

**MAYWOOD PLANNING BOARD
MINUTES
August 2, 2018**

A regular meeting of the Maywood Planning Board was held on Thursday, August 2, 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 7:32pm with the following members present: Chairman Frank Lichtenberger, Vice Chairman Paul Kuhn, Secretary Charlotte Panny, Rick DeHeer (left @ 9:06pm), John Montel, Harry Hillenius, Charles Goebel (left @ 9:07pm), John McManus, Anthony Klymenko, and Daniel Nemecek. Zoning Officer James Mazzer, Board Attorney Kara Kaczynski and Board Engineer Brian Gillen were also present.

Approval of Minutes

Vice Chairman Paul Kuhn made a motion to accept the minutes from the July 26, 2018 meeting. Harry Hillenius seconded the motion. All eligible members present voted in favor of the motion.

Bills

Vice Chairman Kuhn 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

- 7/26/18 letter from David T. Pfund Re: Empire Real Estate Holdings v. Planning Board of the Borough of Maywood, et. al. Trial Date 12/17/18
- 7/27/18 letter from Susan R. Rubright counsel for Maywood Realty Associates Re: Outfront Media Traffic Review
- 8/1/18 letter from Corey Klein Re: 200 Route 17 LLC Notice of Appeal Correction
- 8/2/18 letter from Board Recording Secretary Tara Grunstra Re: SB One Bank Hearing Date 9/6/18

Resolution

None

Hearing

Outfront Media

99 Essex Street
Block 125, Lot 1

Calendar #2017-14

Variance & Site Plan Applications

This hearing was adjourned from the 6/28/18 meeting. During this time, Daniel Nemecek read the 3/22/18 and 4/26/18 Outfront Media hearing transcripts and Anthony Klymenko read the 6/28/18 Outfront Media hearing transcript. As a result, we now have eight members eligible for voting where five affirmative votes are needed for approval.

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

Mr. Jaworski represents Outfront Media LLC and, nominally, property owner Joseph Muscarelle Investments Inc. He reminded the Board that the applicant's professional planner, John McDonough, testified on 6/7/18. Ms. Rubright with Brach, Eichler represents one of the adjoining property owners, Maywood Realty Associates at 113 West Essex Street. She cross-examined Mr. McDonough at the 6/28/18 hearing. At the close of the 6/28/18 hearing, Mr. Jaworski stated that he did not plan to call any more witnesses but reserved the right for rebuttal of witnesses called by Ms. Rubright. He anticipates that Ms. Rubright will call two experts to testify; a traffic engineer and a professional planner. He believes that her clients from Maywood Realty Associates may also testify. In terms of traffic, Mr. Jaworski issued a letter on 7/3/18 citing case law supporting that off-site traffic conditions should not be considered by the Planning Board. Off premises signage is a permitted use in the HDO zone. Ms. Rubright issued a response letter on 7/27/18. An updated exhibit list was distributed by Mr. Jaworski. His 7/3/18 letter was marked as Exhibit #A-13 and Ms. Rubright's 7/27/18 letter was marked as Exhibit #O-1. The updated exhibit list includes materials that Ms. Rubright plans to distribute at tonight's hearing.

Ms. Rubright explained that both cases cited by Mr. Jaworski in his 7/3/18 letter allow for the Board to consider access to the subject property. She then called her first witness, Louis Luglio who is a traffic engineer. He was sworn in, qualified and accepted. He prepared by reviewing the application, site plan, Borough zoning ordinance and master plan. He also visited the location and neighboring areas multiple times at different times of day. He then described how he accessed the subject property using the Aerial (Google) Map of 113 and 99 West Essex Street, June 14, 2018 which was marked as Exhibit #O-4. Mr. Luglio confirmed that he created the exhibit and reduced copies were distributed to the Board. There is an access point at the traffic signal which is part of the easement for 113 West Essex Street. He detailed the use of 113 West Essex Street as medical offices. Both buildings at 113 West Essex Street and 99 West Essex Street are 3 stories in height. The surrounding area around the location is comprised of commercial, office and retail uses. Using Exhibit #O-4, Mr. Luglio pointed out the Route 17 access from West Essex Street. He detailed the number of lanes on Route 17 northbound and southbound near the subject property. He began to describe the number of curb cuts along West Essex Street.

Louis D'Arminio of Price, Meese, Shulman & D'Arminio is the applicant's co-counsel with Mr. Jaworski. He objected to this line of testimony. The proposed use is conditionally permitted and the applicant is seeking variances related to size and setbacks. Mr. D'Arminio does not consider this testimony related to the variances that the applicant is seeking. Ms. Rubright continued with her witness asking about the zone of the subject property; HDO zone. Off-site signage is a conditionally permitted use in the HDO zone. Ms. Rubright then asked Mr. Luglio how billboard locations are sighted. He explained that the goal is to have a large number of the motoring public view the sign. According to previous testimony by the applicant's experts, the sign is shaped like a "V" in order to be viewed by northbound and southbound vehicles on Route 17. Mr. Luglio noted that there was no testimony from the applicant on how the sign would be viewed from Essex Street. He added that there was no lighting impact study for Essex Street. While he agreed with applicant's testimony that the advertisements will be displayed for 8 seconds, the ad content could be distracting if there is a lot of text. In his opinion, he believes that the proposed billboard can be viewed from West Essex Street. Based on the applicant's testimony, the billboard height that is proposed was determined in order to clear the Essex Street overpass. For drivers going to 113 West Essex Street, he believes that the proposed billboard would be distracting and may cause drivers to miss the entrance. He noted that no renderings were provided by the applicant for how the proposed billboard would be viewed from West Essex Street. He suggested that a crane test could be conducted to provide how the proposed billboard would be viewed from West Essex Street. Based on his own experience, he believes that the sign face can be seen from West Essex Street. Aerial (Google) Map of 99 West Essex Street, July 2007 and Aerial (Google) Map of 113 and 99 West Essex Street, April 2016; Zoning Map Showing HDO Lots was marked as Exhibit #O-5. The general location of the proposed billboard was marked on both the 2007 map and the 2016 map. The purpose of the exhibit is to show the difference between the current condition (2016 map) and the condition when the zoning permitting off-site signage in the HDO zone was adopted (2007 map). Since 2007, Route 17 and the Essex Street overpass were widened and buildings north of 113 West Essex Street were razed. Two of the five lots designated in the HDO zone became part of Route 17 or the Route 17 on-ramp and off-ramp. Mr. Luglio believes that the proposed billboard will be the tallest structure in the immediate area and will be a focal point. He believes that the proposed billboard will distract drivers from accessing the entrance to the 113 West Essex Street property via 99 West Essex Street easement. If drivers traveling west on West Essex Street missed the entrance, they would need to make a U-turn. Vice Chairman Paul Kuhn asked about the third entrance on West Essex Street that is fenced off. Ms. Rubright explained that the entrance is not permitted to be used per the NJ DOT.

A short recess was taken at 8:31pm. The meeting resumed at 8:40pm with all members present.

Mr. D'Arminio asked Mr. Luglio what year the Essex Street Exchange was constructed. Mr. Luglio did not know the exact answer but approximated that it occurred between 2007 and 2016. Mr. D'Arminio marked Notice from NJ DOT as Exhibit #A-14 but there was only 1 copy of the document. Ms. Rubright objected since she did not have an opportunity to review the document. Mr. D'Arminio then went to call Hal Simoff to testify as the applicant's traffic engineer. Ms. Rubright objected to this since Mr. Jaworski indicated at the 6/28/18 hearing that the applicant would call no further witnesses. Should the applicant wish to reopen their case, Mr. Simoff can testify and then she will cross examine him. Mr. D'Arminio believes that Mr. Simoff should be

allowed to testify in order to counter the objector's claim that the proposed billboard location prior to the Route 17/Essex Street Exchange was better than what is currently proposed. Board Attorney Kaczynski asked that the applicant distribute Exhibit #A-14 at the next hearing. She explained that if the applicant would like to have Mr. Simoff testify, they would need to reopen their case and Ms. Rubright would be able to cross-examine the witness. Lastly, she said that if Mr. D'Arminio has questions of the objector's traffic engineer, now would be the time to ask. Mr. Jaworski stated that Exhibit #A-14 will be marked for identification purposes only and will distribute copies at the next hearing.

Mr. D'Arminio questioned Mr. Luglio about westbound traffic on West Essex Street and the proposed billboard's south facing orientation. He asked if Mr. Luglio did any specific analysis that would support his statement that the sign face could be seen from West Essex Street. Mr. Luglio replied that he didn't do an analysis but his statement was based on his experience. His experience consists of two applications; one for the applicant and the other for the Garden State Parkway. Mr. Luglio does not believe that there are specific requirements in the ordinance for the lighting and foot-candle intensity. Mr. D'Arminio suggested that if the proposed billboard conformed to the Borough code at 35' high, it would more directly in the line of sight of West Essex Street than what is proposed at 70' high. Mr. Luglio agreed with this statement. Mr. D'Arminio asked if there were benefits to having the proposed sign at 70' so that it could be viewed in both directions of Route 17. Mr. Luglio believes that the proposed height is a disservice to the area and suggested that the sign be one-sided and conform to the Borough code. However, a double-faced sign is permitted in the zone. Mr. D'Arminio asked if there were benefits to having the proposed sign at a larger size so that it could be seen from Route 17. Mr. Luglio said that there are 2 parts to this answer; the sign face and the message. The amount and size of text in the message is important. Mr. D'Arminio noted that the Borough ordinance does not address the size of the text on the off-premises signage. Mr. Luglio added that the Borough ordinance addresses the regularly posted speed limit of adjoining roadway; 50 miles per hour or more. The idea being that the size of the billboard is dependent on the speed limit of the adjoining roadway; the higher the speed limit, the larger the sign. Ms. Rubright asked Mr. Luglio how the Borough ordinance refers to the 30 mile per hour speed limit on West Essex Street and he replied that the ordinance does not address it. As such, he believes that the ordinance was focused on Route 17, not West Essex Street.

Chairman Lichtenberger reminded counsel that the Board would like to end the meeting by 10pm.

Ms. Rubright marked the Aerial Map Showing Distances 500', 750' and 1,000' out from Proposed Billboard Location as Exhibit #O-2.

Charles Goebel left the meeting at 9:07pm.

Ms. Rubright called her next witness, Jason Dunn of Dykstra Associates who is a professional planner and landscape architect. He was sworn in, qualified and accepted. He prepared by visiting the site, met with counsel and the traffic engineer, reviewed the application documents, attended several of the previous hearings and read the transcripts of the hearings that he didn't attend. When he visited 99 and 113 West Essex Street, he traveled via Route 80 and accessed

the site via the main entrance at the traffic signal. He also walked over the Essex Street overpass to visit the residential neighborhood in that area. He parked at the location twice and has driven past it on his way to the hearings. He reviewed the uses in the area; general offices at 99 West Essex Street and approximates the building height as between 25' and 35'. He noted that 113 West Essex Street is a similar height but looks a little lower than 99 West Essex Street. The uses at 113 West Essex Street is as a medical office building with some medical procedures being performed there. While the building at 113 West Essex Street fronts on West Essex Street, the entrance to the building is facing Route 17. He believes that accessing the parking lot could be challenging if a person was unfamiliar with the location. Mr. Dunn prepared Exhibit #O-2 which marks the location of the proposed billboard with yellow circles that mark the radiuses around the proposed billboard at 500', 750' and 1,000'. Using this exhibit, he described the uses of surrounding area as mostly commercial buildings with residential buildings starting at approximately 750' from the proposed billboard. The heights of the buildings in the surrounding area are mostly one-story buildings approximately 15' in height. He described the subject property as pie shaped with Route 17 running north and south along the property's eastern edge. The Essex Street Overpass is south of the subject property and is elevated above Route 17. He explained that off-site signage is permitted in the HDO as a conditional use meaning that the use is permitted as long as certain conditions are met; setbacks, height, size, etc. Mr. Dunn reviewed the Borough zoning ordinance for the HDO zone and Borough master plan. He listed the conditions as:

- Front yard setback
 - The subject property fronts on both West Essex Street and Route 17
 - West Essex Street front yard setback-minimum 25' required vs. 3.76' proposed
 - Route 17 front yard setback-minimum 25' required vs. 2.93' proposed
- Sign Height
 - Maximum 35' required vs. 70' proposed
- Sign Area
 - Maximum 528 square feet required vs. 672 square feet proposed
- Sign Face Dimensions
 - Maximum 14' high x 44' wide required vs. 14' high x 48' wide proposed

Mr. Dunn referenced the testimony by Mr. Luglio about the speed limit of the adjoining roadway and cited the Borough code §209-38.4 (F) (5):

Off-premises advertising signs shall be constructed so that the sign face(s) 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.

He understands this to mean Route 17 and not West Essex Street. He added that the applicant has not provided an analysis of the sign face visibility from West Essex Street. As a planner, he described the deviations from the Borough code as significant. He added that the if the applicant does not meet the conditions, the use is not permitted and requires a D(3) variance.

Ms. Rubright marked the Scaled Drawings of Conforming Sign and Sign as Proposed as Exhibit #O-3, but did not have copies to distribute to the Board. Mr. Dunn verified that his office created this exhibit and his goal is to show the magnitude of the size and height variances.

Mr. Dunn then provided the conditional use variance standards established in the Coventry Square vs. Westwood case. The negative criteria weren't a substantial impact to the surrounding area. Additionally, the site can accommodate the use despite the deviations and conditions. He did an analysis of how this application complies with the standards. He believes that the visual impact affects the motoring public on West Essex Street more than Route 17. Ms. Rubright marked the March 3, 2009 letter from Beattie Padovano LLC Enclosing Maywood Planning Board's Master Plan Amendment Dated February 24, 2009 Adding Billboard Use to HDO Zone as Exhibit #O-6. On the last page, Exhibit A is a zoning map. On the zoning map, Block 125, Lots 1-6 are designated as the HDO zone. Mr. Dunn believes that since the reconstruction of that area, only 3 lots could accommodate the billboard conditional use zoning. He understands that Lots 4-6 are now designated as highway.

Getting back to the conditional use variance standards, Mr. Dunn explained that the first prong of the criteria is that the lot has to be able to accommodate the deviations. The second prong is that there's no substantial impairment to the zone plan and the granted conditional variances can be reconciled with the municipal legislative intent. In his opinion, the granting of the variances for this application cannot be reconciled with the municipal legislative intent since the deviations are too drastic. He specified that the reconstruction caused the Essex Street overpass bridge to get higher and the subject property to get smaller than when the ordinance was determined. Mr. Dunn believes that this area was selected for billboards as a conditional use was to protect the residential zones from viewing the billboards. He quoted the master plan amendment:

Ensure that billboards and signs are not visible from residential properties.

He believes that a 35' billboard would be less visible from the residential areas than a 70' billboard. He considers a 70' billboard as contrary to the master plan's intent and spirit of the zoning. The Borough code permits a double-faced sign but he believes that the smaller scale size is more in line with the master plan amendment. He noted that on page 5, the master plan amendment allows billboards that won't be a potential distraction of excess lighting or movement of signage.

Ms. Rubright reminded Mr. Dunn of the applicant's testimony that the proposed billboard is an industry standard size allowing ease of installation. He replied that ease of installation is not a zoning standard and the Board is not allowed to consider the applicant's economic hardship. While the applicant conducted a crane test for Route 17 northbound and southbound, they did not provide how the proposed billboard would be viewed from the residential area or West Essex Street. In his opinion, the proposed billboard could be installed at another location on the subject property which would comply with the Borough code. He believes that the structure (pole, frame and catwalk) would be viewed from West Essex Street. He also thinks that granting these variances would be substantially detrimental to the public good and surrounding properties (second prong). Exhibit #O-2 (Aerial Map Showing Distances 500', 750' and 1,000' out from Proposed Billboard Location) shows the lines of sight from the residential areas to the proposed billboard. This exhibit also shows the lines of sight cut across the entranceway to 113 West Essex Street which he considers as a potential obstruction for drivers to locate the access drive.

While the applicant proposed landscaping at the base of the proposed billboard pole, there was no testimony about concealing the framework or the pole other than the base. He concluded that the applicant spent a lot of time trying to determine the optimum location so that the proposed

billboard would be seen by the most drivers on Route 17, but didn't determine how the proposed billboard would be viewed from West Essex Street. He does not believe that there are any benefits to the Borough of Maywood by granting the variances for this application. He believes that the proposed billboard would be the focal point for drivers on West Essex Street thereby distracting them when trying to access the medical offices at 113 West Essex Street. Vice Chairman Paul Kuhn confirmed that Mr. Dunn thinks that the proposed billboard would block the view of Route 17 from drivers traveling east on West Essex Street. Anthony Klymenko asked if Mr. Dunn knew the height of the Essex Street overpass above Route 17. Mr. Dunn estimates that the height is 30'-35'.

Ms. Rubright summarized that she and her experts are emphasizing that there are holes in the applicant's testimony. Board Attorney Kaczynski asked if counsel felt that it was the applicant's responsibility to provide a rendering of how the proposed billboard would appear from the West Essex Street location. Mr. Rubright answered that it is the applicant's burden to prove that they meet the conditional use standards. If they don't, the applicant needs to prove that the site can accommodate the deviation and they can satisfy the negative criteria. Anthony Klymenko questioned how the proposed sign would negatively impact the 113 West Essex Street property. Ms. Rubright responded that the proposed billboard would block the view of 113 West Essex Street. She believes that it's the applicant's obligation to show that there is no detriment to the neighboring properties. Without the applicant providing a rendering of how the proposed billboard would appear from West Essex Street, her clients cannot be sure that the access to their building won't be affected by the proposed billboard. Dan Nemecek believes that the line of sight exhibit is missing the elevation. Mr. Dunn agreed with this statement. Mr. Klymenko added that a profile view would be beneficial. Ms. Rubright believes that it is the applicant's burden to prove their case and her clients should not have to conduct a crane test of their own.

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

The application was carried to the 10/4/18 meeting without obligation to re-notify the public. Mr. Jaworski extended the window for the Board to act to 10/31/18.

Informal Hearing None

Old Business None

New Business

- Distribution of Calendar #2018-10 200 Route 17 LLC 200 Route 17 South, Block 125, Lots 3 & 4 Variance and Site Plan Applications

Open Meeting to the Public

Adjournment

A motion to adjourn the meeting was made by Harry Hillenius. Chairman Lichtenberger seconded the motion. The meeting was adjourned at 10:04pm.

Respectfully submitted,

Tara Grunstra
Planning Board Recording Secretary