

To: Ridgewood Zoning Board of Adjustment

From: John Barree, PP, AICP

CC: Jane Wondergem, Board Secretary
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Date: July 11, 2024

Re: ZBA 21-16 Outfront Media LLC
500 Route 17
Block 4703, Lot 10

Property and Project Description

The subject property is Block 4703, Lot 10, an approximately 22,386 square foot triangular property on the west (southbound) side of Route 17. The property is developed with an automotive repair / tire shop with approximately 76.2% of the property covered by improvements.

The site immediately to the north is developed with a two-story commercial / office building with a variety of tenants including a Kumon learning center and a dentistry office. The property to the south is developed with an Exxon gas station and convenience store. The properties to the west of the subject lot front on Franklin Turnpike and are developed with a variety of commercial uses and one non-conforming residential structure.

The applicant is proposing to construct a two-sided digital off premise multimessage advertising sign (aka a "billboard") adjacent to the south side of the existing building on the property. The top of the sign is proposed at a height of 40 feet. The dimensions of each sign face are proposed to be 10'-6" x 35'-8 1/4", an area of 374.7 square feet. A 2'-6" tall apron with an area of 80 square feet is proposed along the bottom of the sign.

Zoning

The site is in the Village's OB-2 Zone, which does not permit the proposed use. The existing auto repair shop is not a permitted use, and the developed condition of the site exceeds the permitted impervious coverage limit of 70%, with a total coverage of 76.2%.

Variations Required

- 1) D-1 Use Variance – The proposed off premise multmessage advertising sign is not permitted in the OB-2 Zone.
- 2) D-1 Use Variance – Two principal uses and structures are proposed on the property where only one is permitted.
- 3) D-6 Height Variance – A maximum height of 30 feet is permitted in the OB-2 Zone where 40 feet is proposed.
- 4) C Bulk Side Yard Setback Variance – A minimum setback of 12 feet is required where a setback of 10 feet is proposed.

Overview of Planning Proofs and Testimony

The applicant’s burden of proof for both d(1) use variances require a finding that the positive criteria, which includes a demonstration that the site is particularly suitable for the proposed use, and special reasons, typically the advancement of purposes of zoning outlined in the MLUL, are met. The proofs related to a d(6) height variance are derived from case law and generally deal with demonstrating that the site is suitable for the height and can accommodate the exception without substantial detriment.

The Municipal Land Use Law includes seventeen purposes at N.J.S.A. 40:55D-2. The testimony provided on the record references the following purposes:

- a. “To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare;”
- g. “To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens;”
- i. “To promote a desirable visual environment through creative development techniques and good civic design and arrangement;”
- m. “To encourage coordination of the various public and private procedures and activities shaping land development with a view of lessening the cost of such development and to the more efficient use of land;”.

In addition to the “positive criteria” the applicant must provide testimony about the “negative criteria.” To grant any variance, there must be a demonstration that there is no substantial detriment to the public good and that the relief will not substantially impair the intent and purpose of the zoning ordinance and master plan. The *Medici v. BPR Co.* 107 NJ 1 (1987) case established an enhanced quality of proof related to the

negative criteria that requires a reconciliation of the omission of the proposed use from the master plan and zoning ordinance.

John McDonough, PP, AICP offered planning testimony on behalf of the application. Joe Burgis, PP, AICP offered planning testimony on behalf of an objector. Brigette Bogart, PP, AICP offered planning testimony on behalf of another objector.

Testimony of John McDonough, PP, AICP

1. Site Suitability – Mr. McDonough offered testimony regarding the suitability of the subject property for a billboard. The testimony focused on the site’s location along a highway, which included reference to the NJDOT permit that was issued for the location. He stated that the neighboring land uses are compatible with no residential uses on the same side of the highway and that the closest homes on the opposite side of Route 17 are well buffered. He testified that the previously developed condition of the site, which requires minimal improvements to install the billboard, speaks to its suitability.
2. Special Reasons – Mr. McDonough offered the following special reasons, based on the purposes of the Municipal Land Use Law (N.J.S.A. 40:55D-2)

Purpose A

Mr. McDonough testified that the proposed use promotes the general welfare because it is a form of communication that promotes economic development by providing advertising opportunities for local businesses, provides opportunities for institutional and public uses (which may themselves be inherently beneficial) to disseminate messages, and offers a venue for public service and emergency announcements.

Purpose G

Mr. McDonough stated without specific qualification that the application advances: “Purpose G, to provide for a variety of uses in appropriate locations.” There was no further testimony to support that assertion beyond a recitation of the section of the statute.

Purpose I

Mr. McDonough stated without specific qualification that the application advances: Purpose I, the promotion of a desirable visual environment. He stated as a point of comparison that an as-of-right 30’ tall building would be more intrusive than the proposed billboard due to its potential bulk.

Purpose M

Mr. McDonough testified that the proposal advances purpose M, which speaks to the efficient use of land” because the site is already developed and adding another use to the property would reduce the development impacts.

3. D(6) Height Variance

Relief is being sought for a d(6) variance to permit a 40 foot tall billboard sign structure where 30 feet is the maximum height for a principal structure permitted in the OB-2 Zone. Mr. McDonough testified that “The height is necessary to effectuate the use. It needs a certain height to fulfill its purpose”¹ and “There are obstacles on the road that hamper visibility.”²

- a. The testimony offered throughout the hearings by several of the applicant’s witnesses argued that to effectuate its purpose, the billboard needs to be visible from a particular distance. The height of intervening objects and the roadway geometry are two factors cited in determining the appropriate height for the billboard, from the applicant’s perspective. The applicant acknowledged that billboards are not necessarily all at the same height, and that a similar sign in Maywood on a different segment of the Route 17 corridor is mounted at a lower height.
- b. In discussing the negative criteria associated with the height variance, Mr. McDonough stated: “The added height will not block scenic views or create negative shadow effects.”³ I note that there was no evidence entered into the record regarding a shadow study or the potential impacts of the sign’s height on shadow effects.

4. Negative Criteria

Mr. McDonough offered the following testimony related to the negative criteria:

- The distance to residential properties, particularly those on the opposite side of Route 17, which are separated with landscape buffers speaks to the lack of detriment.
- Mr. McDonough referenced the testimony of prior witnesses to support his assertion that there would be no substantial detriment associated with the use related to site issues, lighting, operations, traffic volume and safety, and the limited visibility of the message screen due to the use of “narrow view technology.”
- Mr. McDonough entered exhibits showing drone photographs of the surrounding area to support his testimony that there would be no substantial visual impact from a variety of vantage points.

¹ P.55 9-11 September 20, 2023 Transcript

² P.55 19-20 September 20, 2023 Transcript

³ P.56 5-6 September 20, 2023 Transcript

- Regarding *Medici* reconciliation, Mr. McDonough indicated that there are no articulated reasons why the use is not permitted. He states that the use can be reconciled because the Route 17 corridor represents the most “aggressive” zoning in the Village. He testified that the 2022 Master Plan recommends limiting billboards and out-of-scale visual intrusions. In his opinion, the billboard is not an out-of-scale visual intrusion, so there is no substantial detriment.

Testimony of Joe Burgis, PP, AICP

1. Site Suitability – Mr. Burgis provided testimony that referenced the Master Plan’s concern about preserving the character of the Village and historic viewsheds along Route 17 to assert that the site may be unsuitable for a billboard. He also testified that the presence of a non-conforming use and non-conforming impervious coverage condition on the subject property do not make it suitable for additional development.
2. Special Reasons – Mr. Burgis offered testimony rebutting Mr. McDonough’s testimony about the “special reasons” for granting the variance. These special reasons deal with the advancement of several purposes of zoning. Mr. Burgis offered the following counter points:

Purpose A

In response to Mr. McDonough’s testimony that billboards as a form of communication promote the general welfare, Mr. Burgis suggested that not all forms of communication should be treated equally, citing the example of graffiti, which some people may like, and others may not. He further indicated that the prevalence of different avenues of communication via cell phone alerts, etc. have diminished the weight of the billboard as a venue for public service announcements.

Mr. Burgis also testified: “my understanding of the Municipal Land Use Law, in D variances is that the variances are for [the] structure itself, the billboard. It is not for the message that’s being delivered on that billboard.”⁴

Mr. Burgis concludes that the testimony offered does not rise to the level of a special reason to permit the use in this location.

Purpose G

In response to Mr. McDonough’s testimony about purpose G, Mr. Burgis testified that the Village’s policy, by way of its zoning ordinance is to permit a variety of uses in the OB-2 Zone. Excluding certain uses from certain zones is permissible, and there is no obligation to permit all uses within

⁴ p.17 February 27, 2024 Transcript

the Village. The OB-2 Zone permits a variety of uses, of which a billboard is not one, in a manner consistent with the Village's power to zone, and consistent with the Municipal Land Use Law.

Purpose I

Mr. Burgis countered Mr. McDonough's limited assertion that the proposed billboard would advance a desirable visual environment. Mr. Burgis cited the Village Master Plan, which specifically discusses maintaining the historic character of this segment of Route 17 due to the presence of historic sites on both sides of the highway. He also testified that the zoning anticipates a two-story commercial building along the highway and that the Village's policy is to encourage that design, so it would be inconsistent with the Village's policies to describe a building of that scale as undesirable. During questioning, Mr. Burgis further offered that it is his opinion as a planner that billboards be avoided as a permitted use in a historic area.

Purpose M

Mr. Burgis offered a counterpoint that the site is already fully developed with a non-conforming use and non-conforming impervious coverage, so adding an additional use to the property, which is not permitted, does nothing to advance purpose M.

3. Negative Criteria

Mr. Burgis provided the following points about the negative criteria regarding the detriment of the application to the Master Plan

- A key goal of the Master Plan is "to keep the small town village feel in the community and adapt to change in ways to maintain or compliment that feel"
- The Master Plan includes a goal of protecting views of the historic properties along the Route 17 corridor in the vicinity of the subject property.
- The Master Plan identifies different types of "visual intrusion" including "billboards, power lines and poorly design and inappropriately located buildings, and inadequately screened, unsightly land uses."⁵

Mr. Burgis testified that he did not feel the balancing test for the height variance had been met. He felt that there is substantial impairment to the intent of the Master Plan and that the inherent nature of the proposed use does not justify the requested height variance.

⁵ p.14 February 27, 2024 Transcript

Testimony of Brigette Bogart, PP, AICP

1. Ms. Bogart entered exhibits and offered testimony about the proximity of historic and residential properties and the potential for visual intrusion related to the proposed billboard, particularly with regard to the neighboring office building occupied by her client.
2. Ms. Bogart offered testimony, based on her experience as a planner in the Village that there are dangerous traffic patterns and driveways along the corridor where the billboard is proposed on Route 17.
3. Ms. Bogart concluded that the site is not suitable for the use in her opinion based on its impact on the Master Plan, nearby historic district and sites, and traffic considerations.

Other Testimony

1. Numerous witnesses appeared to offer testimony about concerns related to visual intrusion either with relation to how the enjoyment of their properties would be impacted, or with regard to how the historic character of nearby registered historic sites, including Valteau Cemetery, Old Paramus Reformed Church, and the Zabriskie-Schedler House and Property. In response, the applicant's witnesses provided testimony about measures to reduce certain aspects of the visual intrusion but acknowledged that there would be some impact.
2. The immediate neighbors to the north (lot 9) and south (lot 11) both appeared before the Board to object to the sign, generally regarding its size and placement. The neighbor on lot 11 has not participated in the hearings, citing an agreement with the owner of the subject property to modify the original location of the sign, but AK Realty, the owner of lot 9 has participated as an objector.

Planning Comments

The Board's charge is to determine if the applicant has satisfied its burden of proof, related to the suitability of the subject property for the proposed use, whether there are special reasons to grant the variances based on the purposes of zoning, and whether the relief can be granted without substantial detriment to the public good and substantial impairment to the Master Plan and zoning ordinance.

I offer the following comments for the Board's consideration in its deliberations.

Site Suitability

1. Mr. McDonough's testimony did not offer a distinction between the particular characteristics of the subject property from other properties along Route 17 in the OB-2 Zone. Nothing put on the record demonstrates how the unique characteristics of the site make it particularly appropriate for a

billboard that would not apply to each of the other developed, commercially zoned properties along the highway.

2. Mr. McDonough relied on the grant of an NJDOT permit as a portion of his argument demonstrating site suitability. NJDOT's permitting requirements do not consider the context or physical characteristics of a property beyond it being in a non-residential zone, having frontage on an appropriate highway and being located an appropriate distance from other signs and certain types of highway access points. The grant of an NJDOT permit demonstrates compliance with the appropriate section of the state administrative code but does not speak to the suitability of the property from a local zoning and land use standpoint.
3. Mr. McDonough cited the existing development on the property as a sign that the site is suitable for the proposed use because minimal development would be required for the billboard to be installed. However, the existing use on the property is non-conforming, which is generally disfavored by zoning. Adding the billboard to the property limits the potential for redevelopment of the property into a conforming use in the future.
4. The applicant's testimony and exhibits advance an argument that the proposed billboard needs to exceed the permitted height in the zone to effectuate its intended purpose. The proposed height and location of the sign on the property have been influenced by the existing developments on the subject property and neighboring properties. However, there is evidence in the record that a shorter sign may be appropriate if the site circumstances were different. Testimony from the applicant's witnesses demonstrates that there is nothing inherent to the operation of a billboard that requires it to be a particular height – the appropriate height is determined on a case-by-case basis. As a result, it is fair to question the suitability of the site if the general advertising purposes advanced by a billboard could be effectuated in a less intrusive, and more conforming manner if the site and neighboring pattern of development were not constrained as they are.

Special Reasons

5. In my opinion, the positive criteria testimony offered in support of Purposes G, I, and M of the Municipal Land Use Law did not rise to the level of special reasons to grant the variances sought. The applicant's case generally hinges on the argument that purpose A of the MLUL is advanced because the billboard is a means of communication that supports the general welfare.
6. The use is well represented from a regional standpoint as there are numerous billboards along Route 17 and other highways throughout Bergen County and northern New Jersey. The preponderance of the use may diminish the alleged public benefit the billboard would provide as a means of communication.

7. The Board should carefully review the arguments made by each of the planners related to purpose "a" of the Municipal Land Use to determine if there is ample evidence in the record to support a determination that the proposed use advances the general welfare. The planners offered differing opinions on the relative merit and value of the advertising billboard as a form of communication that may, or may not, advance the general welfare.

Negative Criteria

8. For the first prong of the negative criteria, the Board should review the evidence related to the impact of the proposed billboard on its surroundings. Numerous photos and visual exhibits are in evidence depicting various existing and simulated views of the subject property. The applicant's burden is not to demonstrate that there is *no* impact, but that there is *no substantial* impact. The Board must determine whether the potential impact is substantial based on the body of evidence in the record.
9. The sightline and visibility concerns raised by the objectors contribute to questions about the suitability of the property for the proposed use and the proposed height, which was intrinsically linked to the use by the planning testimony.
10. In Mr. McDonough's testimony regarding the negative criteria for the d(6) height variance, he stated that the sign would not create negative shadow effects. This statement is speculative since a shadow study has not been entered into evidence.
11. For the second prong of the negative criteria, the Board should evaluate the Master Plan goals related to the preservation of a Village feel and prevention of out-of-scale visual intrusion into historic sites along the Route 17 corridor to determine if the proposal will substantially impair those goals.
12. Regarding impairment of the zoning ordinance, Mr. McDonough testified that the Route 17 corridor is "the most aggressive zoning district in the community" to reconcile the location of the Billboard in the proposed location. The subject property is in the OB-2 Zone, which is a relatively restrictive commercial zone in the Village. The OB-2 Zone permits:
 - a. Financial institutions
 - b. Professional, business, and administrative office uses
 - c. Veterinary hospitals
 - d. Child-care centers
 - e. Municipal buildings owned or leased by the Village and used for public purposes
 - f. Institutional uses
 - g. Instructional Schools

By way of comparison, the OB-2 Zone does not permit retail uses, which are permitted in the B-1, B-2, C, and HC Zones. Nor does it permit auto repair, wholesaling, trades shops, and storage warehouses which are more industrial in nature and are permitted in the C Zone. Based on the relative intensity of uses permitted in the OB-2 Zone, the billboard impairs the zoning ordinance to a greater extent in that zone than it would in some of the more permissive commercial and light industrial zones in the Village.

13. The applicant entered an exhibit showing that there are three other outdoor advertising permits in Ridgewood. Two of which relate to painted signs on the sides of buildings downtown, and the other to a billboard visible from the train tracks. Ridgewood has an existing billboard that offers potential advertisers the ability to transmit their messages and exercise their rights to advertise in that manner.