buffering vegetation around her property to block any possible view of the proposed billboard from her home.

Mr. Skapinetz also presented to the Board a simulation of the view of the proposed sign from the Kumon learning center in objector AK Realty LLC’s office building. Even standing directly in front of the window, only a black screen would be visible:



(A-19A: Simulated view of billboard from Kumon window)

And from the middle of the room, most of the sign face is not even in view:



(A-19B: Simulated view of billboard from middle of Kumon classroom)

Mr. Skapinetz also testified that even under this new configuration, the extent of the minimal 0.3 footcandle over ambient light impact would not reach any residential properties.

John McDonough, P.P. L.A. AICP, John McDonough Associates

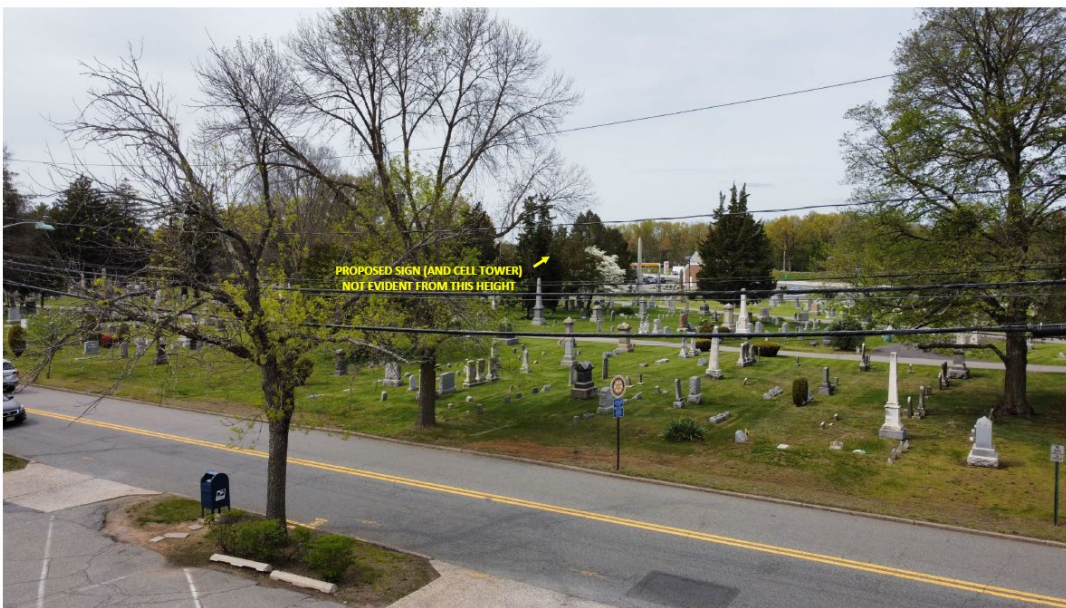
Mr. McDonough was accepted by the Board as a professional planning witness. He testified that he has been to the Property during each of the four seasons, allowing him a more complete view of the surrounding area and conditions to assist in his planning analysis.

According to Mr. McDonough, Route 17 is the highest order roadway in the Village, as a multi-lane highway with a Jersey barrier. And because billboards as land uses follow the highways, Route 17 is a good spot in Ridgewood for a billboard. The Property in particular is irregularly shaped, which limits some of the development potential, and there is a lot of frontage along Route 17, which provides access to the downtown area of Ridgewood and acts as a gateway to the community. In his opinion, this provides benefits to the Village and its downtown businesses.

Per Mr. McDonough's testimony, nearby land uses include an office building, two gas stations, and a Dunkin'. This is a non-residential zone, one that invites businesses that will draw economic development; billboards as a land use serve the same purpose. Furthermore, Mr. McDonough explained that other permitted uses in the OB-2 Zone may cause issues in ways the billboard would not. Another office building could be erected on the Property and block the entire view of the surrounding area from the AK Realty LLC office building whereas the billboard is not such an obstruction. A school or public utility could legally be built on the Property and would generate noise and distraction which a billboard, a passive use, does not. Mr. McDonough also referred to the nearby cell tower, which is almost three times as tall as the proposed billboard and is the greatest visual influence in the area.

Mr. McDonough reviewed the impact of the proposed sign on four properties of objectors' concern, including the Paramus Reformed Church, the cemetery, Schedler, and the objector AK Realty LLC's property.

Regarding the church, Mr. McDonough explained that it is about 1000' from the proposed location of the billboard and is not oriented in the direction of the billboard. There is also heavy vegetation, including evergreens, which blocks a view of the billboard from both the church and the cemetery. Neither land use would have any view of the advertisements on the proposed sign. Additionally, the 135' tall cell tower in the area is what impacts the view in the area, not the proposed billboard which would be only 40' tall. Mr. McDonough was of the opinion that the billboard would not impact the church or the cemetery.



AERIAL DRONE VIEW OF SUBJECT SITE FROM CHURCH PROPERTY – FLOWN AT 20'
(TAKEN BY JOHN MCDONOUGH ASSOCIATES ON MAY 5, 2022)

(A-26 page 9: existing condition view from church/cemetery in the direction of the proposed billboard)

Regarding Schedler, Mr. McDonough noted that the major impact is from Route 17 with its constantly moving traffic and lights, and the proposed billboard would not add to that impact. An important factor as well is that the narrow view technology eliminates any possibility of a view of advertisements. Furthermore, Outfront's proposed extra vegetation on the berm would buffer Schedler from the noise and impact of Route 17 as a whole and not just the billboard.¹



GROUND VIEW OF SUBJECT SITE FROM 460 WEST SADDLE RIVER ROAD – BLOCK 4604 LOT 9
(TAKEN BY JOHN MCDONOUGH ASSOCIATES ON SEPTEMBER 11, 2023)

(A-26 page 15: view from Schedler of proposed billboard location)

As for the objector's office building, Mr. McDonough reiterated Mr. Skapinetz's testimony that the sign will not have an impact on the same. The narrow view technology will display only a black screen in the direction of that building, and the dominant use and view in the area remains the nearby truck and vehicular traffic on Route 17.

Mr. McDonough also provided his testimony on the proofs necessary for the (d) and (c) variances requested by the Applicant.

Regarding the (d)1 use variances for the use not being permitted in the OB-2 Zone and for the second principal use on the Property, Mr. McDonough cited Medici v. BPR Co., 107 N.J. 1 (1987), which delineates the test for meeting the criteria for a Board to grant such a variance. The Applicant must have met the positive criteria (demonstrate that the use promotes the general welfare and is particularly suitable for the use) and the negative criteria (relief can be granted without substantial detriment to the public good and without substantial impairment to the zone plan and zoning ordinance). Mr. McDonough opined that Outfront's applicant meets these criteria.

On the positive criteria, Mr. McDonough explained that the proposed sign would promote the general welfare because:

¹ The Village Council has not committed to accepting the Applicant's offer of vegetation on the Schedler berm, but Outfront is willing to agree to the extra vegetation as a condition of approval.

- this is a constitutionally protected form of speech;
- it promotes business and social causes;
- it contributes to political discourse;
- it promotes inherently beneficial uses like schools, hospitals, and religious communities;
- it allows for public service announcements for public health and safety;
- it allows for emergency messages (as described by Mr. Antal and with Protocol A); and
- it promotes state policy in support of economic development which is seen as a special reason for granting a variance under Anfuso v. Seeley, 243 N.J. Super. 349 (App. Div. 1990).

The proposed sign also promotes the following purposes of zoning under N.J.S.A. 40:55D-2 as other positive criteria elements, per Mr. McDonough:

- (a) the promotion of the general welfare;
- (g) to provide for a variety of uses in appropriate locations;
- (i) the promotion of a desirable visual environment; and
- (m) the efficient use of land.

Regarding the particular suitability standard, Mr. McDonough testified to the following:

- the Property is surrounded by highway commercial uses on its side of Route 17;
- the other side of the highway has limited existing residential uses – and even if the referenced affordable housing overlay zone is put to use in the future, those residences will be buffered from the highway and therefore the billboard;
- Route 17 is the dominant use in the area;
- Schedler is sufficiently buffered and Outfront has offered to increase it;
- Outfront obtained a permit from NJDOT which endorses a proper location for a billboard; and
- this stretch of Route 17 is clear and straight with good lines of sight.

Mr. McDonough believes the second principal use satisfies the positive criteria as well:

- a billboard is a well-suited dual use, especially digital sign;
- the use is easily accommodated on the Property;
- no traffic generated and minimal maintenance required – especially for a multmessage sign given the ability to change advertisements remotely;
- the sign would not impede the site as it is in a corner and does not take up any parking spaces; and
- planning intent is met by this use by dealing with any concerns about a second use including conflicts, interference, and/or intensification of differing uses.

As for the negative criteria requirement, Mr. McDonough opined that there would be no substantial detriment to the public good. In addition to the lack of impact on the church, cemetery, Schedler, and office building properties discussed above, he presented to the Board photos taken via drone from nearby residential properties to assist in his testimony that there would be no impact on those residences. (September 12, 2023 Testimony, 32:8-42:11). He also relied on prior testimony that the proposed use creates no traffic, no increased population, and no water sewer demand while noting that a number of permitted uses in the OB-2 Zone could generate those issues.

Per Mr. McDonough, there would also not be a substantial detriment to the zone plan and zoning ordinance. Mr. McDonough cited to a number of cases that touch on the constitutionally protected nature of billboards, and some extra context is provided here for the Board's edification. The first such case is Bell v. Stafford, 110 N.J. 384 (1988). The Court in that matter noted "freedom of speech and expression" applies to billboards. Id. at 395. Therefore, municipalities should look for locations at which billboard uses would be appropriate.

Building upon the Bell holding was the State Supreme Court's decision in E&J Equities, LLC v. Bd. of Adjustment of the Tp. of Franklin, 226 N.J. 549 (2016). The Court held that digital billboards are a form of communication protected by the First Amendment. Id. at 557. Specifically, the Court noted, a municipality cannot rely on aesthetics and public safety alone in declining to find space for billboards. Ibid. With respect to the interest in safety, the E&J Equities court held that based upon a review of the literature on the matter, the impact (if any) that digital billboards have on traffic safety can be mitigated by the standards (i.e. spacing and size requirements) suggested by those studies and those implemented by NJDOT through its regulations under N.J.A.C. 16:41C-11.1. Id. at 584.

Mr. McDonough also testified that Ridgewood's Master Plan calls for regulation of billboards. Despite the arguments made by counsel for objector AK Realty LLC through the testimony he took from his planning witnesses, *regulation* and *prohibition* are not synonymous. Mr. McDonough established that the Master Plan is concerned about "out of scale visual intrusions." Given the proposed sign's size, location, height, and the use of narrow view technology it would not be out of scale. This is especially notable in contrast to the existing cell tower.

Regarding the (d)2 use variance for expansion of a nonconforming use, Mr. McDonough noted that this is only necessary because the existing use on the Property is not permitted in the OB-2 Zone. He reiterated that the proposed use has no effect on operations, is tucked away in a corner of the Property, and is therefore not an issue. Furthermore, the proposed billboard would be installed in an area of the Property that is unused by the existing use. Negligible or insubstantial changes to nonconforming uses that do not expand the facilities containing the use do not trigger concerns from a d(2) perspective. See Razberry's v. Kingwood Tp. Planning Board, 250 N.J. Super. 324, 327 (App. Div. 1991).

Turning to the (d)6 use variance for height, as 30' is allowed in the zone but 40' is proposed, Mr. McDonough opined that the proposed height is necessary to effectuate the use. He cited New Brunswick Cellular Telephone Co. v. South Plainfield, 160 N.J. 1 (1999), in which the NJ Supreme Court found that a cell tower's height was necessary to effectuate its use. Here, the 40' height is necessary because there are obstacles on the road, including vehicles and physical structures, that hamper visibility. There are no negative criteria issues because the added height will not block scenic views, create negative shadow effects, increase population density, generate traffic, or create an imposing structure. He again noted the proposed sign's height in comparison to the much taller cell tower. Furthermore, while maximum height requirements are often based on concern for obstruction to access to light and air for surrounding residential properties, a billboard is not a large building and does not create light or air obstruction concerns, especially considering that the proposed sign would be located along a highway and not near any residential properties.

The (c) variances for sign regulations under §190-122 of the Village's municipal code would be, in Mr. McDonough's opinion, not necessary because the proposed billboard cannot be both a

principal use and a freestanding sign and as discussed this relief would be subsumed within the grant of the use variances per Puleio. Regardless, he testified that the (c)1 and (c)2 criteria would be met. The (c) bulk variance for side yard setback is not an issue because there is no impact on the neighboring Exxon site created by the violation of the minimum setback, and the orientation of the sign is as such in part to appease that property owner.

He also explained that he believes the (c) variances, including the necessary bulk variance for side yard setback, would be subsumed by the (d) use variance relief under Puleio. These variances are all necessary to effectuate the use. And abiding by the freestanding sign requirements would create not a billboard, but an identification sign.

Mr. McDonough also noted that despite concerns about State Historic Preservation Office regulations due to Schedler's status on its registry, the project would not have any direct or indirect effects, as defined by those regulations, on any historic structures to due substantial screening and distance from the Property. The proposed billboard would have limited, if any, visibility from any historic structures. And Mr. McDonough noted again that despite this, to ensure the Board is fully comfortable with the project, Outfront is willing to offer additional buffering along the Schedler berm.

Review of Objector AK Realty LLC's Planning Testimony

Joe Burgis, P.P.

Mr. Burgis was accepted by the Board as an expert planner. His opinion turned on the idea that Mr. McDonough's testimony did not sufficiently detail reasons for which the application would meet the statutory criteria and the Medici tests. However, Mr. Burgis did not provide sufficient detail himself as to why or how Mr. McDonough's testimony fell short. Instead, he referred to generalities about Mr. McDonough's testimony and adopted extreme readings of the same, such as that by suggesting billboards are a beneficial form of communication Mr. McDonough must also believe graffiti is a beneficial form of communication. While Mr. Burgis testified that Mr. McDonough opined that billboards are inherently beneficial, Mr. McDonough actually said that billboards provide a benefit to the general welfare by meeting the purposes of zoning listed above. In fact, Mr. Burgis cited the Medici requirements for the positive criteria standard incorrectly by suggesting that the use must be particularly suited or inherently beneficial when the true standard, as Mr. McDonough explained, is that the Applicant must demonstrate that the use promotes the general welfare and is particularly suitable for the use. Mr. Burgis focused on the second principal use/second non-conforming use issue, but as Mr. McDonough explained, the proposed use does not raise any standard second principal use concerns. The proposed billboard would be a passive, non-obtrusive use and is compatible with the existing use in that it creates no traffic or circulation issues and does not affect parking.

Additionally, Mr. Burgis testified that Mr. McDonough should have discussed a (c) variance for impervious coverage because 70% is the maximum allowed in the zone and the proposed condition is 76.2%. However, as Mr. Duarte testified and as is shown on the site plan (A-16), Outfront's proposal does not affect the existing nonconformity regarding impervious coverage and no variance is necessary. The Board and zoning officer accepted the same.

Mr. Burgis also discussed Mr. McDonough's review of the Village's Master Plan and opined that the Master Plan indicates that no billboards should be permitted in Ridgewood. However, as aforementioned, the Master Plan discusses regulating billboards, not prohibiting them. Mr. Burgis

attempted to ascribe something other than the plain meaning of “regulating” to that word, but that is not a proper conclusion, especially considering the context of that section of the Master Plan which proposes limiting billboards to not be “out of scale intrusions.” The proposed sign will not be out of scale in comparison to the surrounding area, as Mr. McDonough testified. And the Applicant’s proposal includes the narrow view technology and is of an appropriate size for Route 17.

Brigette Bogart, P.P.

Ms. Bogart was also accepted by the Board as an expert planner. She opined that the historical character of the area is inconsistent with a billboard use. However, as noted in prior testimony, the Property is surrounded by a number of non-historic uses: office buildings, gas stations, a Dunkin’, a large commuter parking area for transfer to New Jersey Transit buses, and on the other side of Route 17 a construction yard. As Mr. McDonough explained, these are exactly the types of uses that *should* surround a billboard. This is primarily a highway service commercial use corridor.

Ms. Bogart also testified as to traffic safety concerns. Ms. Bogart is not a traffic expert and should not have been able to offer her opinion on traffic data. Nonetheless, despite her testimony that any amount of accidents in the area of the Property would create a traffic concern, Mr. Taylor – who is an expert traffic engineer with over 20 years of experience testifying before land use boards in New Jersey – testified that the area of Route 17 near the Property is much safer on a crashes per million vehicle miles scale than not just the average highway in the state, but also the rest of Route 17. Ms. Bogart’s testimony did not (and could not) address Mr. Taylor’s data-driven analysis behind his unrefuted expert opinion that there is no traffic safety concern. Mr. Taylor used standard procedure for traffic engineering analysis, and Ms. Bogart is not qualified to dispute his opinion.

Review of Other Objectors’ Questions and Testimony

A number of Ridgewood residents asked questions and offered testimony objecting to Outfront’s application, but these questions and objections were entirely unfounded.² Many of the objectors appeared at the April 23, 2024 meeting after having heard no prior testimony and were therefore unable to properly comment on the application. For example, the owner of the Kumon learning center relayed concerns about her students viewing the advertisements on the sign but was completely unaware of the narrow view technology proposed by Outfront. But Mr. Skapinetz testified that the narrow view technology would eliminate that possibility and presented the Board with A-19A and B (see above) which showed simulated views to support that opinion.

Other residents objected to the brightness of the billboard, unaware that Outfront will be installing a photocell on the proposed billboard that limits the light intensity and projection such that it does not extend past Route 17. And as Mr. Duarte testified, the gas station’s identification sign is brighter than the billboard would be. Despite concerns, no light would be shining onto any residential property.

A churchgoing resident believed improperly that the Paramus Reformed Church would be in view of the proposed sign, despite Mr. McDonough’s photographic evidence showing that the sign (and much taller cell tower) would not be visible from the church (see A-26 above). This resident was not

² Albert Kurpis, a dentist who runs his practice out of the AK Realty LLC office building, testified that the billboard would create traffic concerns due to cars entering and exiting the office building parking lot. This testimony was unsupported and anecdotal – furthermore, Dr. Kurpis’s office is located at the back of the building, far from Route 17.

present for Mr. McDonough's testimony and was unaware of the simulations prepared which support his conclusions. The Property is also, as noted by Mr. McDonough, about 1000' away from the church.

A cemetery advocate stated concern about the impact of the sign on visitors despite evidence to the contrary presented by Mr. McDonough. The cemetery is buffered by multiple other buildings from the sign and already contends with the 135' tall cell tower, which creates more impact than the sign would due to the vast difference in height (again, see A-26).

Several residents expressed concerns about Schedler. However, the evidence shows that Schedler is well within the narrow view protection area, is presently shielded by a berm and landscaping installed by the Village, and would be buffered even further thanks to Outfront's offer to install additional 10-12' evergreens which would also block the view of Route 17 and the other commercial uses on Route 17 S, if that installation is consented to by the Village.

Other objectors referred to residential impacts and proximity to residences. However, only one residence would be within the view of the sign face, and that home is located on Route 17 N.³ It would therefore be buffered by traffic on the highway. Furthermore, Mr. Duarte and Mr. Skapinetz presented exhibits that showed no light from the proposed sign would be shining on that property. Outfront also offered to plant vegetation to buffer the property but Ms. Marticek declined. Any other residences to the east of Ms. Marticek's property would be well-buffered by distance, proposed plantings, and the narrow view technology such that they would not see the sign.

Finally, several objecting residents simply indicated that they do not like billboards. However, billboards provide constitutionally protected commercial speech. The Board's decision should not be made on personal dislike especially considering there should be a spot for a billboard in Ridgewood and Route 17 S is the most appropriate place.

Closing Remarks

Outfront's planning expert Mr. McDonough testified that the proposed billboard use is instilled with beneficial constitutional protections. This is a use that follows the highways and the OB-2 Zone allows for similar highway uses. Per the NJ Supreme Court's holding in Bell, because billboards trigger concerns about freedom of speech and expression, municipalities should find a spot for billboards and, as Mr. McDonough testified, the Property is an excellent option for that. Bell, at 395. E&J Equities, which followed Bell, calls for the constitutional protection of multimessage billboards; the Court held that digital billboards cannot be objected to simply based on aesthetic and traffic safety concerns. E&J Equities, at 557. The E&J Equities Court also noted that any traffic safety concerns would be mitigated by traffic safety standards such as those established by NJDOT. Id. at 584. Both of those cases find their roots in Metromedia, Inc. v. City of San Diego, 453 U.S. 490 (1981). In that matter, the US Supreme Court held that commercial speech "enjoys a substantial degree of First Amendment protection" as does "displaying ... ideas of others." Id. at 505, 513.

³ A few objectors also mentioned a property located at 581 Franklin Tpke. However, this property is directly behind the AK Realty LLC office building; even if the building were not there it would not be in the viewshed of any advertisements due to the narrow view technology. It seems to operate as a construction company of some sort and is located in the OB-2 Zone. While the objectors who mentioned this property classified it as a residence, none offered any proof of the same. If there is a residence on this lot it is mixed use, nonconforming to the zone, and is again located behind the office building.

The acknowledgement by the NJ and US Supreme Courts that billboards are protected commercial speech is also useful to consider in the context of a variance application. When considering whether special reasons exist for a variance under N.J.S.A. 40:55D-70d, a zoning board must determine whether the purpose of land use regulation and the general welfare would be promoted by granting the variance. Medici v. BPR Co., 107 N.J. 1, 18 (1987). State (or federal) policy should lead to a finding of special reasons, satisfying the positive criteria for a variance. See Anfusio v. Seeley, 243 N.J. Super. 349, 372 (App. Div. 1990) (noting that “given the clearly articulated State policy ... special reasons existed to support the [Board of Adjustment of the Borough of Oceanport’s] grant of the use variance”). Furthermore, in cases where policy goals of the state or federal government are implicated, local zoning interests are subordinate. Id. at 363 (citation omitted). There can be no more fundamental federal policy than a constitutional right. This application meets that policy.

As discussed numerous times, Ridgewood’s Master Plan does not prohibit outdoor advertising. It instead notes that developments that would be out of scale with the existing built environment along Route 17, inappropriately located, and/or inappropriately screened should be restricted. The proposed sign would not be out of scale with the existing built environment as it would not be significantly taller than other uses and would be located near a cell tower that is almost three times as tall. The billboard would be appropriately located because, as Mr. McDonough explained, billboards are a land use that follows highways. The billboard would be surrounded by other commercial uses and would display advertisements from local businesses, acting as a gateway to the Village’s downtown. And it would be appropriately screened, due to the narrow view technology, the existing natural buffers, and Outfront’s offer to increase the buffering to screen Schedler. The billboard would also be limited by lighting controls that ensure no increase over ambient light reaches onto any residential property.

This proposed billboard would meet all requirements of the NJDOT regulations for safety, including that messages on the sign would change instantaneously once every eight seconds. Outfront offered the Village 90 minutes per day of municipal advertising on the sign – Outfront offers time on its billboards to every municipality with which it works. The proposed sign would also provide for emergency messaging and public service announcements. All of this, taken together, shows that this billboard would be a beneficial addition to Ridgewood, especially along the Route 17 commercial corridor. Mr. McDonough summed it up best: if a billboard cannot go here – along the only highway in Ridgewood, in a commercial corridor, and with no residential impacts – where can one go?

Outfront would like to thank the Board for its consideration across these ten meetings.

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