

**MINUTES OF A REGULAR MEETING
ZONING BOARD OF ADJUSTMENT OF THE BOROUGH OF MOUNTAIN
LAKES
September 3, 2015**

Chair Chris Richter called the meeting to order and announced: Adequate notice of this meeting has been provided in accordance with the Open Public Meetings Act by adoption of the annual notice on January 12, 2015. Said resolution was mailed to The Citizen and The Morris County Daily Record and by filing the same with the Borough Clerk on January 12, 2015 and was made available to all those requesting individual notice and paying the required fee.

Start: 7:31PM

ROLL CALL:

Present: Bolo (7:32), Dietz, Max, Murphy, Sheikh (7:37), McConnell, Richter, Vecchione

Absent: Tolud

Also Present: Attorney Michael Sullivan

REVIEW OF MINUTES: Mary Dietz made a motion to approve the minutes from the June 4th meeting. Jim McConnell provided the second; the minutes were approved by voice vote by all members.

RESOLUTION: none

PUBLIC HEARINGS:

New Application:

ROBERT & SUZANNE PLATT

Blk: 54, Lot 10

FAR

Appl. #15-647

210 Laurel Hill Road

R-AA Zone

Alex Gotthelf, a licensed Architect in the state of NJ, presented the application. The applicant proposed adding an entry vestibule to an existing portico. The house is drafty around the front door so they are infilling a portion of the portico with a vestibule. The old Hapgood has many pre-existing non-conforming conditions plus the lot is small and triangular in shape. They are adding 50 sq. ft. to the house which increases the 22.8% FAR to 23.1%. This is a contributing dwelling but they are not applying under the special ordinance. Peter Bolo asked why they were not using the ordinance. Mr. Gotthelf said they would be before the Board either way. Peter Bolo asked what the benefit of the alteration was. Robert Platt said the thermostat was 5 ft. from the door so it would be an energy saver for them.

Chris Richter asked if anyone from the public wished to ask questions or provide a comment. No one was present for this application. He then asked the Board for their comments and they did not have any.

Jim Murphy made a motion to accept the application as presented and Arthur Max provided the second. The Board voted 7 – 0 to approve the application with members Bolo, Dietz, Max, Murphy, Sheikh, McConnell, and Richter voting in favor.

Carried Application:

LAMAR OUTDOOR ADVERTISING OF PENN, LLC

Appl. # 15-646

Blk. 4, Lot 15

320 Route 46

Use, Front, Side, Height, Sign Area

Zone B

Numbers of Signs, Illumination, Intermittent/Flashing Signs

Stephen Vecchione and Chris Richter were not present at our July 9th meeting but listened to the tape of the hearing and can now participate in the continuation of the Lamar application. Peter Lanfirt, Attorney for Lamar Outdoor Advertising, resumed the application. He reminded everyone the applicant found out at the previous hearing there was an approved handicap ramp for Paul's Diner. After seeing the plans the applicant decided to move the billboard to the other side of the property.

Daniel Dougherty, of Dynamic Engineering, introduced Exhibit A-5, a colorized site plan rendering dated August 27, 2015, depicting the current site conditions. Exhibit A-6 was a colorized site plan rendering, dated August 27, 2015, with the diner handicap ramp improvements included. Mr. Dougherty explained the sign was originally at the south west corner of the site. The sign has been relocated to the left side of the diner and elevated above the roof top. This new location provides an adequate drive by aisle of 26 ft. the same as the current aisle.

Mr. Dougherty referenced the "Schedule of Zoning Requirements" on exhibit A-6.

Previously they asked for 3 bulk variances, by moving the sign to this side of the property they no longer need a side setback variance and the front yard setback was now 12 ft., an improvement over what was requested before. They raised the sign height 1 ft. to 44.5 ft. and the pole setback is 43 ft. The topography of the lot slopes down on this side of the property requiring an additional 1 ft. in height. At the base there will now be a landscape planter. Peter Lanfirt was asked if the new sign location in any way disturb the handicap ramp; no it did not. The distance from the ground to the bottom of the sign is now 30.5 ft. and 28 ft. to the bottom of the apron. Since this sign is digital it has no catwalks. Stephen Vecchione asked Mr. Dougherty to explain how they serviced the LED sign without the catwalks. He answered there still would be catwalks between the signs for service.

Chris Richter asked if the public had any questions for Mr. Dougherty. Lori Jacovsky, of 11 Fox Lane in Parsippany, asked if they had moved the sign 7 ft. closer to the residential properties. Daniel Dougherty said the sign was 235.4 ft. from the property line rather than the 242.6 feet previously on the site plan. This 8 ft. difference occurred because the rear property line is at an angle. Mary Dietz asked the distance between the pole and Paul's Diner; it is 10ft.

Exhibit-7, a light analysis dated August 14, 2015, was presented by Glen Wiebe of Daktronics. The light output was still the same but it shifted to the east with the relocation of the sign. In this light analysis exhibit the 75° mark now moves one house to the right. The trees create a buffer causing the light values disappear. Chris Richter asked Mr. Wiebe if he could tell him if in the winter time the houses at the 60° and 75° mark would have light shining in the homes; no he could not. Khizar Sheikh asked if they could control the light output; yes they can. Could Lamar Advertising change the sign to a different light output? This could not be done without the help of Daktronics. Mr. Sheikh asked would the light output ever be greater than presented; it could be possible. Peter Lanfirt said the state permit has light regulations. Glen Wiebe agreed, 3 ft. candles

is the limit. Chris Richter asked about the glare. Mr. Wiebe said the higher the foot candles the higher the glare. Chris Richter confirmed if you had straight line of visibility you could see the billboard a half mile away. Jim Murphy asked what the light numbers were for the homes on Fox Lane and Rainbow Trail. The light values were .01 and .00 on the light analysis. Stephen Vecchione asked what the max light output of the sign was; it was 100% at the sign but less bright at night. Will the Paul's Diner sign trick the billboard into thinking it's brighter than it is at night. The system is made to not respond to the lights from the traffic and other signs. Daktronics will get data from monitoring the sign and will make adjustments. Mr. Vecchione asked why not frame the billboard so the light was directed to the road. Mr. Wiebe said this concept had been discussed but not done due to safety reasons. Mr. Sheikh asked how far into the residential zone would someone see the light source. Mr. Wiebe said that can only be determined if the sign was installed. Chris Richter was concerned with the homes in the Borough by Fox Hill Road. Peter Lanfrit told the Board the applicant had amended their application to the DOT due to the sign location change.

Chris Richter asked the public if they had any questions for this witness. Jessica Tatz, of 6 Spurr Road, Parsippany, asked if there were any other billboards like this in residential areas. Mr. Wiebe could not answer that. Jim Bailey, of 111 Kenilworth Road, asked about the Daktronics contract with Lamar.

Chairman Richter reviewed the variances requested by the applicant and explained the use variance must be considered first. The applicant was presenting both the use and the bulk variances at one time.

Next Lamar introduced Matthew Seckler, a licensed Traffic Engineer in the state of NJ. The site located on Route 46 saw about 26,000 vehicles per day traveling about 45 miles per hour. It consists of 2 lanes each way with a curvature in the roadway at this location. The sign could be seen at Fox Hill Road about 900 ft. away. The two closest billboards are near the Hampton Inn to the east and the Route 53 intersection to the west. Mr. Seckler looked at the accident data for the roadway. From January 2011 to July of 2015 42 million car traveled on Route 46 with only 81 accidents, the state average is 1.94 accidents per million. Jim McConnell confirmed that data was for all of Route 46 not just between Fox Hill Road and the Boulevard. Mr. Seckler continued, a billboard is better closer to the roadway rather than further away and having it in the peripheral vision of the driver was safer. A driver looks at a billboard for 300 milliseconds. The DOT has regulations concerning how long the message can be shown, it can't look like a traffic signal, it cannot have significant impact on the traveling public and it must be well suited for a site. Peter Lanfrit asked him if he felt the site circulation was a problem now that the sign was moved. No it was not, the location of the sign was appropriate. Arthur Max asked with an 8 second schedule what happens if the sign changes while the drivers looking at the sign. Mr. Seckler referenced several studies done concerning the distraction of billboards on drivers. He said 8 seconds is the state interval for change and they consider that safe. Chris Richter asked when you have multiple distractions on a roadway how do you determine this is one distraction to many. Matthew Seckler said every driver is different so this is not definable but the state of NJ does require 3000 ft. between billboards. No one from the public had any questions.

John McDonough, a licensed Planner in state of NJ, reviewed the Master Plan and Zoning Ordinances for the Borough. Exhibit A-8 consisted of four sheet with 13 photos

of the subject property. The property is over sized, regularly shaped, backed by the railroad tracks which buffer the homes at the back of property, it is 450 ft. to the nearest home, it's in the Borough's commercial area and it is along a state highway. The property is across from the old Newsweek site, the trees on the site become a buffer from the northern residential areas. The Billboard is not aimed at the residents but rather the motoring public. Page 1 of exhibit A-8 was an aerial photo of the site, page 2 was 4 photos of the actual site with the billboard location identified. Page 3 was 4 photos of the neighboring properties. This is a commercial use in a commercial zone. Billboards are not permitted anywhere in the community. The state has felt this a proper and safe location.

John McDonough said he would address the use variance first. When looking at the standard for review you need to determine if it is inherently beneficial, is there a hardship related to the property or is the site suited for the use. When looking at the suitability of the billboard it does not create any additional traffic or density. The negative impact, the effect on the public good and the greater zone, have been covered in our experts testimony. He felt they met the positive criteria and the intent and purpose of the act to (A) *promote the public safety and general welfare*, billboards are an instrument of business. He referenced page 4 of exhibit A-8, 4 photo examples of real time messaging. Disaster and amber alerts that could be broadcast were a benefit of LED display. (G) *Provide sufficient space in appropriate locations for a variety of uses*, this is a commercial highway, it has a narrow cone of vision and meets consumer demand. (M) meets the planning goal of *efficient use of land*, it uses a developed site, no trees will be cleared and there will be no earth work or grading. The site is suitable due to the conditions of the property and the contents of the zone.

Mr. McDonough then looked at the negative criteria. Was the use impacting the public good? He felt the use was as benign as it got. There are a lot of studies that say there is no correlation between accidents and billboard. The content of the billboard does not move or flip, it is static and the sign is not directed at the homes behind the property. Visual displays are already part of the Route 46 landscape, it would not block scenic views and it does not interfere with any of the businesses on the highway. The 1996 Master Plan encourages development along the Route 46 East corridor. The positive criteria outweighed the negative and passes the Medici standard.

Peter Lanfrit asked Mr. McDonough to touch on the other variances requested. Jim McDonough said a "D" variance was needed for height. This variance request does not add to the population, there is no casting of shadows, no blocking of scenic views and there is no height advantage over another property. The height effectuates the use similar to cell towers. The front setback variance, a "C" variance, relates to the panel and has been improved by the change in the location. This is a better zoning decision as it's further away from the residents and Route 46. The pole is over 40+ ft. away, the same distance as the diner is from the roadway. The existing impervious coverage is 82.4% and the change is de minimis. Mr. McDonough felt this was a better zoning alternative and a form of constitutional free speech.

The Board took a break at 9:35pm and resumed at 9:43pm.

Chris Richter asked if the Board had any questions for Mr. McDonough. Peter Bolo asked if the Planner had looked at the 2013 Master Plan. Could he comment about statement 5 in Element III, the *Land Use Plan*, of the Master Plan? It states we should

encourage development and redevelopment of commercial areas, especially along Route 46, in a manner that is more coordinated and visually attractive? John McDonough did not think the billboard was going to stand out. The Borough already have a proliferation of signs and this would blend in with what they already had. Chris Richter said if the site was redeveloped the sign, with a clearance of 30.5 ft. located within the setbacks, would it conflict with future redevelopment. Mary Dietz was not convinced with the argument that the approval of the use (D1) variance provided a benefit to the community when the sign was taller than the one story buildings in the zone. Mr. McDonough responded this is predominately a residential community so this commercial location was the best suited for a billboard. Khizar Sheikh felt the applicant's analysis was wrong about the beneficial criteria. He did not understand why this location was the most suitable for a billboard. The criteria cited could apply to any business along Route 46 not just this billboard and he did not see the benefit to the local businesses. John McDonough answered this site meets the needs of this user. Their business model was aimed at the motoring public, it benefits many end users not just Lamar and can be used to stimulate economic activity in the community. All these benefits outweigh the negatives. Chris Richter pointed out the zone only permits 40 sq. ft. of signage on a lot and this billboard is 16 times larger. He continued towns prohibit billboards because of safety issues and the brightness conflicts with the sites. He had not heard anything in the testimony to support the sign exceeding the allowed square footage or the safety issues. It's a self-created hardship, they chose a site next to a gas station with a tall canopy. John McDonough answered, this is a balancing act trying to find the least impactful location to your community. Peter Lanfrit said the client looked at all the sites in the area. Arthur Max felt the applicant was trying to thread the needle. He had reached a different conclusion than the Planner, this sign is visual pollution for our community. The applicant was asking the Board to override the Borough Ordinance. He don't think this type of development was thought of by the writers of the Master Plan. Michael Sullivan asked what the square footage of the 2 existing signs were. Paul's was 59 sq. ft. and the nail salon's two signs, one on the building and one free standing, was never determined. Peter Bolo asked what percentage of time a public service announcement would appear. Peter Lanfrit said it was part of the regular message rotation. Glen Wiebe added Lamar would have to opt in to the alert system. Khizar Sheikh asked if there was a requirement to work with law enforcement. Peter Lanfrit said they had done so as a condition of approval. Chairman Richter asked if there were any question and/or comments from the public. Lori Jacovsky, of Fox Lane, felt now that the sign was moved she would see light from one side of the sign and it would be above the trees. Hess and Paul's shut off there lights about 1 to 2 am this sign will always be on. It also will be seen by a lot of people, in addition to myself, in the community. She was also concerned about the value of properties going down and that part of Route 46 was already a distraction with the comings and goings of people visiting the sites. Jim Bailey, of 111 Kenilworth Road, visits Paul's Diner every morning and it is very hard to enter the site due to the gas station. He also thinks you would look at the sign longer than they say if you are interested in the message. He continued the Planning Board was very concerned with the signage at Paul's Diner when they did their application to the Planning Board for the handicap ramp. The Route 53 billboard they have mentioned is not surrounded by

businesses there is nothing but vacant land there. Maybe the community would want to have an input into the messages on the sign if the use variance was granted.

Peter Lanfrit presented his summation. Cameras are not proposed on the sign. The old perception that billboards are visual pollution has changed. Things have come a long way paper billboards became vinyl now they are LED. The state recognizes a billboard as a means of speech that is good for the economic viability of the country, state and community. The history of traffic accidents is minimal. Does Lamar have a legal entitlement to the board? The Zoning Board cannot compare a business sign to a billboard because the intent of the billboard is different than the sign for a business. They are different animals and should not be compared. The visual pollution to the residents is minimal but they cannot guarantee the light spillage. Any other development on the site would include lighting for safety. He felt most communities would like to control the installation of a billboard by allowing them with conditions. There are limited opportunities in this community to provide billboards and this is the most reasonable location. We have met the criteria both positive and negative.

Chairman Richter said it was time for Board comments and asked them to allow him to go first. He stated the Borough has decided to not allow the use of billboards. He felt the applicant had not talked about the visual impact when presenting their proofs. He continued the request for the height variance was a self-inflicted hardship since they had chosen a location next to a gas station with a canopy. He disagree that they had met purpose (A) *promote public health, safety and general welfare* when cars are required to cross three lanes of traffic when exiting from the bagel shop, gas station or Paul's in order to merge into the turning lane to come back into Mountain Lakes. The applicant did not have a traffic count done, they did not talk about the merge into the turning lane and did not specifically talk about this section of Route 46. They did not meet provision (C) *provide adequate light, air and open space*, this billboard is a block in the sky and will have a negative impact. Provision (H) *to encourage transportation routes which promote the free flow of traffic while discouraging congestion or blight* was not met and the billboard has an adverse impact. Lastly purpose (I) *promote a desirable visual environment* was not met and he considered the billboard visual pollution. He did not think the application met the statutory requirements.

Mary Dietz said she agreed with Mr. Richter and added Mountain Lakes was a historic district and we would like to integrate that into our commercial district. The billboard did not do that. Arthur Max did not have anything to add to his previous statements and agreed with Mr. Richter's statement. Peter Bolo thought they didn't meet the negative criteria. He referenced the 2013 Master Plans recommendation to have Route 46 developed in a coordinated and visual attractive way. The applicant was not achieving this. James McConnell thought the height was a self-created hardship. He was influenced by the inability of the applicant to state how the effect of light and glare will affect the neighboring homes especially in the winter. He was also very concerned about the lack of discussion concerning the traffic flow especially the left hand turn on to the Boulevard. Jim Murphy was concerned with adding the billboard at the site for two reasons. In his opinion it will create a safety issue since there is one continuous driveway from gas station to the nail salon where cars are free to enter and leave where ever they want. The billboard is asking for people to make it a consideration for their attention when so much is going on. This site was opportunistic and they should have looked at other sites that

made more sense. Khizar Sheikh was agnostic to billboards in general and was for economic development along Route 46. He referenced Mr. Phillips report which stated since the use is not inherently beneficial and the site already has two uses the applicant needed to address the addition of another use at the site and they did not do so. The applicants Planner approached his testimony as if the billboard would already be located at the site. The applicant did not address the outright probation of general advertising signs. The applicant has not met their burden. Stephen Vecchione did not feel he had anything else to add.

Peter Bolo made a motion to deny the application as presented and Mary Dietz provided the second. The Board voted 7 – 0 to deny the application with members Bolo, Dietz, Max, Murphy, Sheikh, McConnell, and Richter voting in favor.

Other Matters / Public Comment:

Chairmen Richter asked if anyone from the public wish to speak during the public comment time. No one wished to do so.

Arthur Max made a motion to adjourn the meeting and Jim Mc Connell provided the second. The meeting was adjourned at 11:05PM.

Respectfully submitted,

Cynthia Shaw, Secretary