

**MAYWOOD PLANNING BOARD  
MINUTES  
June 7, 2018**

A regular meeting of the Maywood Planning Board was held on Thursday, June 7, 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, Mayor’s Designee Rick DeHeer, Gary Neumann, John Montel, Harry Hillenius, John McManus, Anthony Klymenko and Daniel Nemezcek. 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 April 26, 2018 meeting. Secretary Charlotte Panny seconded the motion. All eligible members present voted in favor of the motion.

**Bills**

Harry Hillenius made a motion to accept payment of the bills. Rick DeHeer seconded the motion. All eligible members present voted in favor of the motion.

**Correspondence**

- 5/4/18 letter from Board Engineer Brian Gillen Re: Triple A Investments/My Home Adult Day Care 37 Brook Avenue Completeness Review
- 5/4/18 letter from Board Recording Secretary Tara Grunstra Re: Triple A Investments/My Home Adult Day Care 37 Brook Avenue Hearing Date 6/7/18
- 5/16/18 letter from Board Attorney Kara Kaczynski Re: Notice of Meeting Requirements
- 5/17/18 letter from Bergen County Freeholders Re: Sustainable Site Plan Ordinance and Subdivision Resolution
- 5/30/18 letter from Francis A Ciambrone Re: Triple A Investments/My Home Adult Day Care 37 Brook Avenue Request for Waiver

**Resolution** None

**Hearing #1** **Triple A Investments, LLC**  
**My Home Adult Day Care, Inc.**  
37 Brook Avenue  
Block 23, Lot 107  
**Calendar #2018-04**  
**Variance & Site Plan Applications**

Frank A. Ciambrone is counsel for the applicant, Triple A Investments, LLC/My Home Adult Day Care Inc. The applicant was granted use variance approval in 2016 to relocate his existing adult day care business at 217 Hergesell Avenue to 37 Brook Avenue. The property at 37 Brook Avenue includes an approximately 32,000 square foot building on a 73,000 square foot lot. The business is licensed by the State of New Jersey to serve no more than 140 patients per shift. Although the new location is larger, the license prohibits the business from expanding. As such, the amount of vehicle traffic (patients, staff and suppliers) and hours of operation will remain the same. The new location is better suited for the business needs. Board Attorney Kara Kaczynski suggested that completeness checklist listed in Board Engineer Brian Gillen's 5/4/18 letter be addressed prior to the hearing proceeding. Mr. Ciambrone responded to the Board Engineer's letter on 5/30/18 with a letter of his own. Board Attorney Kaczynski marked the Board Engineer Brian Gillen 5/4/18 completeness review as Exhibit #PB-1. Mr. Ciambrone summarized his 5/30/18 letter:

- B (1)-Notice of Appeal (signed and notarized) was included in original submission.
- B (2)-All fees requested to date have been paid by Applicant.
- B (3)-Applicant submits that Bergen County Planning and Economic Development Approval (BCED) is not required as part of this application. If it is determined that BCED approval is required, Applicant requests that said approval be a condition of any approval granted by the Maywood Planning/Zoning Board.
- B (4)-Applicant is required to obtain approval from the State of New Jersey Department of Health and Senior Services and the Department of Community Affairs. The 2-step process has received approval from Department of Health and Senior Services and will seek approval from Department of Community Affairs once construction is complete. Applicant shall provide proof of licensure upon receipt. Mr. Ciambrone noted that the applicant is required to come before the Board if the license is updated to service additional patients as a condition of Board 2016 approval for the use variance.
- B (5)-Applicant proposes nominal changes to the exterior portion of the site and submits that there will be minimal to no change to the existing drainage and runoff. The proposed area of disturbance is below the threshold triggering Bergen County Approval.
- B (6)-Applicant requests a waiver for the submission of a Traffic pattern analysis and will provide testimony from its engineer on site circulation and parking.

- B (7)-Applicant needs to comply with the standards mandated by the State of New Jersey and Borough of Maywood. Applicant requests that proof of compliance with the applicable Fire Safety Code be made a condition of approval should the Board act favorably on the application. Applicant will submit satisfactory proof of same to the Borough of Maywood Fire Official as a prerequisite to obtaining a Certificate of Occupancy.
- B (8)-A waiver is requested as Applicant shall install signage consistent with Borough Ordinance. The applicant was instructed that all signage must be approved by the Board and Mr. Ciambrone agreed to come before the Board for proposed signage approval.
- B (9)-Proof of Notice and Publication to be filed in accordance with the Municipal Land Use Law.

Chairman Frank Lichtenberger made a motion to grant completeness waivers for checklist items B (5), B (6) and B (7). Rick DeHeer seconded the motion and all eligible members present voted in favor of the motion.

The applicant's first witness is the Business Administrator Melissa Frisoli and she was sworn in. She is responsible for ensuring that the business operates in accordance with the Department of Health and Senior Services regulations. She explained that the hours of operation are 7am-7:30pm. There are 20-25 employees on site depending on the number of patients present. She said that approximately 20 employees park on the property with a handful of employees carpooling to the facility. There are 30 parking spots at the current location at 217 Hergesell Avenue and 47 parking spaces are proposed at the new location at 37 Brook Avenue. Ms. Frisoli detailed patient transportation; all patients arrive and depart using the jitney sized transport buses and no patients drive themselves. During the day while the buses are not in use, they are parked at 219 Hergesell Avenue which is co-owned by the applicant. The buses are parked overnight at the My Home Adult Day Care location at 217 Hergesell Avenue. The current operation will transfer to the new location without any changes. The business operates Monday-Friday. Once the business relocates to 37 Brook Avenue, the business at 217 Hergesell Avenue will cease since they only have one license. The current business has been on Hergesell Avenue for the past nine years. She is unaware of any violations or complaints against the business. The new location is significantly larger and offers better opportunities to service their patients. Ms. Frisoli updated the Board on the status of the State license. The Department of Community Affairs is reviewing the plans and once construction is complete, the Department of Health and Senior Services will inspect the facility prior to approval. Maywood Planning Board approval is a requirement of the State application. The State license is for 140 patients. There are 10-12 buses utilized by the facility and each hold about 20 passengers. Board Engineer Gillen would like the applicant's engineer to testify about how the buses will navigate the facility to discharge and collect the patients. He requested engineer testimony about the angled parking to the rear of the property.

Chairman Lichtenberger invited the public to ask questions of Ms. Frisoli.

James Dolce of 29 Brook Avenue asked if the business expansion would require additional parking. Mr. Ciambrone replied that the business is being relocated and expansion is not

currently being proposed. Mr. Dolce asked how many cars are currently parked for the business and Ms. Frisoli answered that there are approximately 20 cars parked at the business each day. She further explained that increasing the number of patients would require a new State permit. Mr. Dolce has observed 50-60 cars parked in the present location. Mr. Frisoli noted that over the course of the day, pharmacists drop off medication but are usually parked for only 10 minutes. Medical supply deliveries are also scheduled but they are parked for a short time as well. Board Attorney Kaczynski asked what other deliveries are made. Ms. Frisoli replied that milk is delivered once per week usually very early in the day. The pharmacy and medical supply deliver three times per week and they deliver in passenger cars not trucks. Secretary Charlotte Panny asked if meals are served to the patients. Ms. Frisoli confirmed that meal service delivery is daily but the delivery vehicle is parked in the lot for a short time. Chairman Lichtenberger suggested keeping one of the overhead doors that is slated for removal so that patients could enter and exit during bad weather. Ms. Frisoli believed that this was a good idea. Board Attorney Kaczynski confirmed that the deliveries are made throughout the day. Mr. Dolce is concerned about the increase in traffic since he believes that there is existing traffic congestion. Ms. Frisoli reminded the Board that the buses are used for each shift (8:30am-9:15am, 1pm and 7pm) and not throughout the day.

Fire Official Thomas Tuttle asked Ms. Frisoli about parking violations that have been issued for illegal parking in the fire zone and handicapped parking spaces. Ms. Frisoli confirmed that parking violations have been issued and apologized for not remembering them during her testimony. She was unaware of the summonses for parking in the handicapped parking spaces. Mr. Ciambone suggested adding signage indicating that parking in the fire zone is prohibited and parking in the handicapped parking spaces requires a placard or sticker.

The second witness was the applicant's engineer Raymond Moraski of Koestner Associates in Hackensack, NJ and he was sworn in, qualified and accepted. He was tasked with taking the property's existing conditions and accommodating the client's needs. There is an existing industrial 2 story building approximately 28,000 square feet in size. The existing paved parking area surrounding the building on 3 sides; southern, eastern and northern sides of the building. Nearly 22% of the property is non-impervious primarily on the western side. No expansion to the building is being proposed. On the southern side of the building, the loading dock area will be filled in to match the grade and a client entrance and ADA ramp is included. The Site Plan is dated 11/20/17 with the last revision date of 2/13/18 which was submitted with the application. The current parking lot aisle width is less than the required 24' and the existing parking spaces are perpendicular. He proposes to angle the parking spaces to accommodate the narrower aisle width. The angle orientation was determined to accommodate the staff leaving all together at the end of their shift as opposed to when they arrive at staggered times. Mr. Moraski detailed the variance reliefs being sought:

- Impervious coverage (78% existing/proposed vs. 65% maximum permitted)
- Side setback (39.39' existing/proposed vs. 40' minimum permitted)
- Parking spaces (47 proposed vs. 107 minimum permitted)
- Drive aisle width (19' existing/proposed vs. 24' minimum permitted)

Mr. Moraski believes that there is adequate on-site parking for the applicant's business requirements. Since the parking is changing from perpendicular to angled, the narrow drive aisle width can accommodate vehicle maneuvering. He then repeated his earlier testimony about filling in the loading dock to create a second entrance for clients and creating an ADA ramp. Landscape will be added near Brook Avenue. The existing conditions of this fully developed property require multiple variances but the existing conditions cannot be changed. He believes that the proposed parking layout maximizes the number of parking spaces that can be safely configured for this property. The proposed site plan adequately addresses the needs of persons with disabilities and complies with the Borough site plan ordinance. He does not believe that the proposed site plan would negatively impact the surrounding neighborhood. There are no proposed changes to the site lighting. Given that building is unoccupied and the lighting has not been used for some time, additional lighting can be added should the need arise. Since there is no increase to the impervious coverage, stormwater runoff is not a concern. Trash is currently being brought to 219 Hergesell Avenue for collection and that is not proposed to change. Should that situation change, a fenced in trash collection area is proposed for the easternmost corner of the property.

Board Engineer Gillen asked if a garbage truck could access the trash collection area given the narrow drive aisle and the location. Mr. Moraski believes that trash was collected from this location previously when it was used by Ikegami. The applicant plans to continue bringing their trash to 219 Hergesell Avenue for collection. Board Engineer Gillen questioned if a fire truck could navigate the property. Mr. Moraski replied that the existing conditions are not proposed to change. Board Attorney Kaczynski confirmed with Board Engineer Gillen that drainage calculations were not needed if he agrees that the impervious coverage is reduced. Ms. Frisoli was called back to explain how the refuse is disposed of. She reiterated Mr. Moraski's testimony that trash will be brought to 219 Hergesell Avenue and placed in the dumpster there. If the situation changes and the trash cannot be brought to 219 Hergesell Avenue, the applicant will utilize the proposed trash collection area. Medical waste is separated from the regular trash and shipped to a medical waste collection company. Board Attorney Kaczynski noted that if the concrete curb is installed around the trash collection area, the parking space adjacent to it would not be able to be used. Should the trash collection area need to be utilized, garbage collection would occur outside of the hours of operation so employees would not be parked on the site. Chairman Lichtenberger questioned if additional parking spaces could be added to the southern section of the property near the building entrances. Mr. Moraski replied that this area was intentionally left open to allow the buses to maneuver to discharge and collect patients. Mr. Ciambrone suggested meeting with Board Engineer Gillen on the property to see if additional parking was possible as a condition of approval. Chairman Lichtenberger believes that the location of the proposed trash enclosure is not ideal and requested that the applicant come before the Board should the need for the trash enclosure arise. Board Attorney Kaczynski added that if the applicant returns to the Board about the trash enclosure, they could assess the parking situation as well.

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

The final witness was the applicant's architect Michael Winkler of Saizan & Winkler Architects and he was sworn in, qualified and accepted. Mr. Winkler prepared the 2-page set of plans dated 5/30/17. He described the layout indicating the front entrance, several exits around the building, the activity/dining area, two kitchens in the back of the building, quiet room, bathrooms, offices and storage. The building use is switching to I4 Institutional which requires multiple exits and an ungraded fire sprinkler system. He added that the Department of Health requires awnings where patients are discharged and collected to limit exposure to the elements. A glass enclosed entrance and windows on both sides of the building were added to allow more light to enter. The Department of Health has approved the plans and the Department of Community Affairs is currently reviewing the plans.

Vice Chairman Paul Kuhn asked what the second floor will be used for. Mr. Winkler replied that the applicant plans to leave the second floor empty. Vice Chairman Kuhn confirmed that the large activity/dining area will not be partitioned off. He then questioned why there are two kitchens proposed when Ms. Frisoli testified that they use a meal service. Mr. Winkler answered that there is both a meal service and kitchen prepared foods served. He added that full ansul systems are planned. Ms. Frisoli explained that the new facility will have more kitchen prepared foods than meal service. They will continue to grocery shop rather than having the groceries delivered. Board Engineer Gillen asked if the exterior lighting will conform to the Borough code and Mr. Winkler said that the lighting is existing and would conform to Borough code. Anthony Klymenko clarified that the canopy by the client entrance will have enough clearance for the buses, garbage trucks and fire trucks.

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

Fire Official Thomas Tuttle was sworn in. Chairman Lichtenberger noted that the connection to the sprinkler system is on the eastern wall of the building which makes the Fire Department connecting to it very difficult. Fire Official Tuttle elaborated that the Fire Department Connection (FDC) is located at the rear of the building. The Fire Department would need to connect to the fire hydrant near the Brook Avenue driveway and lay hose all the way to the back of the building. Once the hose is in place, no vehicles including fire trucks can access the area. He asked that the FDC be relocated next to the fire hydrant on Brook Avenue to allow access onto the property in case of a fire. Mr. Winkler conferred with the applicant who then agreed to relocate the stand pipe to the location requested by Fire Official Tuttle. At the 2016 hearing, Fire Official Tuttle had requested that the window bars in the first-floor office area be removed. Mr. Winkler spoke to the applicant at this time and the applicant agreed to do so. Fire Official Tuttle asked that a fire zone around the perimeter of the building be established so that no one parks adjacent to the building restricting access. He asked that stand pipes within the building be installed. Mr. Winkler offered to meet with Fire Official Tuttle and implement his requests. Fire Official Tuttle asked about the length of the buses that transport patients. The largest bus is 26'. He understands that the parking spaces are 18' in length. If the buses park in the angled parking space, approximately 8' would stick out into the 19' drive aisle thereby blocking access. While

the buses will be parked at 219 Hergesell Avenue during the day, they are parked overnight at the My Home Adult Day Care location. Ms. Frisoli offered to have the buses park against the back fence so as not to obstruct the drive aisle. Fire Official Tuttle confirmed that the hours of operation are Monday-Friday 7am-7pm, no weekends. Mr. Ciambrone did not want to limit the hours of operation in the resolution since they may occasionally have events on the weekend but he confirmed that there will never be overnight activity. Ms. Frisoli explained that should the facility be forced to close on a weekday because of a snow storm, they would like to make up the missed day by having clients come to the facility on a Saturday.

Chairman Lichtenberger invited the public to ask questions of Fire Official Tuttle but no one in attendance came forward.

Mr. Ciambrone summarized the application requesting site plan and variance approvals.

Chairman Lichtenberger opened the hearing for public input on the application but no one in attendance came forward.

Rick DeHeer confirmed that the applicant, Board Engineer Gillen and Fire Official Tuttle will visit the site together to coordinate the requested changes.

Chairman Lichtenberger understands that location has challenges.

Board Attorney Kaczynski summarized that the applicant is seeking site plan approval and several variance reliefs are being sought:

- Preexisting nonconforming impervious coverage condition (98% or 78% existing/proposed vs. 65% maximum permitted)
  - The applicant's engineer and Board Engineer Gillen will resolve this discrepancy
- Preexisting nonconforming side setback condition (39.39' existing/proposed vs. 40' minimum permitted)
- Proposed parking spaces (47 proposed vs. 107 minimum permitted)
- Preexisting nonconforming drive aisle width condition (19' existing/proposed vs. 24' minimum permitted)

She then listed several conditions for the application approval which is subject to DCA approval:

- The applicant is required to come before the Board should they seek to expand the existing business license or add any additional uses
- The applicant will return to the Board for signage approval
- The applicant is required to install signage for handicapped parking and no parking fire zone around the perimeter of the building
- The applicant's engineer and Board Engineer Gillen will resolve this discrepancy over impervious coverage
  - Should the impervious coverage exceed the current condition, drainage calculations and Bergen County approvals would be required
- The lighting will be assessed and should any changes be necessary, a lighting plan must be submitted to Board Engineer Gillen for review for compliance with the Borough ordinance

- Refuse will be disposed of offsite and should that change, the proposed trash storage area will be utilized
- The applicant, Board Engineer Gillen and Fire Official Tuttle will visit the site together to coordinate the requested changes
  - Board Engineer Gillen will make recommendations for additional parking if possible
- The Fire Department Connection will be relocated near the fire hydrant on Brook Avenue in the location indicated by Fire Official Tuttle
- The window bars in the first-floor office area be removed
- Interior stand pipes will be installed
- Buses will be parked off-site during the day and will be parked parallel to the rear fence overnight
  - Final location will be determined by applicant's engineer, Board Engineer Gillen and Fire Official Tuttle

Harry Hillenius made a motion to approve the site plan and variances listed above with the noted conditions. Vice Chairman Kuhn seconded the motion. All eligible members present voted in favor of the motion.

A short recess was taken at 9:08pm. The meeting resumed at 9:13pm with all members present.

Since the witness for the next hearing was indisposed, the Board discussed new business while waiting.

#### **New Business**

- Board Recording Secretary reminded the Board to view the Stormwater Review Training Webinar before the 7/1/18 deadline
  - Board Recording Secretary has certification letters for each Board member
- All members agreed to cancel the 7/5/18 meeting

#### **Hearing #2**

#### **Outfront Media**

99 Essex Street  
Block 125, Lot 1

#### **Calendar #2017-14**

#### **Variance & Site Plan Applications**

Mayor's Designee Rick DeHeer stepped down from the dais.

This hearing was adjourned from the 4/26/18 meeting. During this time, Vice Chairman Paul Kuhn read the 3/22/18 and 4/26/18 Outfront Media hearing transcripts. As a result, we have now have eight members eligible for voting where five affirmative votes are needed for approval.

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 who is considered an expert on outdoor advertising land use. Also present was John Antal, Outfront Media New Jersey General Manager. Mr. Muscarelle was unable to attend. At



the 4/26/18 meeting, the application was adjourned to 5/24/18. Unfortunately, the meeting had been cancelled. Board Recording Secretary posted notice of the meeting cancellation on the Council Chambers bulletin board. In addition, counsel posted a notice of cancellation on the front door of the municipal building which was marked as Exhibit #A-11. A copy Exhibit #A-11, Notice of 5/24/18 Meeting Cancellation was shared with Susan Rubright. Ms. Rubright is an attorney with Brach, Eichler and represents one of the adjoining property owners, Maywood Realty Associates at 113 West Essex Street. Mr. Jaworski also contacted Ms. Rubright to inform her of the meeting cancellation. As such, the applicant has satisfied the continuity of notice requirement. The 120 days window for the Board to act will end on 6/15/18, however, Mr. Jaworski would like to extend the window to 7/31/18.

Mr. Jaworski explained that the applicant's professional planner will testify tonight. The applicant's planner is John McDonough and he was sworn in, qualified and accepted. He conducted a standard planning analysis. He visited the property and assessed the property's condition. He evaluated the surrounding land use context and reviewed the zoning ordinance, master plan, and all the pertinent planning documents related to the application. The applicant is seeking conditional use relief and he researched the statutory tests that would apply to the relief. There is an established body of law that gives planners a clear framework from which to base their planning conclusions which are the elements of proof that are necessary for the conditional use relief. He added that he rode with Mr. Zepponi during the 2/22/18 crane test on Route 17. He noted that there was a lot of traffic so he was able to see the sign at a slow speed and they drove through the surrounding neighborhood as well. He marked Exhibit #A-12, 4 Sheets prepared by John McDonough; Tax/Parcel Map, Aerial Map, Land Use Map and Zoning Map and distributed to the Board. Mr. McDonough noted that the subject property is in the High Density Office (HDO) zone which is the only district in the municipality where the proposed land use is permitted as a conditional use. This zoning came into effect in 2009 as a master plan amendment. There are approximately 10,000 residents in Maywood and neighborhood preservation is a core component of the master plan. He noted that the Borough has a clearly defined neighborhood pattern. The subject property is the extreme southern end of the municipality. Near the property, there are commercial uses which are separated from the residential uses. There is a major state highway (Route 17) that runs right along the edge of this property. The DOT regulates outdoor advertising and considers the need to balance economic development equally with neighborhood protection and preservation. Page 1 (Tax/Parcel Map) of Exhibit #A-12 shows that the property is at the junction of Route 17 and West Essex Street. The property is triangular shaped which presents practical difficulties of meeting setbacks requirements and the applicant is seeking setback relief. The location of the property along a state highway is where this land use belongs and, at the very southern tip of the community, substantially remote and away from residential areas. Page 2 (Aerial Map) shows the physical characteristic of the property and the surrounding area. The property is developed with a multi-story office building. The billboard is proposed to be located at the extreme southern piece of the property which is separated from the functional aspects of the property to avoid interference with circulation and the functionality of the site as a whole. The location is to focus on the motoring public where the cone of vision is narrow and channelized at the population that it is intended to serve. Page 3 (Land Use Map) shows the surrounding land uses color coded to indicate the different types to land use categories. The subject property is surrounded by all commercial land uses. There is a very remote residential piece on the other side of the Route 80

which is well over a 1,000 feet away, a substantial distance in terms of visual impact from the proposed billboard. The suitability of the location for the proposed use is commercial areas with proximity to a major highway. Page 4 (Zoning Map) indicates the zoning in the existing condition. The HDO zoning district is commercially oriented and is the one zone in the municipality that allows for the land use as a conditional use. Mr. McDonough noted that there are only six lots in the Borough that fall within the HDO district as there is a very limited, narrow band where this particular land use can go. There is substantial compliance with the conditional use criteria. While there is some relief that the applicant needs, the property's shape, location along the highway, commercial surroundings and conditional use permitted in the zone supports the suitability of the location for the proposed use.

Mr. McDonough explained that the applicant is seeking a conditional use variance for the height of the sign, the size of the sign, and the positioning of the sign, but not the sign itself which is a permitted use. He described the billboard as a message board, not a building. He elaborated that the message floats in space and is a beneficial land use. Billboards benefit commercial entities, institutional entities like religious institutions and schools which are inherently beneficial and supports constitutional free speech. A lower standard has been established for conditional use relief so the Medici test does not apply. The enhanced proofs of the Medici of particular suitability and reconciliation of the omission of the use from the zone is not something the Board has to consider. The Coventry Square case established that the use per se is not at issue. There is new case law under the TSI case which reinforced that the Board does not have to go through the exhaustive analysis of the reconciliation of the proposed use with the zone plan and the ordinance. He explained that there are five deviations of the conditional use standard and there are multiple standards here that the application does comply with.

First relief, the proposed height is 70' where 35' is permitted. Mr. McDonough reminded the Board of Mr. Zepponi's testimony giving the technical rationale for the proposed the height. Exhibit #A-9 shows that the height was determined so as to be above the obstruction that's created by the Essex Street overpass over Route 17. Mr. Zepponi's testimony detailed that the actual height from base of the pole to the top of the sign at ground level is actually 60'. The 70' height is to Route 17 which slopes down 10'. On Exhibit #A-9, driving northbound at 750 feet out, the sign needs to be elevated in order to effectuate the purpose which is to be read and to convey a message without interference.

Reliefs 2 and 3 are for the maximum sign area and the maximum sign width. The proposed size is 672 square feet where 528 square feet is permitted. The proposed dimensions are 14' high x 48' wide, which results in 672 square feet. Mr. McDonough again reminded the Board of Mr. Zepponi's testimony that stated the proposed billboard size is an industry standard for this type of highway adjacency. Mr. Zepponi said that the permitted 528 square feet is not a size standard that he had seen previously and he was unsure of the legislative intent of how that size was determined. The permitted size will create message warping or a disparity with the way a message is typically conveyed on the 672 square foot panel. Likewise, the proposed width of 48' deviates from the permitted 44'. The 14' x 48' dimension is an industry standard and the 14' x 44' size has not been seen anywhere else so the legislative intent is unknown.

The last 2 forms of deviation from the conditional use standard pertain to the setbacks. Since the property is a triangular shaped, the applicant is proposing to position the billboard at the narrowest portion of the property so as not interfere with the parking lots. Mr. McDonough suggested that if the billboard were to be positioned in a setback conforming location, the pole would be in the middle of a parking lot aisle. He feels that the the proposed location is a better alternative. The proposed location is 2.14' from Route 17 and 2.28' from Essex Street where as 25' is required from both.

Mr. McDonough explained that there is a five-prong test for conditional use. He reminded the Board again that particularly suitability is not an element of proof that the Board needs to find. However, he believes that if the Board did have to find that enhanced standard, it is actually met here as well because the site is located along a highway in a commercial area which lends to the suitability of this particular site. He believes that the billboard does fit within the surrounding area in terms of uses as there are several billboards in the area. The proposed use is not a land use that is foreign to the local landscape.

Prong number one is to identify the legislative intent behind the conditional use provision which cannot be met. There are several answers to this question, and he believes that the conditional use controls and the legislative intent behind them are all met even though the strict ordinance requirements are not met. The legislative intent is that this use be located along the main highway, in a commercial area and away from residential neighborhoods. The proposed location is consistent with all three aspects. Route 17 is the only major highway in Maywood, it is in a highly commercialized area and away from residential neighborhoods. Secondly, the legislative intent recognizes that this use needs to be seen in order to be effective. The relief related to height, area and setback are all necessary to effectuate the use. The basis for height relief was found in the New Brunswick Cellular case in which the court found that the height relief was necessary to effectuate the use. A cell tower needs to have a certain height so that the phones all work. Likewise, a billboard needs to have a certain height so that it can be seen and effectuate its use. Public safety is always paramount to any legislative intent. Mr. McDonough considers the added height and size helping visibility which meets legislative intent to protect public safety. The state regulations that pertain to outdoor advertising permits are full of safety regulations as safety is paramount to the siting of billboards. He emphasized that the DOT has found that the proposal meets its legislative intent. Lastly, economic development is also part of the legislative intent. The State regulations recognize that this land use is necessary to stimulate economic development. Mr. McDonough believes that the added height and size of the size will advance this legislative intent as well. If the proposed billboard were to comply with the Borough ordinance requirement, it would be obscured by the Essex Street overpass and not be readable which would hinder the ability to effectuate its purpose.

The second prong of the conditional use test asks that does the failure to meet the standard of the conditional use materially affect the appropriateness of the site for the conditional use. Mr. McDonough answered that question with a no. First, he believes that the height is necessary to meet the legislative intent that the sign be effective and be seen. He noted that Route 17 is at a lower elevation than the proposed billboard location. He considers the site appropriate because the elevated roadway mitigates the perception of height. The sign will not appear excessively high because the Essex Street overpass proximity. He explained that the deviation is de minimus

and the smaller size would warp messages which serves no planning purpose. He considers shrinking the sign to meet the 14' x 44' requirement would serve no planning purpose. He thinks that the spirit of the ordinance is substantially met. With respect to the question does the failure to meet the standard of the conditional use materially affect the appropriateness of the site for the conditional use, again he says no from the setback standpoint. He believes that the proposed location is a better zoning alternative since it is tucked into a corner of the property, closer to the highway where it can be seen better and within the motorist's cone of vision. He considers this a better zoning alternative than locating the sign in the middle of the parking lot which serves no planning purpose. He suggested that if the sign were moved to a conforming setback, it would be in the access driveway or in the middle of the bank building and may violate DOT spacing requirements of approximately 3,000 linear feet between billboards. Mr. McDonough noted that there are no structures adjacent to the proposed billboard location so the overriding planning purpose of the setbacks to provide for adequate light, air and open space is substantially met.

The third prong of the conditional use test asks can the site still accommodate the problems associated with the conditional use provisions. Mr. McDonough believes that it not only accommodates the problem but is better in terms of accommodating the use. The height and the size of the sign improve the visibility to the motoring public. The setbacks are better because the proposed sign is tucked away into a corner of the property and there is no operational impact. He added that if the permitted setback were utilized, it would negatively impact the site operation. The proposed billboard location has no interference since it is positioned in a corner of a parking lot rather than in the middle.

The fourth prong asks will the grant of the conditional use variance have a substantial, detrimental impact on the surrounding properties. With respect to the height, Mr. McDonough feels that this is a product of the elevation of the property and there is no adjacent impact on a product of the necessity for the sign to be seen. He cited the Grosso case which asks about the purposes of height control. He pointed out that none of the traditional purposes of height control are being violated with the proposed billboard since the added height does not block nor create a negative shadow effects, block scenic views, create additional population density nor give one property an unfair height advantage over another property. He believes that the additional sign area is not perceivable as nearby properties are distant and unaffected. In terms of neighborhood impact, he considers the proposed setback location lessens the impact on the adjacent land uses.

The last prong of the test asks will the granting of the conditional use variance be reconciled with the municipal legislative determination to impose the condition which the applicant seeks to vary. With respect to the height, Mr. McDonough feels that these conditions are general and that they fail to consider the more site-specific conditions. For this application, the topography is elevated above the roadway. The need is for the billboard to be viewed given the particular impediments which requires striking a balance between the criteria and the legislative intent to effectuate the use. He cited the Sunrise Development case which makes the distinction between visibility and visual impact. The proposed sign may be seen from neighboring properties but he does not consider it to be substantially detrimental or substantially adverse on neighboring properties. Citing Mr. Zepponi's testimony, the visual evidence, the physical evidence, it is his planning conclusion is that there is no substantial visual impact on the surrounding properties. He visited the neighboring residential uses. While it is hard to determine if you can actually

physically see the sign from those areas, the area has existing substantial visual saturation. Since this is not a desert landscape, the sign is not going to stand out by itself. There is interference, obstructions, and physical aspects that would obscure the visibility of this sign. It is his planning conclusion that there is not going to be a substantially negative visual impact associated with this land use. The area conditions fail to consider the industry standards. The setback conditions are general and fail to account for the specific location and the adjacent highway.

Mr. McDonough's planning conclusions are that the essence of the conditional use test focuses on the deviations since the use is permitted. The Board must determine if the physical location is appropriate for the proposed use. He cited the nexus of the land use law:

- Purpose A: the promotion of the general welfare
- Purpose G: to provide for a variety of uses in appropriate locations
- Purpose M: the efficient use of land

For all of these reasons, it is his planning conclusion that the relief that the applicant is seeking can be granted without substantial detriment to the public or without substantial impairment to the zone plan and the ordinance.

Mr. Jaworski confirmed with Mr. McDonough that the HDO zone requirements for the conditional use require that the speed limit of the adjacent highway needs to be 55 miles an hour which is compatible with the proposed location. Vice Chairman Kuhn confirmed that ordinance height requirement is 35'. Chairman Lichtenberger inquired if the setback from Essex Street could interfere with the Essex Street walkway, roadway traffic, or anything else. Mr. McDonough explained that the relief does not relate to the pole of the sign but to the closest point of the face of the sign. Referring to Exhibit #A-3 (site plan), that closest point of the face of the sign is 2.14' from the Route and 2.29' from the Essex Street. Vice Chairman Kuhn noted that the proposed height of 70' is needed to clear the Essex Street overpass obstruction for a two-sided sign but may not be needed if the billboard was one-sided. Mr. McDonough responded that it is in the interest of efficiency to keep the two panels together so that there is both a southbound and a northbound read. He suggested that the proposed two-sided sign is a better, more efficient zoning alternative than having two separate signs. He added that the proposed billboard height does not have a negative impact. He feels that having the two panels on one pole represents a more efficient land use with no substantially negative impact on surrounding properties and effectuating the purposes of the use, which is to have a message that's readable to the motoring public.

Chairman Lichtenberger announced that the Board would like to end the meeting by 10pm since many in attendance needed to work the next morning. Mr. Jaworski believes that Susan Rubright which represents one of the adjoining property owners, Maywood Realty Associates at 113 West Essex Street, would like an opportunity to question Mr. McDonough. The application was carried to the 6/28/18 meeting without any obligation to re-notify the public.

Mayor's Designee Rick DeHeer rejoined the dais.

**Informal Hearing**                      None

**Old Business**                        None

## Open Meeting to the Public

### Closed Session

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

### **BOROUGH OF MAYWOOD PLANNING BOARD** **Closed Session Resolution # 2018-07**

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): Pending litigation

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
- 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: 6/7/18 Time: 10:02pm

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Respectfully submitted,

Tara Grunstra  
Planning Board Recording Secretary