



**J Caldwell
& Associates, LLC**
Community Planning Consultants

March 1, 2021

MEMORANDUM TO: Ms. Patricia Craven, Planning Board Secretary

FROM: Jessica C. Caldwell, P.P., A.I.C.P., Planning Board Planner

SUBJECT: Klein Outdoor Advertising, LLC
Site Plan and Use Variance
Block 801, Lot 7.01
320 Route 15
Borough of Wharton, Morris County

Dear Ms. Craven:

The Applicant is seeking Site Plan and Use Variance approval for the construction of a billboard sign with an LED Variable Message Sign (VMS) on the above-referenced property. The subject property is in the B-2, Regional Business Zone where the proposed billboard sign is not a permitted use in the Zone. The Applicant has obtained an outdoor advertising permit from the New Jersey Department of Transportation (NJDOT) Office of Outdoor Advertising Services for the proposed billboard.

1. **The following documents were reviewed:**

- i. Three (3) sheets of a Preliminary and Final Site Plan entitled, "Klein Outdoor Advertising, LLC, Proposed Billboard Sign, Block 801; Lot 7.01, 320 N.J.S.H. Route 15, Borough of Wharton, Morris County, New Jersey," prepared by Dynamic Engineering Consultants, P.C., dated December 21, 2020.
- ii. Land Survey Plan entitled, "Survey of Property, Tax Lot 7.01, Block 801, 320 N.J.S.H. Route 15, Borough of Wharton, Morris County, New Jersey," prepared by DPK Consulting, dated July 24, 2015.
- iii. Traffic Engineering and Safety Assessment prepared by Dynamic Traffic, LLC, dated February 9, 2021.
- iv. Lighting Study prepared by Watchfire Signs, dated January 27, 2021.
- v. Copy of application, checklist and additional supporting documents

2. **Existing Site & Use:** The subject property is located on Block 801, Lot 7.01 in the B-2, Regional Business Zone. The property fronts N.J.S.H. Route 15 and is 1.3 acres. The Townsquare Diner is located on the site with associated parking and two (2) existing freestanding signs. To the north of the site is an access drive to Bob's Furniture and

Shoprite. To the south is Bob's Furniture and associated parking. To the east is the Busy Lady Plaza, Taco Bell, Costco and a bank. The site currently has two (2) freestanding signs: one (1) for the Diner; and one (1) sign that marks the second entrance for Bob's Furniture and the Diner. On the adjacent property to the south, Bob's Furniture has a freestanding sign for their main entrance and store.

3. **Proposed Development:** The Applicant proposes to erect a 40-foot high, 396 square feet (each side) LED variable message billboard sign fronting N.J.S.H. Route 15. The sign face is 396 square feet (36'x11') and sits above a 2' by approximately 34' border with the Klein Logo, which is approximately 68 square feet. This 464 square foot structure is proposed to be placed on a 27-foot tall steel support column, creating a total sign height of 40 feet. The proposed billboard would be the third (3rd) freestanding sign located along the 173.28-foot frontage of the property.

4. **Area and Bulk Requirements:** The subject property is located in the B-2, Regional Business Zone. The following table reviews existing and proposed requirements.

Zone Requirement	Zone B-2	Existing	Proposed
Min. Lot Area	40,000 SF	56,613 SF (1.3 Acres)	56,613 SF (1.3 Acres)
Min. Lot Width	150 FT	230.6 FT	230.6 FT
Min. Lot Depth	200 FT	234.51 FT	234.51 FT
Min. Front Yard Setback (NJSH Route 15)	50 FT	79.2 FT	5 FT (V)
Min. Side Yard Setback	25 FT	55.1 FT	5 FT (V)
Min. Rear Yard Setback	40 FT	101.5 FT	101.5 FT
Max. Building height	35 FT 2.5 Stories	< 35 FT	40 FT (V)
Max. Lot Coverage	40%	7.6% (4,278 SF)	7.6% (4,278 SF)
Max. Impervious Coverage	70%	81% (E)	81% (E)
Max. Floor Area Ratio	0.35	0.08	0.08
N/S: No Standard Variance N/A: Not Applicable (E): Existing Non-Conforming (V):			

- a. **Principal Structure Setback and Height Variances:** The proposed billboard is a principal structure because of the nature of the sign being proposed as a billboard for the purposes of off-site advertising and not being related to any use on the site. As a principal structure, it does not meet front yard, side yard or height requirements. **The setback variances are pursuant to N.J.S.A. 40:55D-70c; however, the height variance is a variance in excess of 10% of the maximum height for a principal structure in the Zone of 35 feet and therefore requires a variance pursuant to N.S.A. 40:55D-70d(6).**
5. **Use Variance:** According to Section 165-109(A), no billboard or billboard signs shall be permitted. The Applicant is proposing to construct a billboard sign on the subject property along N.J.S.H. Route 15 in the B-2, Regional Business Zone. **A use variance pursuant to N.J.S.A. 40:55D-70d(1) is required.**
6. **Signs:** While the proposed use of the sign is as a billboard sign that is not permitted in the Zone, the type of sign is a freestanding sign, which has standards in the Zone. Below is a review of those standards.

Sign Requirements – Free-Standing Signs

Description	Requirements	Existing	Proposed
Number of Signs	1 per lot	2 E	3 -V
Maximum Sign Area	24 sf	144 sf E 91 sf-E	144 sf -E 91 sf-E 396 sf – V
Maximum Sign Height	10 ft.	22 ft. E 17.3 ft. E	22 ft.-E 17.3 ft. E 40 ft. – V*
Minimum Sign Setback From ROW	10 ft.	10.7 ft. 5.3 ft. E	10.7 ft. 5.3 ft. E 5.0 ft. – V**
Minimum Sign Setback From Property Line	10 ft.	69.4 ft. 0 ft. E	69.4 ft. 0 ft. E 5.0 ft. – V**
Minimum Sign Clearance	3 ft.	10 ft. 6.8 ft.	10 ft. 6.8 ft. 27 ft.
Off-Site Advertising	Not Permitted	1 E (Bob’s Furniture)	V*

E- Existing with Variances Previously Approved (11/15) V- Variance Required *Variance superseded by D(1) Use and D(6) Height Variances. ** Variance superseded by principal structure front and side yard setbacks.

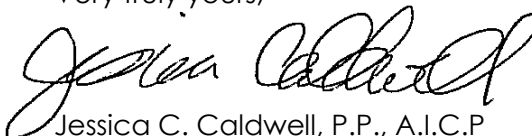
- a. Variances from sign standards are required for a third freestanding sign on the site that exceeds maximum sign area. Height and setbacks are superseded by the principal structure requirements of the B-2 Zone. A variance for off-site advertising is also required. **The Applicant should address the proposed sign area and height in testimony as it relates to the surrounding area from a suitability perspective. For instance, the height of the proposed sign appears to be approximately twice the height of the existing signs on the site and is taller than the existing structure on the site.**
- b. According to Section 165-108(E), no sign shall be artificially illuminated after 11:00 p.m. or before 7:00 a.m. unless said premises are occupied and attended. **The sign is proposed to be illuminated 24 hours per day. A variance is required.**
- c. According to Section 165-108(F), no sign shall be internally illuminated, except a neon sign located in a window, provided that it meets all other requirements of these regulations. **A variance is required for internal illumination.**
- d. According to Section 165-109(F)(1), no sign shall have more than two colors, inclusive of its background, frame and decorative parts. However, varying tones or gradients of the two main colors may be utilized on a sign and shall not constitute additional colors. For the purposes of this chapter, black and white shall not be considered colors. **The Applicant is proposing an LED Variable Message Sign, which utilizes multi-color displays. A variance is required.**
- e. According to Section 165-109(F)(2), sign colors shall complement the building design, architecture and color scheme. **The Applicant should testify to the operation of the sign as it relates to surrounding uses.**
- f. According to Section 165-109(J), in order to preserve the basically residential character of this community and to facilitate the improvement of its commercial and industrial areas in a safe and orderly manner, no commercial outdoor advertising signs, billboard or other signs which are not expressly and directly related to the business being conducted on the premises and which do not conform to the applicable requirements and standards set forth in other sections of this chapter shall be permitted, and all other such commercial outdoor advertising signs, billboards and other nonconforming signs are specifically prohibited. It shall be unlawful for any person to display upon any sign or other advertising structure any obscene, indecent or immoral matter. **A variance is required.**

7. **Lighting:** According to Section 165-74(A), a lighting plan prepared by a qualified individual shall be provided with site plan applications. The Applicant submitted a lighting study prepared by Watchfire Signs, dated January 27, 2021.
 - a. According to Section 165-74(D), the light intensity at ground level shall average 0.5 footcandles; however, variations are permitted depending upon the intensity of the use. The lighting intensity shall not exceed 0.3 footcandles along any property line and shall be so arranged and shielded to reflect the light away from adjoining streets or properties. **The Applicant should confirm light intensities through testimony.**
 - b. According to Section 165-74(H), no lighting source shall be visible from windows, streets and driveways, nor shall lighting shine directly into or reflect into windows or onto streets and driveways to interfere with the driver vision. **The Applicant should discuss the brightness of the sign for drivers at night and if color variations are also dimmed based on the color as some colors cause more glare than others.**
 - c. According to Section 165-74(I), no lighting shall be of a rotating, pulsating or other intermittent frequency. **The Applicant should discuss this section as it relates to the proposed changes in advertising.**
8. **Traffic:** The Applicant submitted a Traffic Engineering and Safety Assessment dated February 9, 2021.
 - a. The traffic study addresses visibility and time of visibility for the sign. The traffic engineer should provide testimony with respect to sign height and area and whether the proposed height and area is necessary at the sizes proposed given the numerous variances associated with those two aspects of the sign.
 - b. The traffic engineer should discuss the duration of time to read the sign and the proposal for changing the sign messages. The NJDOT permits changes every 8 seconds, however, the traffic engineer determined a time of read to be 9.6 seconds.
 - c. The proposed sign is located at a busy intersection with several decisions for drivers to make within close proximity to the sign. The traffic engineer should discuss how this proposed advertising sign may impact driver's attention span and the potential for increased accidents in the area due to the distraction from the sign.

9. **Criteria for Granting “D(1)” Use and “D(6)” Height Variances:** The Applicant is requesting a “d(1)” use variance to permit the construction of a billboard sign on the subject property where the use is not permitted and “d(6)” for height in excess of 10 feet or 10% of that permitted in the B-2, Regional Business Zone. Variances can be granted by the Board pursuant to N.J.S.A. 40:55D-70d(1) and d(6). The Applicant must address the following criteria from both the use and height perspective.
- a. The Municipal Land Use Law (MLUL) sets forth the statutory positive and negative criteria for variance relief. It permits a Zoning Board of Adjustment to grant a “d(1)” variance in particular cases and for special reasons. The courts have determined that special reasons include a showing by the applicant that the granting of the variance will effectuate the intents and purposes of the MLUL and advance the goals and objectives of the local master plan. This is the “positive” criteria of the statute. Likewise for a d(6) height variance where the use is not permitted, the d(1) variance criteria apply.
 - b. To address the “negative criteria,” the applicant must demonstrate the proposed variances can be granted without substantial detriment to the public good, not will the granting of the variance substantially impair the intent and purpose of the zone plan and zoning ordinance of the municipality.
 - c. Additionally, the Applicant for a use variance is obligated to address the planning issues raised in the New Jersey Supreme Court case *Medici v. BPR, Co.*, 107NJ (1987). In accordance with the guidelines set forth in *Medici*, and applicant for a use variance must demonstrate that special reasons are satisfied by either showing that the proposed use is one which “inherently serves the public good” or the proposed use promotes the general welfare because the proposed site is particularly suitable for that use. The *Medici* decision provides that in conjunction with the demonstration of the negative criteria, an enhanced quality of proof must be demonstrated to indicate that the grant of requested use variance is not inconsistent with the intent of the Master Plan and Zoning Ordinance.
 - d. The proposed billboard is located at the southern municipal boundaries with the Township of Rockaway and Town of Dover. Given the sign’s location at a gateway into Wharton, the Applicant should consider integrating the sign into a gateway feature for the Borough of Wharton. Likewise, as part of positive criteria, the Applicant should consider and discuss the use of the billboard for emergency services and community alerts such that the proposed sign would benefit the community and not just the Applicant.

10. **Criteria for Granting "C" Variances:** Variances can be granted by the Board, pursuant to N.J.S.A. 40:55D-70c where two provisions exist:
- a. The first provision for granting a "c" variance is under the N.J.S.A. 40:55D-70(c)(1) where the Board must find whether there has been a showing of peculiar exceptional practical difficulties or exceptional undue hardship arising out of the exceptional narrowness, shallowness, or shape of a piece of property, or by reason of an extraordinary and exceptional situation uniquely affecting this specific piece of property or the structures uniquely affecting this specific piece of property or the structures lawfully existing thereon. The two-part negative criteria must also be addressed.
 - b. The second provision for granting a "c" variance is under N.J.S.A. 40:55D-70(c)(2) where the Board must find that the application related to a unique situation on a specific piece of property, that the purposes of the MLUL would be advanced by the requested deviation, that the variance can be granted without substantial detriment to the public good, that the benefit of granting the variance outweigh any detriments and the variance will not substantially impair the zone plan or ordinance. Under (c)(2), the Applicant should show that the proposal is a better zoning alternative to what which is permitted by the ordinance and provide benefits to the community as a whole, not just the Applicant. The two-part negative criteria must also be addressed.

Very truly yours,



Jessica C. Caldwell, P.P., A.I.C.P

J. Caldwell & Associates, LLC

Wharton Planning Board Planner

cc: Via Email Only

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