



Mr. Jaworski represents Outfront Media LLC and, nominally, property owner Joseph Muscarelle Investments Inc. He introduced his co-counsel Louis D'Arminio of Price, Meese, Shulman & D'Arminio and Jon Antal of Outfront Media.

Councilman Michael Gervino and Rick DeHeer recused themselves from the hearing and stepped down from the dais.

Mr. Jaworski explained that he received an email the day prior from Ms. Rubright in which she indicated that she had additional traffic and planning testimony and testimony from one of principals of Maywood Realty Associates at 113 West Essex Street.

Ms. Rubright of Brach Eichler represent Maywood Realty Associates, the adjoining property owner who is objecting to the application. She noted that there were some concerns that were raised by several of the Board members at the end of the last meeting. Specifically, there was questions as to why her client was objecting and what the potential impact would have on the Maywood Realty Associate's property. Dr. Winters was present to speak to the operations and the impact that he believes that this proposed billboard could potentially have on his operations.

Ms. Rubright was preparing to call back her traffic engineer, Lou Luglio to testify when she mentioned a drone test that was conducted. The drone test had been delayed because the proximity to Teterboro Airport and the President was in the area so the airspace was closed. Mr. Jaworski objected because they did not have the opportunity to review the exhibits in advance. Ms. Rubright replied that she had just received them at 2pm. She suggested that Mr. Luglio explain how the drone test was conducted and the sequence of the exhibits. He remains under oath. He explained that they attempted a balloon test but it was too windy. Therefore, they conducted a drone test on Sunday, 9/30/18. The drone has GPS and it can hover for a long period of time. They had the drone hover at the approximate corner of where the sign would be. They drove up and down Essex Street and Route 17 taking video and still images, similar to the crane test. The applicant's counsel was notified of the balloon test but not the drone test. A company called Wing Man operate the drone. They are a two-man operation. They bring the drone to the location that was specified using a GPS coordinate system. One battery lasts approximately 40 minutes. Although it was too windy for a balloon test, it was not too windy for a drone test. Mr. Luglio believes that the drone can operate in wind up to 60 miles per hour. The drone has flashing lights. While the drone was up in the air, he and the planner, Jason Dunn, drove around. Mr. Dunn was driving and Mr. Luglio was taking video and still images. The exhibit packet has still images taken at 250' in both directions of Essex Street, 500' in both directions of Route 17 and 750' in the residential neighborhood to the northeast of the site. The exhibit packet is 13 pages. Board Attorney Kaczynski asked the name of the person from Wing Man that operated the drone and Mr. Luglio promised to provide it.

Ms. Rubright noted that the objector does not have the burden of proof for this application. The applicant is asking for a conditional use variance seeking what she considers substantial variances from the ordinance. She stressed that the applicant did not provide depictions of what the sign would look like from West Essex Street. Since the objector didn't know what the proposed billboard would look like, how it would impact her client's property, how it would access to her client's property, the visual impact on her client's property and the other properties

on West Essex Street. She emphasized that it's the applicant's burden of proof to show that there's not going to be any substantial negative impact on the neighborhood. Maywood Realty Associates is part of the neighborhood. They hired a drone and created exhibits in order to show the Board that the proposed billboard would have a substantial impact on the adjacent properties. Mr. Jaworski objected to the exhibits because they did not have a chance to review them. Ms. Rubright's client was not advised of the applicant's crane test so the objector is not obligated to notify the applicant of the drone test. She repeated that she had just received the exhibit packet herself.

Board Attorney Kaczynski offered two options. Option one is that Ms. Rubright can present testimony and the exhibits, but the applicant should not be required to make a presentation tonight. He would adjourn his cross-examination until he has that opportunity to review the exhibits. Option two is that Ms. Rubright adjourns the testimony and exhibits to allow the applicant a chance to review the exhibits. Mr. Jaworski preferred to take Dr. Winters testimony tonight and adjourn the testimony of Mr. Luglio and Mr. Dunn. Chairman Lichtenberger also prefers to adjourn the testimony of Mr. Luglio and Mr. Dunn. Several Board members agreed to that plan. Ms. Rubright provided Board Attorney Kaczynski with the exhibits.

Dr. Richard M. Winters was sworn in. He reminded the Board that he has appeared before them previously. Approximately five years ago, he submitted an application to convert 113 West Essex Street to a full use medical building. He is a reconstructive surgeon and one of three main principals who owns the building. They currently have three long-term leases for medical use; a surgical center which has 38 surgeon partners, a dialysis center and offices for approximately 24 physicians. He purchased the property approximately six or seven years ago. When purchased, the building was vacant and in disrepair. They spent about two years converting the building into a full-use medical facility. The Route 17/Essex Street interchange improvement was completed prior to the purchase of the property and the easement access through 99 West Essex Street was already established. He detailed the easement access. There is a right-hand turn heading west on Essex Street at a traffic light. Some patients miss the right-hand turn at the traffic light. He added that the majority of patients, access the property without a problem, particularly if they have been to the property on previous occasions. However, some elderly patients receiving dialysis or nervous patients scheduled for surgery sometimes miss the turn. There is a separate right-turn only entrance by the dialysis center but he does not think many people utilize it.

Dr. Winters is concerned about the proposed billboard. He doesn't understand how the billboard will benefit the Borough. As a Maywood property owner that took effort to beautify his property, he feels that the proposed billboard doesn't enhance the property at all. He has serious concerns that it will distract the people already having difficulty finding their way onto the property. He doesn't understand the difference between a drone test and a crane test. He wanted to know how the proposed billboard would look from Essex Street. Chairmen Lichtenberger inquired how same-day surgery center has worked out for Dr. Winters. Dr. Winters replied that the building has three levels with the first level being a 3-room surgical center. They have recently negotiated a deal with HUMC to convert it into an even larger use with the Hackensack brand name and significantly higher volume.

Louis D'Arminio was preparing to cross examine Dr. Winters. Ms. Rubright stated that she was just provided three exhibits but chose not to object to their introduction. Mr. D'Arminio asked if Dr. Winters understood that the proposed billboard is a conditionally permitted use. Dr. Winters didn't understand why there was a Planning Board application if the use was permitted. Mr. D'Arminio explained that the proposed use is a conditionally permitted use. Applicant's Exhibit #A-15, Photograph was marked for identification. The exhibit is a photograph of the Maywood Realty Associates sign going westbound on Essex Street. Dr. Winters confirmed that the signage belongs to Maywood Realty Associates and indicates the various uses at the property. He also confirmed that the sign is located before the traffic light entranceway onto the easement. He explained that the sign is not lit and can only be seen during the day. Dr. Winters did not know the speed limit on Essex Street when asked by Mr. D'Arminio. Applicant's Exhibit #A-16, Photograph was marked for identification. The exhibit is a photograph of the sign hanging from the traffic light indicating that "99 & 113 Essex St." with an arrow. Dr. Winters confirmed that there is a large sign on the building itself that identifies it as "113". Applicant's Exhibit #A-17, Photograph was marked for identification. The exhibit is a photograph of the second entrance by the dialysis center and is right-turn only. Dr. Winters confirmed that the second entrance is approximately 500' after the main entrance by the traffic light. Mr. D'Arminio referenced Exhibit #O-2, Aerial Photograph. He described coming off the Route 17 exit ramp to West Essex Street; 113 West Essex Street would be on the left. Dr. Winters confirmed that there is a sign on the building but it isn't directional. Applicant's Exhibit #A-18, Photograph was marked for identification. The exhibit is a photograph of the traffic light viewed from the sidewalk in front of 99 West Essex Street. Dr. Winters believes that the exhibit photograph is not what a driver would see traveling eastbound on Essex Street. Drivers would need to make a left turn at the traffic light in order to access the property. Mr. D'Arminio asked if the green sign hanging from the traffic light is visible and Dr. Winters agreed that the sign can be seen. Applicant's Exhibit #A-19, Photograph was marked for identification. The exhibit is a photograph of the sign on the grass looking east on Essex street. When asked, Dr. Winters could not confirm the proposed billboard location in relation to Essex Street. Mr. D'Arminio again referenced Exhibit #O-2, Aerial Photograph. Mr. D'Arminio pointed out the proposed billboard location on this exhibit and asked if the signs noted in Exhibits A-18 and A-19 were located before the proposed billboard if you are traveling eastbound. He confirmed with Dr. Winters that Exhibits #A-15 through #A-19 were accurate depictions of the current conditions.

Dr. Winters confirmed that he has a website which indicates where the property is located. Mr. D'Arminio believes that the vast majority of the people come to the location more than once. Dr. Winters countered that same-day surgery patients may only visit the location once while dialysis patients or doctor office patients would come repeatedly. He confirmed that he has been in litigation with the applicant related to access in the past. While Ms. Rubright objected, Dr. Winters answered the questions that he was unsuccessful in the lower court and in the Appellate court which took substantial time, expense and effort. Ms. Rubright asked if there was any entrance sign at the second right turn entrance and Dr. Winters answered that there is no signage there. He added that the building signage is north and east of that entrance. He then detailed how drivers enter the property when they are traveling eastward. If drivers miss the left turn entrance at the traffic light, they are forced to go over Route 17 and turn around. Mr. D'Arminio cited Exhibit #A-17 and asked if Dr. Winters considered the two entrances as "major". Dr. Winters considers a major entrance as one that drivers turn into from any direction coming or

going. Since the second entrance is right turn only and not an exit, he wouldn't define it as major. Board Attorney Kaczynski intervened by explaining that Mr. D'Arminio is asking about entrances to the building and not the property entrances. Dr. Winters answered that there are two entrances to the building. Mr. D'Arminio confirmed with Dr. Winters that the entrance shown Exhibit #A-17 was the most direct route to building.

Chairman Lichtenberger asked the Board if they had questions for Dr. Winters. John McManus asked if Dr. Winters resided in Maywood. Dr. Winters answered that he lives in Demarest but has been in Hackensack for 20 years. Mr. McManus asked if there are billboard in Demarest and Dr. Winters replied that he wasn't aware of any. Vice Chairman Kuhn asked what Dr. Winters objections to the proposed billboard. Dr. Winters repeated his previous objections. Vice Chairman Kuhn clarified that Dr. Winters objected to the numerous variances requested and not one variance specifically. Chairman Lichtenberger asked how Dr. Winters would feel if the proposed billboard met the Borough ordinances in terms of height, size and location. Dr. Winters answered that he wouldn't have a viable argument against the proposed billboard if it met the Borough ordinance. Chairman Lichtenberger inquired if Dr. Winters objected to all signage in general. Dr. Winters said that he objects to signage that is right in front of his building and potentially obstructs drivers from accessing his property. He added that the existing access is not ideal but that nothing can be done about it.

Chairman Lichtenberger invited the public to ask questions of Dr. Winters but no one came forward.

Ms. Rubright noted that given the inability to proceed with the exhibits and the other witnesses tonight, she would like to adjourn her presentation. Mr. Luglio and Mr. Dunn were going to testify briefly about the exhibits.

The hearing was adjourned to 12/6/18 with no additional notice required. Mr. Jaworski extended the window of the Board to act though 12/7/18.

Councilman Michael Gervino and Rick DeHeer rejoined the dais.

**Closed Session**                      None

**Informal Hearing**                      None

**Old Business**                          None

**New Business**                        None

**Open Meeting to the Public**

**Adjournment**

A motion to adjourn the meeting was made by Harry Hillenius. John McManus seconded the motion. The meeting was adjourned at 8:53pm.

Respectfully submitted,

Tara Grunstra  
Planning Board Recording Secretary