

**RESOLUTION OF THE ZONING BOARD
OF THE CITY OF MILLVILLE**

Resolution No.: _____

WHEREAS, the Zoning Board of the City of Millville (hereinafter “Board”) made the following findings, and resolved, at its meeting on May 7, 2015, as follows:

- I. Applicant:** Jersey Outdoor Media, LLC
- II. Counsel for Applicant:** Michael F. Fralinger, Esq.
- III. Property Location:** Corner of Village Drive and Wade Boulevard Ext.
Block 266, Lot 7.07
- IV. Type of Relief Requested:** A use variance to develop a forty-eight (48) foot wide by fourteen (14) foot high (672 square foot sign face) digital multmessage off-premises commercial advertising sign (hereinafter sometimes referred to as a “billboard sign”) and a second sign face on the same single pole, measuring forty-eight (48) foot wide by fourteen (14) foot high (672 square foot), vinyl constructed, nondigital, non-multimessage billboard.
- V. Property Zoning:** A sign height variance; ninety (90) feet proposed, twenty (20) feet permitted, and variance for sign illumination: internally illuminated sign is proposed and internally illuminated signs are not specifically permitted by ordinance.
- VI. Members Present Acting on Application:**

John Redden, Chairman
Veronica Chaaney, Vince Chairman
Brian Barr
Steve LaTore
Brian McGahhey
Pauline Velez
John Worthington

VII. Members Recused or Abstaining: None

VIII. Completeness determination, including any outstanding items for completeness:

This is an application for use variance, bulk variances, and waiver of site plan. A determination of completeness was not required, other than proof of required notice and publication, which was determined by the Board secretary and the Board to be fulfilled, conforming and adequate.

IX. Plans Submitted: Boundary and topographic survey and billboard location and plan details, prepared by Fralinger Engineering and aerial exhibit, all dated 1/8/2015 and consisting of three (3) sheets.

X. Zoning Board Review Document: Received from the Zoning Officer (Wayne Caregnato) and Assistant Planner (Samantha R. Silvers) dated 3/4/2015, attached hereto as Exhibit A.

XI. Date of Meeting/Decision: May 7, 2015

XII. Evidence and Testimony Presented and Factual Findings:

i. The applicant, through applicant's attorney, Michael Fralinger, Esq., presented a summary of applicant's request for relief, which was attached to and included in the applicant's application to the Board. Said request for relief summary is attached hereto as Exhibit B. The applicant, through applicant's attorney and experts, demonstrated that the property subject to this application (hereinafter referred to as "Property") is 4.39 acres and is located within the Millville Zoning District B-4 general business. Already located on the property and already existing is a two (2) pole, sixty (60) foot high billboard sign with a sign faces, (both north and south) of two hundred and eighty (280) square feet, being twenty (20) feet wide and fourteen (14) feet high and which sign is located a maximum of sixty (60) feet high. The sign is an internally illuminated, static, single message sign advertising "Wheaton Arts".

ii. The applicant, through applicant's attorney, identified that an "off-premises commercial sign", as defined by Millville Zoning Ordinance section 30-259, is not permitted within the B-4 zoning district and, in fact, is not permitted in any zoning district located within the City of Millville. The applicant's proposed sign meets

the ordinance definition of an off-premises commercial sign and is, therefore, not permitted within the zoning district wherein the property is located. Applicant recognized further that a sign height variance would be required for the proposed sign, twenty (20) feet high maximum permitted and ninety (90) feet proposed. Furthermore, the applicant submitted that a variance would be required for an internally illuminated sign where this type of illumination is not permitted by the zoning ordinance.

- iii. Prior to presenting the testimony of witnesses, the applicant introduced and showed to the Board a PowerPoint presentation showing examples of the type of digital, internally illuminated billboard sign, as proposed in this application. Said PowerPoint presentation was identified as Exhibit A, in evidence.

iv. WITNESSES:

- 1. The applicant presented the testimony of Chet Atkins, president of applicant, Jersey Outdoor Media, LLC. Mr. Atkins' testimony included the following:

The applicant started the company in 2008. He has thirty-five (35) years of experience in outdoor signage. The applicant selected the present site because of its proximity to the only major limited access highway in the vicinity and because the site already contained a billboard type sign. The presence of this billboard would support local businesses. Additionally, the property is suitable not only because of its location near State Highway 55 but that there are no other such billboard signs within the City of Millville and surrounding communities (other than the sign which was sought to be replaced) and, therefore, the sign will fulfill a need for this type of advertising for local businesses. The proposed sign will have only one (1) digital face and one (1) static face because only one (1) digital sign would be permitted at this location because of the existence of another New Jersey Department of Transportation directional digital sign within 1,500 feet of this proposed location and two (2) additional digital signs would violate New Jersey Department of Transportation regulations.

Mr. Atkins also testified that a fourteen (14) foot by forty-eight (48) foot billboard sign is the standard billboard size in the industry throughout the nation. The New Jersey Department of Transportation allows even larger signs than this. Mr. Atkins testified as to the need for a ninety (90) foot high sign to replace the existing sixty (60) foot high sign because trees surrounding the sign

location have grown higher than sixty (60) feet and are currently obscuring the existing sixty (60) foot high sign. The New Jersey Department of Transportation currently does not allow tree trimming along the Route 55 corridor. Therefore, in order for the new sign to be visible to traffic travelling along Route 55, it would have to be a maximum of ninety (90) feet high.

Mr. Atkins also testified that the applicant would make available free advertising time on its sign (a donation of advertising time) to public service advertising and to the City of Millville.

Mr. Atkins further stated that digital advertising signs are a more affordable means of advertising and the least cost of advertising of any other advertising media available to businesses. The proposed sign is safe and can withstand hurricane force winds up to one hundred and thirty (130) miles per hour. He stated further that he had spoken to representatives of the Chamber of Commerce and Wheaton Arts who, he reported, are supportive of this application.

2. The second witness presented by the applicant was Jesse Atkins, vice president of the applicant. Jesse Atkins testified that the applicant does have policies against advertising that could be considered a public nuisance, such as prohibition against advertising which presents nudity, profanity and other inappropriate advertisements.
3. The applicant presented testimony of Matthew Baldino, professional engineer, employed by Fralinger Engineering. Mr. Baldino indicated that he assisted in the preparation of the submission plans. He testified that to the east of the location of the property in the B-4 zoning district is a residential zoning district, to the west is the Wheaton Arts zoning district, to the northwest is a school district and to the west a residential district. The site is wooded and vacant, except for the existing "Wheaton Arts" sign. The property is irregular in shape. He testified that high winds would not present a safety hazard for the sign, as for the digital sign, the air moves through the sign and on the static sign face, high winds would simply tear the vinyl sign face and blow through it before any damage could occur to the sign structure.
4. The applicant presented the testimony of Dr. John Tobias. Dr. Tobias is a professional engineer and has a doctorate degree (Ph.D.) in electrical engineering. He has so found to be an expert by the Board. He is the founder of a company

that he is currently associated with known as ElectroQuest LLC. With regard to the digital sign, he testified that the proposed sign lighting intensity (measured in foot candles and luminescence) would be at an intensity below industry standard. He testified with the use of various exhibits, which he described and were presented into evidence. He testified regarding the effect on lighting intensity based upon the height of the sign distance from the viewer and angle of the sign off center. He presented various calculations as to the lighting intensity at various distances from the sign. He further testified regarding illumination standards; best practice standards are set by the Illumination Engineering Society of North America. Those standards set forth maximum illumination which, in best practice, are permitted in four (4) zoning districts, including suburban, residential, and commercial zoning districts. His testimony was that the proposed digital sign would be well below the maximum illumination intensity standards. This also applied to the static face sign testified that the lumination intensity would be one third (1/3) of the digital sign. Mr. Tobias stated that it was his opinion that the proposed billboard would not create a detriment to the public based upon the amount of illumination created by the proposed sign. He stated that a full moon would be brighter than the proposed sign. He further testified that "glare" is a description of the property of light which is experienced to be disturbing to a person viewing it. He stated that the proposed sign would prevent negligible glare disturbance.

5. The applicant presented the testimony of witness David Shropshire, PE, PP. Mr. Shropshire testified as to his credentials. He is a traffic engineer and transportation planner. He was so found by the Board to be an expert in these areas. He testified as to "cone of vision" or field of vision relative to the proposed sign. He identified and presented photographic exhibits to illustrate his testimony. He testified that the location of the proposed sign was suitable for safe viewing of the sign by the motoring public, both north and southbound on State Highway 55. It was his opinion that ninety (90) foot high was appropriate and safe for the motoring public. He testified that the ninety (90) foot height of the sign was necessary for clear viewing because of the surrounding trees. He testified that the size of the sign and its location conforms to the New Jersey Department of Transportation standards and identified the New Jersey Department of Transportation approval of the proposed sign. He further testified that the height and sign size were safe, conform to industry standards, and fulfill the needs of the cone of vision, as he described.

6. The applicant presented the testimony of William D. Crane, PP, AICP, professional planner. Mr. Crane was accepted as an expert in professional planning by the Board. Mr. Crane testified that, in his professional opinion, the proposed sign met the requirements for a use variance. He testified as to the special reasons criteria for a use variance and stated that the proposed sign satisfies a purpose of zoning (Section 2(a)) as set forth in the Municipal Land Use Law. Section 2(a) states a purpose of zoning to be one that supports “public health and safety and general welfare”. Mr. Crane testified that the location, size and visibility of the sign supports public safety, given the testimony of the other experts who testified before him. He testified that the proposed sign, being more readily visible, is safer than the existing sign. He testified that the general welfare is served by local businesses having a cost-effective means of advertising on the proposed sign. Public safety and welfare are also served by public service advertising that the applicant agreed to. Furthermore, the 2005 Master Plan of the City emphasizes economic growth as a goal. It was his opinion that the sign would support this goal. Furthermore, he testified that Title 16 of the New Jersey Statute recognizes the importance of outdoor advertising for economic and business development.

Regarding the negative criteria, Mr. Crane testified as to the two-prong test in a negative criteria analysis. His testimony was that the proposed sign would not result in substantial detriment to the public welfare in that it replaces a sign that already exists, but that sign is in disrepair and is not visible. The location of the sign is appropriate in terms of size and height. The B-4 zoning district allows for many commercial uses and that this proposed sign would be compatible with the B-4 uses and is a tool that can be used by and support the B-4 commercial uses that would exist or permit it to exist in the zone. Regarding the second prong of the negative criteria, he testified that the proposed sign would not result in a substantial detriment to the zone or Master Plan. He stated that the Master Plan recognized the importance of signage and advertising and that this proposed sign would not result in any substantial detriment. He testified that it was his opinion that the absence of including billboard signs as a permitted use can be reconciled with the proposed use, in that the City probably did not look at this type of billboard signage use in conjunction with the Route 55 corridor.

- v. Members of the public also testified. There were as follows:

1. Jose Silva, Jr., attorney representing Citizens United to Protect the Maurice River and Tributaries, indicated that they supported the application. The

organization had entered into an agreement with the applicant that required the applicant to withdraw another pending application within the City of Millville for another billboard-type sign. Also, the applicant had agreed that the applicant would present no further applications for billboard-type signs, on Route 55, south of the proposed sign location. The applicant would also provide free advertising to the Citizens United to Protect the Maurice River and Tributaries organization three (3) times daily for two (2) years, which would be public service type announcements.

2. The next member of the public to testify was Jane Galetto, who indicated that she was a representative with Citizens United to Protect the Maurice River and Tributaries. She confirmed the agreement with her organization with the applicant and confirmed that the applicant had agreed to forebear from every filing an application for a billboard-type sign on the Route 55 corridor south of the proposed sign. She also indicated that the applicant had agreed to provide to her organization advertising time on the sign, three (3) times daily for two (2) years for public service announcements.
3. The next member of the public to testify was Richard Levitt. Mr. Levitt indicated that he objected to the application. He said that he has personal experience with a digital billboard near his residence in Egg Harbor Township, New Jersey. His residence is one half of a mile from the digital billboard and that billboard disturbs him in his home and, in particular, in his bedroom at night. He said that the light from the billboard shines into his bedroom. It was his opinion that the billboard is a visual blight. He further stated that public service advertising on billboards is not necessary for emergency use such as for Amber Alerts or weather emergencies. There is a State Highway message billboard nearby that could satisfy that purpose. He further testified that the billboard obscures the night sky. He also testified that there are municipalities that have ordinances that regulate digital signage but Millville does not have such an ordinance. He further stated that it was his opinion that the applicant presented no evidence to support the positive criteria. He believed that the billboard causes distraction to driving and that, in terms of safety, “no billboard” is safer than any billboard.

XIII. Conclusions of Law by Board Based Upon the Above Facts:

The Board concluded that the proposed sign would require a use variance, in that a sign whose purpose is off-premises commercial advertising is not a permitted use within the B-4 zoning district, where the property is located. Additionally, a variance would be required for exceeding the maximum sign height where twenty (20) feet is the maximum permitted height for a sign within the B-4 zoning district and ninety (90) feet is requested. A variance would be required for signage illumination, since the ordinance does not specifically permit an internally illuminated sign within the zoning district.

The Board finds and determines that a use variance should not be granted in that the proposed sign does not present special reasons (the positive criteria) and that the applicant further did not demonstrate, with enhanced proofs, that the application would not result in substantial detriment to the public good and will not substantially impair the intent and the purpose of the zone plan and the zoning ordinance, in accordance with N.J.S.A. 40:55D-70d. The majority of the Board, after considering the testimony and evidence, did not conclude that the development of the proposed digital billboard-type sign would support the general welfare of the community or public safety. The Board was not convinced that the presence of the billboard would support local businesses in the City of Millville or provide an economic benefit to the public. The majority of the Board was not convinced that the applicant had demonstrated, with enhanced proofs, that the presence of the proposed billboard would not be a substantial detriment, in that the applicant did not present adequate testimony as to the impact of this billboard to zoning districts both within the B-4 and outside of the B-4 zoning district and areas where the billboard would be visible, even in residential zoning districts, and outside of the Route 55 corridor. Additionally, the billboard of the size and height, as proposed, would be inconsistent with the scenic aspects of the State Highway Route 55 corridor within the city of Millville, where billboard-type advertising is not permitted.

XIV. Action Taken by the Board: Denial of applicant's request for approval of a use variance for an off-premises commercial advertising sign. Given the Board's denial of the applicant's request for use variance, the Board did not rule upon the applicant's request for bulk variances or waiver of site plan, since those requests were considered moot by virtue of the denial of the use variance.

XV. Roll Call Vote by the Board:

On motion to approve the applicant's use variance:

YES votes:

Chairman Redden
Mr. Barr
Mr. LaTore

NO votes:

Vice Chairman Chainey
Mr. McGahey
Ms. Velez
Mr. Worthington

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of the City of Millville that a use variance sought by the applicant for the development of an off-premises advertising sign be and the same is hereby denied.

AND BE IT FURTHER RESOLVED that a copy of this Resolution be forwarded to the applicant and to all who request a copy for a reasonable fee. In addition, a copy of this Resolution shall be filed in the Office of the Clerk of the City of Millville.

Dated: _____

JOHN REDDEN, Chairman
Millville Zoning Board

Dated: _____

SAMANTHA SILVERS, Secretary
Millville Zoning Board

CERTIFICATION

The undersigned Secretary of the City of Millville Zoning Board hereby certifies that the above is a true copy of the Resolution adopted by the Board on the _____ day of June, 2015, memorializing the action taken by the Board at its regular meeting held on May 7, 2015.

Dated: _____

JOHN REDDEN, Chairman
Millville Zoning Board

Dated: _____

SAMANTHA SILVERS, Secretary
Millville Zoning Board