

**MAYWOOD PLANNING BOARD
MINUTES
December 6, 2018**

A regular meeting of the Maywood Planning Board was held on Thursday, December 6, 2018 in the Council Chambers of the John A. Steuert, Jr. Municipal Complex, 15 Park Avenue, Maywood, New Jersey at 7:30pm. “This meeting was called pursuant to the provisions of the Open Public Meetings Act. Notice of this meeting was published in the Our Town and The Record newspapers on or about November 23, 2017. In addition, copies of this notice were posted on the bulletin Board in the Maywood Municipal Building at 15 Park Avenue, filed with the Borough Clerk and distributed to all persons, if any, requesting copies of the same pursuant to said act. This meeting is a judicial proceeding, any questions or comments must be limited to the issues that are relevant to what the Board may legally consider in reaching a decision and decorum appropriate to a judicial hearing must be maintained at all times.”

Flag Salute

Call to Order

The meeting was called to order at 7:30pm with the following members present: Chairman Frank Lichtenberger, Vice Chairman Paul Kuhn, Secretary Charlotte Panny, Rick DeHeer, Gary Neumann, John Montel, Harry Hillenius, Anthony Klymenko, Daniel Nemecek and John Gargagliano. Zoning Officer James Mazzer, Board Attorney Kara Kaczynski and Board Engineer Brian Gillen were also present.

Approval of Minutes

Rick DeHeer made a motion to accept the minutes from the October 4, 2018 meeting. Vice Chairman Paul Kuhn seconded the motion. All eligible members present voted in favor of the motion.

Bills

John Gargagliano made a motion to accept payment of the bills. Secretary Charlotte Panny seconded the motion. All eligible members present voted in favor of the motion.

Correspondence

- 11/5/18 letter from Board Recording Secretary Tara Grunstra Re: Patrick Izzo 14 East Fairmount Avenue Hearing Date 2/7/19
- 11/20/18 letter from Board Engineer Brian Gillen Re: Carvana 167 Route 17 North Completeness Review
- 11/21/18 letter from Board Recording Secretary Tara Grunstra Re: Carvana 167 Route 17 North Hearing Date 2/7/19
- 11/21/18 letter from Borough Clerk Jean M. Pelligra Re: John McManus Planning Board Resignation
- 12/5/18 letter from Borough Clerk Jean M. Pelligra Re: Charles Goebel Planning Board Resignation

Informal Hearing**Avid Hotel-Sagar Shah**

207 West Central Avenue

Block 123, Lot 2

Hotel in the Limited Light Industrial (LL) Zone

Anthony Klymenko recused himself from the informal hearing since he has a conflict of interest with Intercontinental Hotels Group (IHG).

Chairman Lichtenberger explained that since this is an informal hearing, no formal action can be taken. Sagar Shah thanked the Borough and the Board for accommodating the informal hearing. He is a principal in his family's commercial real estate company. They own two hotels and three assisted living facilities in Pennsylvania, South Carolina and Georgia. His father, Dr. Vinay Shah is an OB-GYN affiliated with Hackensack University Medical Center and St. Mary's Hospital. Mr. Shah was born and raised in New Jersey. His family is looking to invest in a hotel in Bergen County and feel that the proposed location is a perfect fit. They are proposing a nine-story, 120 key Avid branded hotel. Avid is part of the IHG which is the parent company of Holiday Inn and other hotels. Avid was recently created by IMG to meet the need of today's mid-scale segment traveler. Guest rooms with a king bed average 222 square feet and two queen bed rooms average 275 square feet which is approximately 100 smaller than standard hotel rooms. They are proposing a glass enclosed roof top bar with outdoor space for guests to enjoy views of New York City. The space could also be utilized for banquets. He estimates that the hotel would create 35-40 jobs, mostly full-time positions. Mr. Shah described the building as attractive addition in a mostly industrial area. He added that there would be tax revenue associated with a hotel. The roof top bar would also be a welcomed amenity. He introduced his architect, Ashish Mishra.

Mr. Mishra provided a conceptual site plan package to the Board. He explained that his firm specializes in the hospitality industry. The proposed building would be nine stories with a ramp to the basement level parking area. There would be parking for 121 vehicles in the basement area. The surface parking would accommodate 76 vehicles so there is a total of 197 parking spaces. The room count is 120 in total. The first floor would have a pre-function area and meeting space/banquet room. The second floor has a reception area, lobby, gym, small market and guest rooms. Floors 3-8 would be guest rooms only. The ninth floor is the roof and would have a glass enclosed bar and outdoor seating with a fireplace. Mr. Mishra explained that the building would be constructed of steel and concrete and, therefore, have a very high fire rating; 2A. The building would have a fire sprinkler system, as required.

Chairman Lichtenberger asked if the liquor license has been obtained. Mr. Shah replied that he is in the process of securing a liquor license. John Gargagliano asked who would be their clientele. Mr. Shah answered that it would be a mix of young professionals, families, business travelers and sports fans. Mr. Gargagliano confirmed that the guest rooms would not have a kitchen but would include a small refrigerator. Chairman Lichtenberger questioned how the traffic would be addressed. Mr. Shah answered that most of the traffic flow would take place during the hours of 6am-8:30am. Most guests would travel via Route 17. Since check-in time is at 3pm, he expects that the evening peak would be between 3pm-6pm. Chairman Lichtenberger believes that some people will travel via Central Avenue. Those that will travel via Route 17

will need to enter and exit off of Woodland Avenue. Mr. Shah believes that the traffic will be limited to the peak times that he already discussed but he offered to have a traffic study conducted. Mr. Mishra explained that the Bergen County hotel occupancy rate is approximately 70% which means that 84 of 120 rooms would be occupied. Most of the guests travel with only one car. He approximates 30 cars per hour during the peak travel times. Mr. Shah described the property at 1.1 acre as ideal for their needs in terms of size and central location. He added that the hotel occupancy rate is very encouraging. Secretary Charlotte Panny questioned is two elevators are sufficient for a building of this size. Mr. Mishra offered to research the number of elevators more and would consider adding a third elevator. Harry Hillenius is concerned about the Route 17 access at Woodland Avenue. Mr. Mishra suggested instructing guests to utilize a different roadway than Route 17. Rick DeHeer relayed how much existing traffic is on Maywood Avenue. Mr. Shah explained that the IHG reservation system will drive business. He feels that the location will not be a deterrent to his business. Chairman Lichtenberger pointed out that the Maywood municipal pool would be around the corner. He has concerns about the traffic that a hotel would bring in that location. John Montel asked if the sewer and water lines could support a hotel and Mr. Shah answered that they haven't completed that research yet. He added that they would be interested in partnering with the local high school for students interested in hospitality careers. Vice Chairman Paul Kuhn would feel more comfortable if a traffic study was conducted. Mr. Mishra added that they could incorporate a van service in order to minimize the number of cars traveling to and from the property.

Anthony Klymenko rejoined the dais.

Resolution

SB One Bank
125 West Pleasant Avenue
Block 70, Lots 16 & 17
Calendar #2018-08
Variance Application

Harry Hillenius made a motion to approve the resolution as written and Vice Chairman Kuhn seconded the motion. All eligible members present voted in favor of the motion.

Hearing

Outfront Media
99 Essex Street
Block 125, Lot 1
Calendar #2017-14
Variance & Site Plan Applications

Rick DeHeer recused himself from the hearing and stepped down from the dais.

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. He understands that Ms. Rubright has a number of witnesses scheduled to testify tonight. He distributed an updated exhibit list that incorporates her new exhibits and one new exhibit from the applicant. The applicant's new exhibit was marked as Exhibit #A-20, 12/5/18 NJDOT Notice of Approval for two (2) LED Multi-Message, Back to

Back Off Premise Signs. When the application began, the NJDOT had approved the static billboard but not the digital billboard. Attached to the exhibit is the NJDOT application for outdoor advertising permit but includes a typo listing "Deal Borough" as the municipality. This will be corrected.

Susan Rubright is from Brach Eichler on behalf of the objector, Maywood Realty Associates. Mr. Jaworski provided her a copy of the approved NJDOT permit. She confirmed with Mr. Jaworski that although the NJDOT approved a 1,000 square foot billboard, the application remains for 672 square feet. At the previous hearing on 10/4/18, Ms. Rubright identified several exhibits including Exhibit #O-7, Curriculum Vitae of Nicholas Kida Drone Operator. Mr. Kida is available at this hearing to testify, if needed. The drone that was used for the test is also on-site this evening. She explained that Mr. Jaworski has agreed that the exhibit photographs correctly show the location of the drone at approximately 35'. Applicant's counsel nor the Board members had questions for Mr. Kida. Ms. Rubright explained that her remaining witnesses would be Mr. Louis Luglio, Mr. Jason Dunn and Dr. Dante Implicito, a partner of Maywood Realty Associates.

Louis Luglio is a traffic consultant who will testify about Objector's Exhibit #O-8, Drone Photos/Maywood Proposed Billboard, pages 1 through 13 which was marked. Mr. Luglio remains under oath. He explained how the drone test was conducted. The drone hovered at 35' while members of his team drove along Essex Street, Route 17 and a local residential street taking photographs. Using the photos, he superimposed what he believes would be an accurate, depiction of what that billboard would be look like from various locations. Page 1 shows the road surface of Essex Street and the proposed billboard location. The red circle is approximately 250' from the center of the billboard and the blue circle is 500' from the center of the billboard. Page 2 of Exhibit #O-8, shows the approximate drone location 250' from the proposed billboard location going southbound. Page 3 shows the superimposed proposed billboard face using the approximate drone location. Anthony Klymenko questioned the depictions presented in pages 2-4 of the exhibit given the proposed billboard's V-shape. He believes that the view would not be the sign face but would be distorted given the angle. Mr. Luglio agreed and indicated that page 4 shows the two pieces of that billboard which is slightly rotated. Mr. Klymenko believes that the proposed billboard would be more rotated than page 4 depicts because drivers would see the two billboard ends skewed at an angle that faces Route 17. There was some discussion between them with an agreement that the dimension would be narrowed down to less than a third of the sign face. Mr. Luglio summarized that from this distance, drivers would see the entire structure from that vantage point but believes that from 500', there would almost be no distortion of that angle. He added that it is not an exact science and the point of the exhibit was to provide the Board a visual idea of what the proposed billboard would look like from Essex Street since the applicant did not provide one.

Ms. Rubright confirmed with Mr. Luglio that the angles depicted were determined mathematically using the light pole height. Mr. Klymenko believes that the height is accurate but the depiction of the sign face is not. Daniel Nemecek agreed with Mr. Klymenko. Mr. Klymenko explained that the exhibit should be accurate. He does not believe that the depictions from Essex Street are accurate but does considers the Route 17 depictions to be correct. Ms. Rubright asked Mr. Luglio if it is his opinion that the sign face would be visible from West

Essex Street and he agreed that it would. Mr. Klymenko clarified that the sign face will be seen from West Essex Street but not at the angle depicted in the exhibit. He approximated that the skew is 70° so the view would be 22' of the proposed 48-foot wide sign based on his experience as an architect. Mr. Luglio explained that the drone test is not an exact science and the exhibit goal is to display what the sign would like look. He agreed that the sign view would be somewhat shorter in width.

Chairman Lichtenberger questioned how the height of 35' was determined. Mr. Luglio explained that the applicant is proposing a billboard height of 70' from Route 17. The subject property is 10' higher than Route 17 so the proposed billboard height is 60' from the subject property. The distance between the Essex Street roadway and the bottom of the proposed billboard is 35'. The proposed billboard dimensions are 14' high x 48' wide.

Exhibit #O-8 page 5 depicts the view for drivers traveling in a northwest direction on Essex Street. Page 6 shows the approximate drone location 250' from the proposed billboard location. Page 7 shows the superimposed proposed billboard face using the approximate drone location. Page 8 shows an example of the sign face using a potential advertiser. Page 9 depicts the view for drivers traveling northbound on Route 17 about 500' away from the billboard. Page 10 shows the approximate drone location 500' from the proposed billboard location where the drone is barely visible. Page 11 shows the superimposed proposed billboard face using the approximate drone location. Page 12 depicts the view from the closest Maywood residential area approximately 750' from the proposed billboard. The residential location is the backyards of some of the homes along Maywood Avenue. Page 13 shows the superimposed proposed billboard face using the approximate drone location. The drone can be seen very faintly and the billboard sign face itself can be seen but not in its entirety because of the angle. Mr. Luglio believes that Exhibit #O-8 gives the Board an idea what the proposed billboard would look like traveling in either direction on Essex Street which the Board did not have before.

Chairman Lichtenberger noted that the ordinance dictates that that the maximum billboard height is 35' from Route 17. Mr. Luglio pointed out that page 11 of the exhibit compares what the applicant prepared vs. the drone test. The proposed billboard would be seen over the Essex Street overpass traveling north on Route 17 at a 500-foot distance. Board Attorney Kaczynski clarified that the ordinance requirement is that a billboard cannot exceed 35' in height. The applicant is asking for a variance from that requirement, which is what pushes it outside the conditional use requirements and into the use variance requirements. Ms. Rubright added that there are a number of variances from the conditional use standard that the applicant is requesting. The point of the drone test and superimpositions was to present and provide support for the objections. She believes that certain variances should not be granted, specifically the height and the billboard is not supposed to be visible from a street with a speed limit less than 50 miles an hour. She asked Mr. Luglio if the sign face will be visible from West Essex Street in both directions and he confirmed that it would be visible which is a violation of the ordinance. Mr. Luglio believes that the sign face can be read from West Essex Street despite the angle. John Gargagliano asked what the speed limit is for West Essex Street and Mr. Luglio believes that it is 35 miles per hour which is below the 50 miles per hour designated in the ordinance. Ms. Rubright explained that one of the conditions of the conditional use from the ordinance is that the

sign not be visible for an adjoining roadway, having a posted speed limit of 50 miles per hour or less.

Daniel Nemecek asked Mr. Luglio about his comment that the proposed billboard poses a distraction and asked if he could define the distraction. Mr. Luglio answered that there is a distraction of reading a billboard at an angle that it is not appropriate for a roadway that's at 35 miles per hour and at a height that is at very difficult to see. Mr. Nemecek asked is there scientific evidence about distraction on roadways under 50 miles per hour. Mr. Luglio answered that there have been studies that have been conducted by various trade organizations. He explained that the sign panels are positioned and angled in such a way to be read by people traveling on Route 17 and Essex Street. For Essex Street, he considers it worse distraction because drivers would be able to see and read a portion of the sign. He believes that a driver could be underneath the billboard and still read it.

Chairman Lichtenberger invited the public to ask questions of Mr. Luglio but no one came forward.

The next witness was Jason Dunn who is a professional planner and remains under oath. He participated in the drone test with Mr. Luglio and has reviewed Exhibit #O-8. He directed the Board's attention to page 2 which shows the identification sign for 113 West Essex on the left-hand side of that photograph. From that distance, he considers it a little difficult to read that sign since it is on the far left. He noted that above that sign is just sky and tree line. Pages 3 and 4 show the superimposed proposed billboard, conceding the angle would shorten of the sign face, the proposed billboard would loom over that identification sign. It is his opinion that the proposed billboard would impact how drivers would recognize the access signage. He believes that it will draw drivers' focus away. Page 6 is the opposite direction and the center of the photograph shows the building sign 113. Drivers can see a small portion of the identification sign, street guidance sign and the green hanging sign from the traffic light. Pages 7 and 8 show the superimposed proposed billboard. He believes that the proposed billboard will distract from the smaller signs in the distance. Lastly, he pointed out on page 13 that the proposed billboard will affect the Maywood skyline for some of the residences.

Mr. Dunn considers the proposed billboard to be inconsistent with the Borough's zoning plan based on the severity of the variances being sought. The exhibit demonstrates the magnitude of the structure and how it will negatively impact the skyline in Maywood's charm and land-use character. He believes that the proposed billboard will be a large-scale blemish to the surrounding neighborhoods and will not serve the Borough's best interest or promote the economic development in the Borough. He considers the violations of the conditional uses criteria, which are setback, height area and dimensions, as significant and should not be viewed lightly. He does not agree that the proposed use is permitted and cited the 2018 edition of the New Jersey Zoning and Land Use Administration, page 741 "Conditional Uses Requiring Variance," 40:55D-70 D3:

A conditional use is a use that is permitted in a zone district only if it satisfies specified conditions stated in the ordinance. If the conditions are not satisfied, the use is not permitted.

In his opinion, the worst and most flagrant violation is the fact that the drivers will see most of the sign face message and structure from Essex Street. He cited the ordinance:

The billboard shall be confined to an adjoining roadway having a speed limit of 50 miles per hour or more.

The applicant has proven that the proposed billboard can be seen from Route 17 and it effectuates its use from that roadway. However, it will also be seen from the local streets; West Essex and the Maywood Avenue residential area. In his opinion, this is a violation of the public safety, health and welfare. He believes that one of the likely purposes of that condition was to protect drivers on speeds with lower speed limits, such as West Essex Street, so that they won't have their focus taken away from the already saturated signs of the street which identify entrances and roadways. He thinks that the purpose of the master plan was to restrict the views to Route 17. It is his opinion that the variances are so far from compliance with the conditions for this use that the Board has to be careful that they are not spot zoning this property. Lastly, he reminded the Board that the applicant's planner, Mr. McDonough, discussed the five prongs of the Coventry Square case. Prong one was legislative intent. The billboard shall not be prominently visible from roads under 50 miles per hour and not visible from residential use. He does not believe that this application meets that criteria. Prong two is does the failure to meet the conditional use criteria affect the property's ability or suitability to accommodate the use. He believes that the answer is yes because the billboard has to be raised so high to overcome the neighboring overpass structure in order for it to be viewed from both sides of Route 17. As a result of its height, it can also be viewed from these other roads. It is his opinion that the site cannot reasonably accommodate the use without a detrimental effect to the public safety and welfare. He offered that there may be alternate locations in the zone that can accommodate this use. He thinks that drivers being able to see the structure and sign face will interfere with and obstruct their ability to find access to the driveway that leads to the property 113 West Essex Street. Prong three is can the site accommodate the problems associated with the violations of the conditional use provisions. The site is still operational and functional with or without the sign; however, it is a serious deviation by changing the aesthetics of the neighborhood. Prong four is will there be substantial negative impacts on the surrounding properties and he believes that there will be. He considers that the proposed billboard will interfere with the ability of the drivers to find and focus on the sign and access to 113 West Essex Street. Prong five is can the violations of the conditional use provisions be reconciled with the intent of the Borough's purpose of imposing the conditions and he believes that the answer is no. He considers that the proposed billboard goes against the intent of these provisions since the stated intent of the ordinance was for a billboard to serve only drivers on Route 17 and not be a blemish on this landscape of Maywood. In summary, it is his opinion that the deviations from the conditions are large and almost every substantial condition is violated as pointed out in the Board Engineer's report. He does not believe that this proposed billboard can compare with other billboards throughout the state because it isn't known if they can be seen from smaller streets.

Vice Chairman Paul Kuhn asked about Mr. Dunn's statement that the property itself is it not viable. Mr. Dunn replied that the property cannot accommodate the proposed use because of the substantial deviations. Vice Chairman Kuhn asked to clarify that the entire property is not viable or just the proposed location on the property. Mr. Dunn answered that the applicant chose the location. He added that they asked about an alternate location but the applicant decided this was the best spot. Secretary Charlotte Panny questioned if a static billboard would be more acceptable. Mr. Dunn said that the testimony is the same regarding the size and the visual impact taking away the focus. In his previous testimony, he had concerns about the light

illumination. The applicant did not present examples that showed the brightness and how it might impact the neighboring properties. Mr. Klymenko asked that if the proposed billboard was located elsewhere on the subject property, it would still be within 100' of Essex Street. Mr. Dunn answered that it may not make a difference as far as visibility from West Essex Street. Another alternative is to make this meet the ordinance and have it 25' from Route 17 and then it would only be visible from the northbound side. Board Attorney Kaczynski asked if the proposed billboard would be visible from Essex Street if it was reduced to total height of 35'. Mr. Dunn answered that in his opinion, it would be a lot less visible but at least the top of the sign would be seen. There was discussion amongst the Board members about how the proposed billboard would be viewed if it conformed to the maximum 35-foot height ordinance. Ms. Rubright stated that they are not proposing any alternatives for the proposed billboard.

Chairman Lichtenberger invited the public to ask questions of Mr. Dunn but no one came forward. A short recess was taken at 9:16pm. The meeting resumed at 9:20pm with all members present.

Ms. Rubright's final witness is Dr. Dante Implicito who is a member of Maywood Realty Associates. He was sworn in. He has testified previously approximately 5 years ago when Maywood Realty Associates purchased and renovated the building at 113 West Essex Street. He explained that he is an investor in the building and also runs his medical practice there so he is both tenant and landlord. He believes that the legislative intent behind the billboard ordinance was to allow tasteful signage that was safe and not a hindrance to Maywood residents, taxpayers and property owners. He has some concerns with regard to the application. The proposed billboard is nonconforming in terms of size and location. The required setback is 25', but the applicant is proposing the location to be approximately 2' from Route 17 and from West Essex. As an adjacent property owner, he sees no benefit to the granting of the variance relief. He believes that granting the variance will harm his business. Access via the easement on Mr. Muscarelle's property is already problematic and he believes that the proposed billboard will further confound his patients from correctly and safely finding their way to his building. This is a medical building and the patients are disproportionately elderly patients. They're stressed, infirmed and worried about a new medical diagnosis, surgery or a dialysis treatment. He believes that the proposed electronic billboard won't help access to an already challenging location.

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

Ms. Rubright summarized her objections. This property is in the HDO zone which permits offsite signs as a conditional use provided that certain specific conditions are complied with. A D3 use variance is required if all of the conditions are not met. It is her opinion that the site cannot accommodate the many variances that the applicant is seeking in order to construct the proposed billboard. The variances would create numerous negative impacts that substantially impair the intent and purpose of the zone plan and are a detriment to the neighborhood. In her opinion, the impacts from the variances for this specific project, at this specific location, cannot be accommodated or reconciled with the Master Plan and the zoning ordinance. She noted that Mr. McDonough stated that the billboard has to be at the height proposed in order to effectuate the use, which is to be seen from Route 17. In her opinion, if multiple and extensive variances

are needed in order to effectuate the use, then this site cannot accommodate the use and it is not an appropriate location for this use. The applicant has the burden to prove the site can accommodate the use and that granting the variances will not substantially impair the intent and purpose of the zone plan or will not cause a substantial detriment to the neighborhood. In her opinion, the applicant did not meet these proofs. Conditions are established so that the use can be accommodated on the site and the use is permitted when all of the conditions are met. Failure to comply with one condition, takes the use out of the permitted category. The Coventry Square standard provides that a conditional use variance applicant must show that the site will accommodate the problems associated with the use, even though the proposal does not comply with the conditions of the ordinance. The applicant has the burden of proof to show that the site will accommodate the problems associated with the use. She continued explaining that the Court next stated in Coventry that the variance can be granted without substantial detriment to the public good. The second prong as stated in Coventry is that the granted conditional use variance for the specific project at the desired site is reconcilable with the municipalities legislative determination that the conditions should be imposed. The conditions imposed in this application relate to how the billboard use will fit on this site, from where it will be seen, the setbacks, the height, the sign size and the sign dimensions which are the factors that determine whether the use can be accommodated on the site. In her opinion, the application does not meet these conditions and the variances from the conditions are so extensive that the Board should deny the variances.

Ms. Rubright then listed the ten conditions in the Borough ordinance that are to be met for the billboards to be a permitted use:

1. No more than one off-premises advertised structure shall be permitted which is being complied with.
2. No part of any off-premises advertising sign shall be located within 300' of another which is also being complied with and is regulated by DOT.
3. No part of any off premises advertising sign shall be located more than a 100' from a roadway having a regularly posted speed limit of 50 miles an hour meaning that the intent of the ordinance appears to be that the proposed billboard is visible from major roadways, but not too close to a nonmajor roadways.
4. No part of any off-premises advertising sign shall be higher than 35' above grade of the adjoining roadway having a regularly posted speed limit of 50 miles per hour or more.
5. Off-premises advertising signs shall be constructed so that the sign faces thereof are oriented to and their line of sight confined to the adjoining roadway having a regularly posted speed limit of 50 miles per hour or more which is one of the conditions that both Mr. Dunn and Mr. Luglio testified to that this does not meet. The exhibits provided were intended to show that the proposed billboard does not comply with this condition.
6. The sign shall not exceed 528 square feet which doesn't meet that condition because it is proposed to be 14' high x 48' wide or 672 square feet.
7. Off-premises advertising signs shall comply with the minimum setback requirements which it does not. The front yard setback requirements are 25' and proposed is a little bit over 2'.
8. Any lighting shall be restricted so as to avoid light spillage upon adjacent properties and any movement or illusion of movement of the off-premises advertising signage shall be prohibited.
9. There must be landscaping but she does not consider this to be an issue.

10. The advertising framework shall be maintained as a single color which is being complied with.

Ms. Rubright feels that the specific deviations are extensive. The setbacks are 85% and 88% deficient. The height is 200% over the maximum permitted. The sign area is a 127% over what is permitted. The dimensions are 110% longer than allowed. The sign face is not oriented to and the line of sight is not confined to the adjoining roadway which is Route 17 that is 50 miles per hour or more and is visible from West Essex Street. The sign is also higher than 35' above the grade of the adjoining roadway having the regularly posted speed limit of 50 miles per hour or more. The applicant's rationale for the proposed size is that the dimensions had to be industry standard so that swapping out the signs would be easier. She explained that the applicant did not provide a rendering to show what this sign would look like from West Essex in either direction. Both Dr. Winters and Dr. Implicito have concerns that the billboard will interfere with and take the patients' focus away who are trying to reach their medical uses via the driveway that is near the proposed billboard. It is her opinion that the zone plan would be substantially violated. Her exhibits showed that the proposed billboard would be visible from the residential area on Maywood Avenue. The applicant's witnesses testified that the reasons for the proposed billboard height is to reach the target audience which is Route 17. She believes that the proposed billboard does not comport with the Master Plan and ordinances which set standards for a smaller scale billboard; 35' high, setback 25' from the roadway and not visible to residential areas. She noted that the ordinance was implemented after the Route 17/Essex Street overpass construction was complete. The height of the Essex Street bridge and that properties that were taken along Route 17 (both the Muscarelle and Maywood Realty properties) had been established when the ordinance was adopted with the height of 35' and the setbacks of 25' required. She considers the granting of the variances would be the definition of a substantial impairment to the zone plan as well as a substantial detriment to the neighborhood. She noted that the applicant has made no effort to conceal the framework that would be seen from West Essex Street. The applicant testified that the optimum location to place the sign is at the angle where it will be seen by the largest number of drivers on Route 17 and the message will be visible from West Essex which violates the ordinance. The applicant did not analyze the lighting impacts. There are no other structures in this area that will be as tall as this proposed sign which, in her opinion and her expert's opinion, will make it a focal point for drivers who are trying to find the entrance of the medical building at 113 West Essex Street. While there are numerous billboards in New Jersey, she noted that we do know how those boards were granted, what the ordinances are or how those billboards affect other local roads. Maywood has a Master Plan and a zoning ordinance. Lastly, she believes that there will be substantial negative impacts on the health, safety and welfare of the drivers trying to access the Maywood Realty Associates building. Drivers need to be able to easily and quickly identify the entrance to this building and both Doctors Winters and Implicito testified that the patients need to be able to access this building in a clear and consistent way and not have to make U-turns. In her opinion, the benefit to the Borough of Maywood if the variances are approved are minimal. There are alternatives to the public service and community bulletins being offered. In summary, Ms. Rubright believes that the applicant has not proven that they are entitled to the variances and the variances are so extensive that the Board should find that the conditional use standards have not been met and deny the variances. In her opinion, to grant the variances is so contrary to the zone plan and to the zoning and planning law, that the

Board would be usurping the authority of the governing body if they grant this and would, in fact, be implementing a rezoning of this property.

Mr. Jaworski provided his summation. The application is for an off-premises sign which is conditionally permitted in the HDO zone. The zone is comprised of four or five properties on the west side of Route 17 which is far from the residential zone in the municipality. He believes that the governing body selected this location because it would have no detrimental impact on residences. The objectors believe that the proposed billboard can be viewed from the residential zone, but he believes that trees will provide screening so the proposed billboard will not be visible. He cited that DOT has given approval for an electronic sign up to 20' high x 50' wide which is larger than what is being proposed. The application deviates from the conditional use criteria in several ways:

- Height of the sign: 35' is permitted, 70' is proposed
 - Height of the Essex Street Bridge and the deviation in topography from Route 17 to the subject property requires the proposed height in order to effectuate the purpose of a double sided off-premises sign to be visible from Route 17 northbound.
 - Lowering the sign to a conforming dimension of 35' would further impact the issues that the objectors have raised. He believes that if the sign was lower, it could potentially be more of an impact than the sign at the height that's proposed, at least from Essex Street.
- Size of the sign: 528 square feet is permitted, 672 square feet is proposed and 14' high x 14' wide permitted, 14' high x 48" wide proposed
 - He thinks that the size is appropriate in this circumstance and the State agrees because they have approved a 1,000 square foot sign.
- Setbacks: 25' required, 2.5' on both sides proposed
 - He considers those setback dimensions as designed for separations from building to building or parking to building. The setback that is proposed is going to be up in the air so he believes that it is of no consequence.

Mr. Jaworski believes that the Board is charged with making a determination on credibility. He reintroduced his co-counsel Mr. D'Arminio and New Jersey General Manager for Outfront Media Mr. Antal and reminded the Board of their credentials. He noted that the State of New Jersey approved the location as acceptable for a sign as large as 1,000 square feet. He reminded the Board that the applicant will accommodate emergency service and municipal utilization of the proposed billboards. He discussed the simulations from 500', 750' and the 1,000' feet on Route 17 provided by the applicant's engineer Mr. Zepponi. He does not agree that the proposed billboard will be visible from a residential neighborhood or even from West Essex because of the way the billboard is designed. Mr. Zepponi testified that landscaping is proposed around the base of sign. The applicant's planner Mr. McDonough testified about the conditional use criteria specifically Coventry Square case. The applicant is seeking a D3 variance, a conditional use deviation. Mr. McDonough talked about the sign needing to be seen in order to carry out the intention of the HDO zone. As such, the size and height are integral to being visible. Mr. McDonough cited the New Brunswick cellular case in support of increased height in order to meet the criteria of the code. Mr. McDonough discussed the setback deviations specifically that the proposed location was better than the center of the parking lot.

Mr. Jaworski feels that the objectors Exhibit #O-8 is confusing. Pages 2 and 6 are meant to be at 250' from the proposed sign and pages 3 and 7 are meant to be 500' from the proposed sign, but the photographs are all the same. He noted that members of the Board did not feel that the depictions presented in the exhibit were accurate. He understands that the doctors at 113 West Essex Street have concerns about access to their building but the DOT Route 17/Essex Street overpass construction created that challenge. He does not believe the proposed billboard will negatively impact any of the directional signage. He does not consider the proposed billboard to be substantial detrimental. In closing, the governing body specifically selected these handfuls of properties in the HDO zone as appropriate for what is being proposed. The State of New Jersey has issued a permit for the proposed sign in this location which he feels effectively pre-empts everyone else.

Chairman Lichtenberger opened the hearing to the public to comment on the application but no one came forward.

Board Attorney Kaczynski suggested that the reliefs being sought are listed:

- Site plan approval
- D3 variance approval
 - Conditions 4, 5, 6, and 7; height, square footage, setbacks and visibility from Essex Street

The Board must determine whether or not the site accommodates its use even though they do not comply with these conditions. Additionally, the Board must decide whether or not the site can address and mitigate the problems and reconcile the fact that these conditions are not complied with. The Board has to determine whether or not the billboard would impair the intent and purpose of the zoning ordinance and zoning plan. Lastly, the Board has to determine whether or not there's any substantial detriment to public good as result of the proposed billboard.

Chairman Lichtenberger asked Anthony Klymenko how the proposed billboard would look if it complied with the Borough ordinance on height. Mr. Klymenko believes that because of the topography, the proposed billboard would effectively be on grade if it complied with the height ordinance. Chairman Lichtenberger asked Board Engineer Brian Gillen for his thoughts on the application. Board Engineer Gillen agreed with Mr. Klymenko's earlier assessment that the angle of the proposed billboard traveling west on Essex Street will diminish the visibility of the sign face. Chairman Lichtenberger understands that the target audience of the proposed billboard is Route 17 and not Essex Street. He then asked individual members of the Board for their thoughts on the application. Gary Neumann feels that the location is limited. Secretary Charlotte Panny is concerned about the proposed sign infringing on Essex Street. Mr. Klymenko noted that the proposed billboard is intended for roadways with a speed limit of 50 miles per hour. Vice Chairman Paul Kuhn believes that the proposed billboard is too big, too close to the property line and too tall. The height was determined in order to capture the Route 17 northbound traffic which he considers an economic issue and not a zoning issue. He added that if the proposed sign satisfied the setback requirements, there would not be an impact on Essex Street. Chairman Lichtenberger suggested another location on the subject property that would not violate the setback requirements and where the topography is more level with Route 17. Vice Chairman Kuhn agreed that another location on the property would not require so many

variance reliefs. Board Attorney Kaczynski reminded the Board that they must vote on the proposed location and cannot offer a new location. Daniel Nemecek does not have a problem with the proposed location and does not see a detriment to Essex Street. Harry Hillenius does not see the setback and height deficiencies as a problem. He feels that the proposed location is appropriate.

Chairman Lichtenberger asked for clarification on the D variance criteria. Board Attorney Kaczynski explained that the Board must determine whether or not there's any substantial detriment to public good as a result of granting the reliefs that the applicant is seeking. She reminded the Board that topography hardship is part of the C variance criteria and does not apply to this application. She explained the Board can look at the hardships that may be imposed on the applicant due to the makeup of the site, topography, the height of Route 17 versus the subject property, but that goes towards the compliance with one of the conditions that are not met which happens to be a particular bulk variance standard. Anthony Klymenko asked if the directional sign for 113 West Essex Street that was installed in the Bergen County right-of-way could be enlarged. Ms. Rubright explained that Bergen County dictated the size of the directional sign.

Harry Hillenius made a motion to approve the application as presented and Gary Neumann seconded the motion. Vice Chairman Kuhn, Secretary Panny, John Montel and Chairman Lichtenberger voted against the motion. Gary Neumann, Harry Hillenius and Anthony Klymenko voted in favor of the motion. Five affirmative votes are required for the motion to carry, therefore, the motion was denied.

Rick DeHeer rejoined the dais.

Old Business

- Chairman Lichtenberger updated the Board that the COAH litigation has been adjourned until 2/11/19

New Business

None

Open Meeting to the Public

Closed Session

Chairman Frank Lichtenberger made a motion to go into Closed Session. Rick DeHeer seconded the motion. All eligible members present voted in favor of the motion.

BOROUGH OF MAYWOOD PLANNING BOARD Closed Session Resolution # 2018-17

BE IT RESOLVED by the Planning Board of the Borough of Maywood, pursuant to the provisions of the Open Public Meetings Act, that the Maywood Planning Board met in closed session to discuss the following subject matter(s): Personnel matters

which subject matter(s) is (are) permitted to be discussed in closed session pursuant to the following designated sub-section(s) of Section 7 of the Open Public Meetings Act:

- () Sub-section 1 dealing with material rendered confidential by express provision of Federal or State law
- () Sub-section 2 covering a matter in which release of information would impair a right to receive federal funds
- () Sub-section 3 involving disclosure of material that would constitute an unwarranted invasion of privacy, including material related to an individual's personal and family circumstances, without the express written consent of the individual involved
- () Sub-section 4 pertaining to collective bargaining agreements and the terms, conditions and negotiations thereof
- () Sub-section 5 dealing with the acquisition of real property, the setting of bank rates, or the investment of public funds where discussion thereof would adversely affect the public interest
- () Sub-section 6 dealing with tactics and techniques used in protecting the safety and property of the public where disclosure could impair such protection or investigation of violation of the law
- () Sub-section 7 dealing with pending or anticipated litigation, contract negotiations, or matters falling within the attorney-client privilege
- (X) Sub-section 8 concerning personnel matters dealing with employment, appointment, termination, or terms and conditions of employment of any person or persons, or the evaluation, promotion or disciplining of employees unless all employees involved consent to disclosure thereof
- () Sub-section 9 involving deliberations after public hearing on a matter which may result in the imposition of a civil penalty or the suspension or loss of a license

AND BE IT FURTHER RESOLVED that, as precisely as can be determined at this time, the discussion conducted in the said closed session can be disclosed to the public upon taking final action thereon, provided disclosure shall not violate the attorney-client privilege or constitute an undue invasion of privacy; and

BE IT FURTHER RESOLVED that the Planning Board of the Borough of Maywood

- () Will return to open session after this meeting.
- (X) Do not envision that they will return to open session after this meeting but reserves the right to do so.

Date of Passage: 12/6/18 Time: 10:35pm

Respectfully submitted,

Tara Grunstra
Planning Board Recording Secretary