

Town of Southborough
BOARD OF APPEALS

James Hegarty
Town Clerk
Town House
Southborough, MA 01772

SOUTHBOROUGH, MASSACHUSETTS 01772

17 COMMON STREET
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December 28, 2016

Notice of Decision on Applications for Variance and Special Permit

Property Address: 6-8 Turnpike Rd.

Applicant: Lamar Central Outdoor LLC

Application Filed: October 11, 2016 (effective date August 23, 2016)

The Board opened the public hearing on December 14, 2016 at 7:00pm in the Public Meeting Room of Southborough Town House with regard to the petition for the applicants for the following:

Petition: Special Permit and Variance to install a digital billboard exceeding the allowed area and height for signs in the Business Highway District and allowance of 24-hour illumination pursuant to Sec. 174-8.5(D), Sec. 174-11C (2 b through d) and Sec. 174-11(D).

Sitting as a Board: Andrew R. Dennington, Chairperson
Debbie DeMuria
Paul N. Drepanos
Craig Nicholson
David Williams

For the Appellants: William Pezzoni, Attorney for Applicant
Day Pitney
One International Place
Boston, MA 02110

Domenic Serra, Agent for Applicant
23 Presidential Dr.
Southborough, MA 01772

Procedural History:

1. On August 23, 2016, the applicant originally attempted to file applications at the Building Department for a special permit and variance to erect the digital billboard in question. The Building Commissioner, however, refused to accept those applications on the grounds that, pursuant to Section 174-11(E)(2) of the Town's Bylaw, "the Board of Appeals will not act on any special permit or variance application without first receiving a written report from the Planning Board." As of August 23, 2016, the Planning Board had not issued any such written report. Pursuant to Section 174-24(A)(1) of the Town's Bylaw,

the applicant then appealed from the Building Commissioner's refusal to accept those applications. The Zoning Board of Appeals ("ZBA") held a public hearing to consider that appeal on September 28, 2016, and voted 5-0 to reverse the Building Commissioner's decision and to accept the applicant's applications with an effective filing date of August 23, 2016. At that same hearing, the applicant agreed to extend the deadline for the ZBA to begin the public hearing on the forthcoming applications to November 30, 2016 and to extend the deadline to render a decision to December 30, 2016.

2. On October 11, 2016, the applicant filed its applications for a variance and special permit at the Building Department. Pursuant to the ZBA's above-referenced decision, the effective filing date of those applications is deemed to be August 23, 2016.
3. Paragraph 12 ("Description of Petition, and Applicant's Reasons for the Board to Approve the Petition") of the Variance Application Form submitted by the applicant did not address the criteria for issuance of a variance under M.G.L. Chapter 40A or the Town's Bylaw. Similarly, Paragraph 12 ("Description of Petition, and Applicant's Reasons for the Board to Approve the Petition") of the Special Permit Application Form submitted by the applicant did not address how the proposed digital billboard would satisfy Section 174-11(E)(1) of the Town's Bylaw, which permits the ZBA to "grant a special permit for a sign not meeting limitations of sign height, maximum number of signs allowed, illuminations of signs, maximum area of signs allowed and minimum setback; provided, however, that the sign is otherwise in compliance with the provisions of this section." Sec. 174-11(E)(1) (emphasis added).
4. The ZBA noticed a public hearing on these applications to begin on November 16, 2016, and notified abutters of the same. Shortly before that scheduled hearing, however, it was determined that there was a defect in publication based upon the MetroWest Daily News' failure to publish the public hearing notice due an error by that newspaper. The applicant's attorney appeared before the ZBA at the scheduled November 16, 2016 hearing, and agreed to extend the deadline to begin the public hearing to December 14, 2016 and to extend the deadline to render a decision to January 15, 2017.
5. The ZBA duly noticed a public hearing to consider applicant's applications for a variance and special permit to begin on December 14, 2016.
6. Before the ZBA opened its hearing, the Planning Board held a separate hearing on December 12, 2016 to consider applicant's proposal to erect a digital billboard and to render the "written report" called for by Section 174-11(E)(2) of the Town's Bylaw. The Planning Board closed that hearing on December 12, 2016, and issued its Section 174-11(E)(2) written report to the ZBA on December 13, 2016. The Planning Board's report to the ZBA found that the applicant's proposed sign did not meet the criteria specified in Section 174-11(E)(4) of the Town's Bylaw.
7. Prior to its December 14, 2016 hearing, the ZBA received numerous letters and e-mails from Southborough residents and various concerned parties. At least 13 of the letters were in opposition to the application. Two of the letters were in support of the application.
8. The ZBA opened and closed its December 14, 2016 public hearing in the same evening.
9. At that hearing, the applicant made a presentation stressing: the benefits of the proposed electronic billboard; the benefits of locating the proposed electronic billboard at a commercial location on Route 9

along the Framingham border rather than a different location along Route 9 that may abut residences; the possibility that in the future the Town's sign bylaw may be challenged on First Amendment grounds; DOT studies supporting the safety of proposed billboards; and that the Town's existing sign bylaw is outdated. A representative of the applicant also stated during his presentation that the applicant was offering to donate time on its proposed billboard to the Town, as well as monetary donations to various Town departments organizations in order to give back to the community.

10. At that hearing, several individuals spoke against the proposal including Selectman Paul Cimino, Susan Grinblatas, Freddie Gillespie, Karen Shimkus, Bill Kennedy (an attorney representing the 9/90 corporate office park in Framingham), David Parry, Whitney Beals (President of the Southborough Open Land Foundation), and Yan Huang. The opponents expressed concern regarding safety, the Bylaw's prohibition against billboards, and the lack of apparent hardship.
11. Anthony Medri, the owner of the locus in question, spoke in favor of the proposal and expressed that it was an appropriate location for a billboard.

Plans/ Documents:

1. Letter from the Building Commissioner/ Zoning Officer Mark Robidoux to William Pezzoni, submitted by applicant's attorney, dated August 16, 2016.
2. Two (2) photographic renderings of the property with the proposed billboard submitted by applicant's attorney.
3. Two (2) page site plan survey and sign details from Connorstone Engineering dated July 22, 2016 submitted by applicant's attorney.
4. Planning Board Section 174-11(E)(2) report dated December 13, 2016.
5. Letter from the Framingham Planning Board dated December 8, 2016 stating that Framingham's Bylaw similarly prohibits billboards.
6. Letters of support from Vaio Theodorakos, VTT Management, owner of 3-11 Turnpike Road (December 13, 2016) and Cliff Schorer, representative of the owner of 10 Turnpike Rd (December 12, 2016).
7. Letters of opposition from Attorney John O. Mirick (November 21, 2016), Freddie Gillespie, Sam Stivers, and Jack Barron (November 29, 2016), Sally Fleming Watters (December 12, 2016), Harold Kiess (December 12, 2016), Marnie Hoolihan (December 13, 2016), Pamela Saitta (December 13, 2016), Andre Mehta (December 14, 2016), Erin Wheatley and Paul Murphy (December 13, 2016), Karen King (December 13, 2016), Laurie Bourdon (December 13, 2016), Elizabeth Meyer (December 13, 2016), and Wayne Long (December 13, 2016).

Findings:

1. The applicant, Lamar, is a prospective tenant of the property located at 6-8 Turnpike Rd. The applicant's attorney indicated that Lamar has a lease with the property owner, but it is conditioned upon obtaining approvals to construct a digital billboard.
2. The applicant is proposing to erect an electronic billboard that would be 50 feet tall and 672 square feet in size, operate 24 hours a day, and would change messages roughly every 10 seconds.
3. Section 174-11(D) provides that, in the Highway Business District, standing signs fronting Route 9 may not exceed 25 feet in height and 100 square feet in size.
4. Section 174-11(C)(2) of the Town's sign bylaw, entitled "Basic requirements, all districts", provides that:
 - a. "Billboards and similar signs are specifically prohibited." (Sec. 174-11(C)(2)(b)).
 - b. "Flashing, moving, changing message and animated signs are prohibited." (Sec. 174-11(C)(2)(c)).
 - c. "No sign may be illuminated between 10:00 p.m. and 6:00 a.m. except signs identifying police or fire stations or businesses open to serve the public on site." (Sec. 174-11(C)(2)(d)).
5. The applicant's proposed digital billboard would not comply with any of the provisions of Section 174-11(C)(2)(a)-(c) and it would significantly exceed the maximum height and size requirements allowed in the Highway Business District fronting Route 9.
6. In light of the property owner's ongoing construction of a commercial structure on the site, there are also unresolved issues regarding whether Lamar's proposed electronic billboard, together with additional signs that may be placed on the property by the owner, would exceed the maximum number of signs allowed under the bylaw.
7. With respect to the special permit application, the Town's Bylaw states that the ZBA "may grant a special permit for a sign not meeting limitations of sign height, maximum number of signs allowed, illuminations of signs, maximum area of signs allowed and minimum setback; provided, however, that the sign is otherwise in compliance with the provisions of this section." Sec. 174-11(E)(1) (emphasis added).
8. Here, even if the ZBA granted the applicant relief from the bylaw's height limitation, the maximum number of signs allowed on the property, restrictions on the illuminations of signs, and minimum setback, the ZBA would still be unable to grant a special permit for applicant's proposed digital billboard because it would not be "otherwise in compliance with the provisions of" Section 174-11. Specifically, the digital billboard would not be in compliance with Sec. 174-11(C)(2)(b), which states: "Billboards and similar signs are specifically prohibited."
9. Because of the prohibitions in Section 174-11(C)(2) of the Town's Bylaw, the ZBA found that the special permit application did not meet the statutory criterion that issuance of the special permit would be "in harmony with the general purpose and intent" of the Town's Bylaw.
10. With respect to the variance application, Section 174-25(A)(3) provides that the ZBA may grant a use variance "where the Board finds that, due to circumstances relating to soil conditions, topography or

shape of land or structures and especially affecting such land or structures but not affecting generally the zoning district in which they are located, literal enforcement of this chapter would involve substantial hardship to the appellant or petitioner and that the desired relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this chapter."

11. The ZBA determined that the applicant did not meet the criteria for hardship. While the applicant argued that property conditions required siting the proposed billboard on one particular portion of the property rather than another, the ZBA was not aware of authority for the proposition that a use variance may be granted to permit a use on one particular property that is otherwise prohibited in every zoning district in the Town. In view of the Bylaw's requirement that "[b]illboards and similar signs are specifically prohibited" (Sec. 174-11(C)(2)(b)), the ZBA determined that it could not grant a use variance "without nullifying or substantially derogating from the intent or purpose of" the Town's zoning bylaw.

Decision and Vote of the Board:

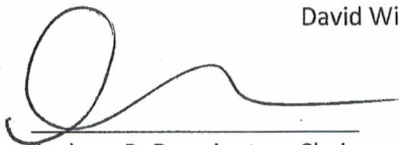
At its meeting on December 14, 2016, the Zoning Board of Appeals voted 5-0 to deny the requests for both the Special Permit and Variance request(s) for a digital billboard exceeding the allowed area and height for signs in the district and allowance of 24-hour illumination.

After review of all evidence and facts presented at this hearing, and after deliberations on the same, voted unanimously 5-0 on a motion made by P. Drepanos, and seconded by C. Nicholson, with members voting as follows for the Special Permit request(s):

Andrew R. Dennington	Deny
Debbie DeMuria	Deny
Paul N. Drepanos	Deny
Craig Nicholson	Deny
David Williams	Deny

Additionally, after review of all evidence and facts presented at this hearing, and after deliberations on the same, voted unanimously 5-0 on a motion made by P. Drepanos, and seconded by C. Nicholson, with members voting as follows for the Variance request(s):

Andrew R. Dennington	Deny
Debbie DeMuria	Deny
Paul N. Drepanos	Deny
Craig Nicholson	Deny
David Williams	Deny



Andrew R. Dennington, Chairperson
Signing on behalf of the Zoning Board of Appeals

****NOT VALID FOR RECORDING UNTIL CERTIFIED BY THE TOWN CLERK OF SOUTHBOROUGH****

In accordance with Sec. 11 of Ch. 40A of Massachusetts General Laws, I hereby certify that twenty (20) days have elapsed after the within decision was filed in the office of the Southborough Town Clerk, and that no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied.

Attest: _____

James F. Hegarty, Town Clerk

Date

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