

**MAYWOOD PLANNING BOARD
MINUTES
September 24, 2020**

A regular meeting of the Maywood Planning Board was held on Thursday, September 24, 2020 via the “Zoom” online meeting platform 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 21, 2019. 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. On August 12, 2020, adequate notice of this meeting being conducted via the “Zoom” online meeting platform in lieu of its in-person meeting which was previously advertised in the Council Chambers of the Maywood Municipal Building was posted at the entrance to the Maywood Municipal Building, filed with the Borough Clerk, sent to the Mayor and Council, Borough Administrator, Borough Attorney and Board Attorney, forwarded to the Our Town and The Record newspapers for publication, posted on the Borough website and distributed to all persons, if any, requesting copies of the same pursuant to the Open Public Meetings Act. This meeting is being recorded both audio and video and may be rebroadcast. 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 7:33pm with the following members present: Chairman Frank Lichtenberger, Vice Chairperson Charlotte Panny, Councilperson Ryan Ullman, Gary Neumann, Paul Kuhn, Harry Hillenius, Rick DeHeer (arrived @ 7:56pm), Peter Cicarelli, Secretary Anthony Klymenko, Daniel Nemecek and John Gargagliano. Board Attorney Kara Kaczynski, Board Engineer Gregory Polyniak, Temporary Board Engineer Richard Wostbrock and Borough Fair Share Housing Counsel Patrick McNamara were also present.

Approval of Minutes

Vice Chairperson Charlotte Panny made a motion to accept the minutes from the August 27, 2020 meeting. Gary Neumann seconded the motion. All eligible members present voted in favor of the motion.

Councilperson Ryan Ullman made a motion to accept the minutes from the September 3, 2020 meeting. 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. Harry Hillenius seconded the motion. All eligible members present voted in favor of the motion.

James Jaworski of Wells, Jaworski and Liebman represents Outfront Media LLC and, nominally, property owner Joseph Muscarelle Investments Inc. He introduced Louis D'Arminio and Jennifer Berardo of Price, Meese, Shulman & D'Arminio and Jon Antal of Outfront Media. Donna Canonico of Price, Meese, Shulman & D'Arminio was present to help with the presentations. In December 2018, the Board denied the application for the multi-media off-premise sign pursuant to the High Density Office (HDO) conditional use criteria. In June 2019, a claim of prerogative writ was filed. A settlement agreement was reached between the Board, applicant, property owner and the adjacent property owner Maywood Realty Associates represented by Susan Rubright of Brach Eichler who was present. The Court required the applicant to return before the Board for a Whispering Woods hearing. While all of the applicant's professionals were present, Mr. Jaworski anticipated calling only one witness, planner John McDonough. Mr. Jaworski noted that off premises signage is a conditional use in the in the HDO zone per Borough code §209-38.4 (F). The applicant requires conditional use D(3) relief from the Board for the proposed multi-media billboard as one variance is required. He summarized what is now proposed vs. the earlier application which was denied:

- Height-35' proposed vs. 70' originally proposed (35' maximum permitted)
- Sign area-378 square feet proposed vs. 672 square feet originally proposed (528 square feet maximum permitted)
- Sign face-10.5' x 36' proposed vs. 14' x 48' originally proposed (14' x 44" maximum permitted)
- Front yard setback from Essex Street-74.13' proposed vs. approximately 2' originally proposed (25' minimum required)

Mr. Jaworski identified that the only variance from the Borough code is the front yard setback from Route 17 South of 2.4' where 25' minimum required.

Board Attorney Kara Kaczynski marked the following exhibits:

- A-1 9.24.20 Site Plan Prepared by Entec Dated 8/15/17 Revised 1/11/18
- A-2 9.24.20 Site Plan Prepared by Entec Dated 8/15/17 Revised 7/31/19
- A-3 9.24.20 Photo Simulation at 750' Travelling Southbound on Route 17

Rick DeHeer joined the meeting at 7:56pm.

John McDonough was sworn in, qualified and accepted. He took control of the screen sharing to display exhibit A-2 Site Plan Prepared by Entec Dated 8/15/17 Revised 7/31/19. He noted that the single tax lot (Block 125, Lot 1) has not changed since the previous application. The triangular shape is "irregular" at the confluence of two roadways; Essex Street and Route 17. The surrounding area land use has not changed. Fronting on Route 17, the land use follows the transportation patterns which is the highest order roadway in the community. The surrounding land use characteristic is all commercial, not in the heart of a residential neighborhood and not within eyeshot of any residential homes. He continued to describe the property as developed with a curvilinear shape parking lot on the Essex Street side and the two-story office building on the right-hand portion of the site. The larger, dark gray "V" in the middle of the site is where the proposed billboard would be located. Previously, the proposed billboard was at the "pinch point" or the "tip of the triangle," which created setback variances from both Essex Street and Route 17. The new proposed location eliminates the setback variance from Essex Street (74.31' from Essex Street) which is three times greater than the zoning requirement of 25'. Mr. McDonough

repeated the changes from the previous application to what is currently proposed. He summarized that the applicant has eliminated every previous relief needed but the setback from Route 17. He added that the site remains in the same district, High Density Office (HDO), which is a district that permits this land use as conditional.

Mr. McDonough began to describe the justification for the relief reminding the Board that the legal standard for D(3) relief is more relaxed than a standard use variance application. The focus of the D(3) conditional use test is based on the legislative intent of the conditions. The more stringent Medici standards of particular suitability and use reconciliation with the Master Plan does not apply here. He listed the positive criteria and noted that all of those public benefits that the applicant cited previously carry forth again. Specifically, a billboard is a form of land use that benefits the general welfare, businesses, institutions such as churches and hospitals and healthcare facilities and individuals. As a message board, a billboard is a form of communication that is recognized on a federal level as a form of free speech. He explained that the added benefit of the new technology of multi-message display is that it benefits the public with instantaneous alerts and instantaneous messaging. As such, benefitting police services and emergency services as an instrument of the public welfare in that regard. The site is particularly suited for the use by virtue of its location along a main highway in a nonresidential area and has been determined to be a permitted location under NJDOT regulations that regulate outdoor advertising signs. He continued that all of the above advance purposes of the of Land Use Law but, especially Purpose A, the promotion of the general welfare; Purpose G, the provision to provide for a variety of uses in appropriate locations; and Purpose M, planning goal for efficient land use by repositioning within an existing developed site which does not require wholesale clearing of earthwork to effectuate the purpose of the land use. In respect to Purpose I, the promotion of a desirable visual environment; he noted that the back of the sign faces Essex Street and the setback presents a better visual impact on the Essex Street. Likewise, there's a narrow cone of vision aimed at the motoring public on Route 17. He switched screen to display A-3 Photo Simulation at 750' Travelling Southbound on Route 17. He explained that the simulation is created in the same format as the submissions from the previous application. Specifically, a crane test is conducted to establish height and location. The proposed billboard is focused on the motoring public and is not going to create a skyline by blending well with the landscape around it. He stated that there is no interference to the surrounding commercial uses, nor erosion or eradication of parking on the site and no interference with the functionality of the site as it presently exists.

Mr. McDonough summarized the negative criteria of the 2' front yard setback deviation from Route 17. He noted that there would be no impact on the motoring public as it is not an obtrusive structure. Additionally, it would not overwhelm the landscape on Route 17 as it is an area that has existing visual saturation. He believes that the proposed billboard represents a better zoning alternative as opposed to the conforming setback location which would compromise its effectiveness in terms of visibility to Route 17 for no practical planning reason. In a conforming location, the proposed billboard would overhang a parking lot and the DOT access agreement. The conforming location would compromise the readability from Route 17. Also, he believes that the conforming location would be more proximate to Essex Street and, subsequently, visible from Essex Street. On the negative side, the planning intent setback controls is substantially met as it will maintain adequate light and air with no obstructions to line

of sight or in context of the area. As such, he believes that the statutory test under the Coventry standard for D(3) relief is met. This application is substantially more in conformance with the zone plan, addresses the concerns with the prior plan and the statutory tests for grant of relief are met. He believes the Board has enough evidence to move favorably on this application.

Mr. Jaworski asked Mr. McDonough to confirm that the permitted amount of square footage for the sign is 528 but the applicant is proposing 378 square feet. Board Attorney Kaczynski asked for clarification on the photo simulation for the record. Mr. McDonough answered that the photo simulation was done by Archinect and reflects the present situation at the site. Chairman Lichtenberger confirmed that the Borough would still be permitted to utilize the billboard as testified by Mr. Antal previously. Board Attorney Kaczynski introduced Board Engineer Richard Wostbrock's Review Letter Dated 9/22/20 as exhibit P-1. Board Engineer Richard Wostbrock asked about Items 5 and 6 in his review regarding proposed landscaping and the impact to the retaining wall. He agreed to defer the structural calculations as part of the building permit process. Mr. Jaworski stated that the applicant recognizes the obligation to do landscaping around the perimeter of the base of the sign. Board Engineer Wostbrock requested that height be confirmed as an as-built condition and Mr. Jaworski agreed to the condition. Board Engineer Wostbrock agreed with the testimony presented that the application was significantly reduced on its impact to Essex Street and is a less intense application to the Borough.

Chairman Lichtenberger asked the public if they had a questions for Mr. McDonough but no one came forward. He then asked the Board members if they had questions for Mr. McDonough but no one came forward.

Board Attorney Kaczynski instructed the Board Recording Secretary to unmute all of the participants and advised the public that they could now comment on the application by speaking or clicking the "Reaction Button" but no one came forward.

Paul Kuhn made a motion to grant the D(3) variance for the deviation from the conditional use requirements, specifically the front yard setback from Route 17 of 2.14' where 25' is required. Board Attorney Kaczynski added that the motion would include the conditions that were discussed such as the structural calculations provided with the building permit, landscaping provided per code requirements and the as-built height confirmation and the standard conditions of seeking any and all approvals, payment of any escrows, etc. John Gargagliano seconded the motion and all eligible members present voted in favor of the motion.

Councilperson Ryan Ullman rejoined the meeting.

Informal Hearing	None
Closed Session	None
Old Business	None

New Business

- 9/4/20 Borough Clerk Barbara L. Dispoto Re: Ordinance #15-20 An Ordinance to Amend Chapter 209 Subchapter 40 (N) of the Borough of Maywood Code Governing Signs in Commercial and Industrial Districts in the Borough of Maywood, State of New Jersey
 - Board Attorney Kaczynski explained that proposed conforming signs would not be required to come before the Planning Board
 - She noted that an application would need to be completed and a color photograph/rendering would need to be provided
 - She added that the Zoning Officer would be responsible for the review
 - Board Attorney Kaczynski outlined the ordinance process:
 - The ordinance is reviewed by the Planning Board for consistency with the Master Plan and any other recommendations
 - She will prepare a letter to the Mayor and Council summarizing the Planning Board comments
 - The Mayor and Council can accept, modify or reject the Planning Board comments
 - Board Attorney Kaczynski suggested that a Board sign subcommittee or the Board Engineer could also review the application
 - Chairman Lichtenberger believes that the Board Engineer should also review the application
 - He explained that the Board Engineer's billing to review the sign applications would be funded from the Planning Board budget
 - Chairman Lichtenberger made a motion to have Board Attorney Kaczynski advise the Mayor and Council that the ordinance is consistent with the Master Plan and recommend adding Board Engineer application review
 - Gary Neumann seconded the motion and all eligible members present voted in favor of the motion

Open Meeting to the Public

Adjournment

A motion to adjourn the meeting was made by Harry Hillenius. Paul Kuhn seconded the motion. All members present voted in favor of the motion. The meeting was adjourned at 8:42pm.

Respectfully submitted,

Tara Grunstra
Planning Board Recording Secretary