

**BOROUGH OF RIVER EDGE
LAND USE BOARD
MEETING MINUTES
ZOOM MEETING
September 9, 2026**

NOTE – Public meetings of the Municipal Land Use Board of the Borough of River Edge will be held in person in the Council Chambers on the second floor of Borough Hall, 705 Kinderkamack Road, River Edge, NJ 07661 unless further notice is provided. Meetings will be held concurrently via ZOOM (Hybrid). Members of the public may attend meetings in person or via ZOOM. To join the ZOOM meeting via smart phone, computer or tablet. The log in information and a link to the meeting will be posted on the Borough's website at <https://www.riveredgenj.org/landuse>.

Chairman Caslin calls the Meeting to order at 7:30 p.m.

Roll call:

Mayor Papaleo – Present	Chairman Caslin – Present
Ryan Gibbons – Present	Councilman Glass - Present
Eileen Boland - Present	Mr. Chinigo – Absent
Mr. Gautier - Excused	Mr. Salva - Present
Michael Krey - Present	Ms. Levine - Present

ALSO PRESENT: Special Counsel attorney Erica Parlavecchio, Esq., Ms. Heather W. Goldstein, Esq. (for Ms. Brown), Mr. Costa, Thomas Behrens, Jessica Hall and Lisa Ciavarella (via Zoom)

APPROVAL OF MINUTES

8/26/26 minutes. Correction made to page 5 putting the name of special counsel Erica Parlavecchio, Morion to accept minutes made by Mr. Gibbons; Second – Mr. Krey.

On the minutes Ms. Boland abstained Salva abstained

Completeness Review

Mr. & Mrs. Funk Subject
204 Wayne Avenue
Block 906, Lot 19.

Application seeking approval for alterations, renovations, and a second-floor addition to a single-family residence.

Ms. Goldstein reviewed the proofs, the certified slips for 200-foot list, and it was compliant.

Mr. Behrens (inaudible as microphone was not on). Mr. Costa stated he would ditto that. So, his recommendation to the board would be to send it into public and proceed to get the application.

All right. Mr. Depken is not available this evening. So, questions from the board on completeness of this application? Okay. There being none, Chairman Caslin looks for a motion to deem the application complete. We got Mr. Krey on a first, and Ms. Boland on second. Roll call - Mayor Papaleo; Chairman Caslin - yes; Mr. Krey- yes; Ms. Boland - yes; Mr. Gibbons - yes; Mr. Salva - yes; Councilman Glass - yes and Ms. Levine - yes. Motion passes.

New Business

Mr. & Mrs. Funk,
204 Wayne Avenue
Block 906, Lot 19

Applications see the approval for alterations, renovations, and a second-floor addition to a single family residence.

Mr. Bruno's (architect) is in attendance this evening. Mr. Bruno is handing out pictures for the Boards review.

Ms. Goldstein swears in the parties. Jason Funk, 204 Wayne Avenue, River Edge, New Jersey. Joseph J. Bruno, 29 Pascack Valley Road, Parkridge, New Jersey. He states that he is a licensed architect in the state of New Jersey and his license is in good standing.

Mr. Bruno states that there are two photos which will be going to mark as A1. He continues - photograph number one is the southward front elevation view of the subject residence. There really is no architectural changes, he submits the photograph to give a little bit of context to the application and the addition. The photograph number two is the northward rear elevation view of the subject residence. The proposed addition is to the left and above the one-story portion of the structure in the foreground, so where that patio currently is the area where part of the addition is being proposed. The applicant is seeking three variances. One is for building coverage. 25% is permitted in the zone. They are existing at 20.85% and they are proposing 27.9% for the proposed footprint addition. Lot coverage, which excludes the lot amenities. 30% is permitted. They are existing at 30.19% and they are proposing 34.83% And then the lot coverage with amenities. Lot coverage amenities are where 5% is permitted. They are presently at 11.47% and if the project were to be approved and to go forward, the coverage would be reduced from 11.47% to 5.6%. On the first floor plan, which is on drawing issue number two that Mr. Bruno submitted, the first-floor plan is on the left-hand side. The area where they've got the diagonal lines with hatching indicates the proposed first floor addition. At present, there is at the first floor on the left-hand side of the plan, there is a single car garage, living room, what Mr. Bruno noted as a den in the final analysis, is at present the formal dining room, and there's a kitchen in the back. Then there's also a family room back in the top left corner of the room. If the proposal is to take family room and create a mudroom with a lavatory, which would enable a direct access between the garage and the interior of the home, where none exists now. Then the existing, the other part of the existing family room would be utilized as the kitchen and the kitchen then space would be expanded to the right-hand side of the plan for dining and family room. At the second floor, above what is above a portion of the first-floor expansion would be a walk-in closet and bath space to the existing master bedroom and one additional bedroom. The architecture of the house would be similar to that which exists at present. They would do some improvements to the streetscape side of the home, new siding, roofing, etc. and the architecture in the sides in the rear at the addition will be similar to the architecture that that exists now. Since the application was filed Mr. Funk

and Mr. Bruno had some conversations, and if they were to use permeable pavers for the driveway, because right now it's an existing asphalt paved driveway, they could reduce the coverage by 302 square feet because they reduce it by half, and that would reduce the impervious coverage from 34.83 to 30.26% and 30% is permitted. So again, they'd be reducing from 34.83% to 30.26% and he would respectfully state to the board that, that excess of .26% is de minimis and would not have an effect on the project. If they were to use permeable pavers for the proposed new patio, they would cut the patio in half, so they'd have a total of 168 sf. So, the coverage of lot amenities would be reduced from the proposal of 5.6% to 2.5%, so that that variance would be essentially eliminated. One thing that Mr. Bruno would like to point out to the board that if the project were to be approved and move forward, the stormwater coming off the entirety of the roof would be captured underground in the stormwater chamber, and not just the proposed footprint roof expansion. It would be the entirety of the footprint of the roof of the home. And with that, Mr. Bruno would like to answer any and all of the board's questions.

Questions and Comments from the Board and Professionals

Mr. Costa. Chairman, basically, as long as they do the stormwater, obviously it's up to the board with the variances. He further states that he knows Mr. Bruno was writing down numbers, but he guesses that by reducing all of the above, it gets you closer to conformity with almost everything. Mr. Bruno responds correct, so again, the lot coverage gets down to 30.26% where 30% is required. Mr. Costa, and as far as the setbacks, you're meeting the side yard setbacks. Mr. Bruno states the setbacks are conforming. The building height, the height of the roof is conforming, and they are conforming by about three feet. 30 feet is permitted, two and a half stories, and they will be maintaining the existing roof height at 27 feet and two stories. Mr. Costa states obviously, there's going to be one story, two stories. Mr. Bruno states correct with all of his designs, it's just not a monolithic block. There's some playfulness with the massing because it is a residential neighborhood, and we want to be respectful of that, and there are a lot of beautiful colonial homes in the neighborhood as throughout River Ridge. So, the applicants want to keep that going.

Mr. Behrens states he doesn't have much to add just maybe an observation or two. Is it accurate that the improvements are generally in the rear of the property? Mr. Bruno responds – yes that is absolutely – Mr. Behrens with respect to setback. Mr. Bruno states the applicants are going to improve the front facade of the house, but the expansion is strictly to the rear, and as you can see on the floor plan, it does jut out to the right or to the east, but it's within the required setback lines. Mr. Behrens continues referencing Mr. Bruno's zoning table, it looks like the property is a bit undersized. Mr. Bruno responds yes, it is at 6,614 sf, which in this zone, as you know, 7,500 square feet is required, and he would say that despite the hardship of being approximately 884 square feet less than the code requirement, where they are not increasing by much at 27.19 as it relates to the building coverage. Mr. Behrens states if the board is so inclined to approve the application, he would ask Mr. Bruno to add the location of AC units. Mr. Bruno responds yes, of course, and they would be compliant. Mr. Behrens states the building department may require height calculations, just to be mindful. He knows they're matching the roof height, but he further states just to confirm, it's the height. He knows the property is relatively flat. Mr. Behrens further states finally, just to be clear, he believes the rear amenity space requirement is actually a minimum, not a maximum. He stated he can be corrected if he's wrong. It's required that you preserve a minimum of 5% so to prevent overdevelopment of housing, etc. So just to be clear, you're complying anyway, but he just wanted to let him know. Mr. Bruno states that they are complying. Mr. Behrens continues that he thinks the use of permeable pavers is a welcome creative installation here.

Mr. Salva - no comments. Mr. Krey - just one - the existing coverage for the amenities is 11.47, and the

lot coverage is 30.19. So that totals 41.66. What you've proposed, without even taking the permeable pavers into account, actually reduces that up to a number. Mr. Bruno responds that in the original proposal they were slightly reducing it. Mr. Krey further states and now with the permeable pavers it's being reduced even more. Mr. Bruno responds that they wanted to reduce it more. Mr. Krey states he just wanted to point that out.

Mayor Papaleo states so, the applicant has agreed to permeable pavers in the front and the back, and if his calculations are right, that drops the overall coverage to 32.76, which he thinks is wonderful, and he has no issue. Mr. Bruno concurs, stating if they add the lot coverage and then for the amenities reserve, it's right. Mayor Papaleo so from 40.43 to 32.76, he's good with that.

Councilman Glass – He's trying to understand from Mr. Costa's letter where it states there's a nonconformance existing, with respect to side yard. Mr. Costa responds that the coverage would be nonconforming. That's an existing condition. Councilman Glass continues – the top of the third page. He's reading that no side yard setback. 2.57 feet existing, non-conforming. He asks if he is reading that right? Mr. Costa states that is for the shed and the accessory. Councilman Glass continues stating that the new footprint is going to reduce the side yard setback on one side, right? Mr. Bruno responds - No, they will be compliant. The side yard setback in the upper right. Councilman Glass further states that's going to reduce the side yard setback a little bit. He's not saying it's nonconforming. He's just asking if they're going to reduce the setback, right? Mr. Bruno states that they are at 7.5 feet right now as they're proposing, are you asking for us to be a little bit more. He wants to understand what – Councilman Glass states he is just asking when you expand the footprint of the building closer to the property, property line street. Mr. Bruno responds yes, but at present, the building is greater than 7.5 feet off of the property line. Councilman Glass asks so what will it be? Mr. Bruno responds post construction will be 7.5. they won't be closer than 7.5 to the property line. Councilman Glass asks about the rear yard setback. So, the proposed rear yard setback is nonconforming right at 27.2 okay. Mr. Costa tells Mr. Bruno to point out the shed in the rear corner, the rear left. Councilman Glass continues that he is reading the main part, not the accessory, just at the main table you have in your letter. It's going from 27.2 to 24.5. Mr. Costa states that it's for the platform, the rear landing. Councilman Glass asks if that is part of the variance request? Mr. Behrens states that he hasn't looked at it he believes the ordinance allows for certain types of encroachments. So, this, if it's uncovered, could function like a deck in a sense. Mr. Bruno states that it's a stair landing. It's uncovered. Mr. Behrens states that he believes there is an encroachment provision. He's guessing, but it may technically need to comply with the 25 feet. Mr. Costa states that because it's raised, they have to include it. They need to get from the first floor down to grade, so you're coming out of the kitchen, and you're on a platform. Probably what, six inches down, eight inches down, four inches down onto the platform. Mr. Bruno states typically he does four to six. Mr. Costa asks how many risers? Mr. Bruno responds there or four risers. Mr. Costa states that the platform projects slightly into the rear, but he doesn't think they could get around that other than making it obviously smaller.

The interior. Mr. Costa continues that the sidelines are not parallel. The one is skewed, so that's why it's converging in the rear. Councilman Glass states it's not the closest but it's still in compliance. Mr. Bruno continues so, the edge of the three-foot four feet platform coming off the house, the setback to that would be 23.76 feet. Right. Mr. Costa states he thinks that's what they need. Mr. Bruno responds right, the minimum. Mr. Behrens states to the councilman's point, it may technically trigger that rear yard setback variance. Mr. Bruno responds while the applicant is here, they can amend the request. Yeah, why don't we amend the request so that rear yard setback for that for the stair platform will be 23.76, and it's uncovered. Mr. Costa states that's what's currently shown on your plans right now. Mr. Bruno stated that he didn't dimension it to the building wall. Mr. Costa asked him to point it out to the Board for clarity.

The north elevation, he believes, shows right. Mr. Bruno states the North elevation is the lower left-hand corner. Mr. Costa states that the west elevation actually shows the side view. Mr. Bruno responds – yes. There will be a railing. But the platform is uncovered. There is just have the roof overhang, with the gutter. Mr. Costa states so the board can understand Mr. Bruno states that the front face of the stair landing would be 23.76. Mr. Costa states for clarity and just for the record the house itself is 27 ½ feet off the rear line – Mr. Bruno - the building wall itself is 27.2 with 27 feet three inches, 25 is minimum. So, the house could have been made bigger but there was no reason to. Mr. Bruno continues that the encroachment of the stair landing is 15 inches, 1.25. Councilman Glass asks what part of the house currently extends to 27.2 feet from the rear property. Mr. Bruno responds that is the existing rear wall of the house at the first floor. That's not changing, he states he showed that dimension because it is relevant to the second-floor edition, which is proposed to be directly above it.

Mr. Gibbons confirms the building coverage is staying what is proposed, 27.19. Mr. Bruno responds that's staying the same. Mr. Gibbons and then the lot coverage is getting down to 30.26 and then with the amenities reserved, it's getting down to 2.5. That's not a variance. Mr. Gibbons states that he listed three variances, which in the end they will need three variances with the rear yard setback. He further stated that they don't need a variance for the lot coverage amenities because you could have well more than 5% as long as you're within. He continues stating that he doesn't know if they necessarily need to try to make that smaller. You're not making it smaller though. You're just doing the pervious pavers to decrease the impact. Mr. Bruno states that since the contractor will be on site and they are doing the driveway they might as well do the patio as well. Mr. Gibbons concludes by stating that technically the applicant needs one for lot coverage.

Ms. Boland had no comments. Ms. Levine no comments. Chairman Caslin thanks Mr. Bruno for taking a hard look at their application and project and trying to do what you can to mitigate the effects. He thinks Mr. Bruno did an admirable job and he thanked him. Mr. Bruno responded that it's our job to do that. Chairman Caslin states that at this time he would like to open this application for public comment. So moved – Mayor Papaleo; Second – Mr. Gibbons. all in favor. Aye. Any opposed, abstain. There being no one in the public looking to comment, Chairman Caslin asks for a motion to close the public. So moved – Mr. Mayor; Second – Ms. Boland. All in favor - Aye. any opposed any abstain? Final questions and comments from the board members and professionals on this application. Mr. Costa states that the only thing he would say is just make sure the numbers that he is saying actually are the numbers because when you go to do an as-built, they need to be compliant with the resolution. So, he tells Mr. Bruno if he wants to check them one more time before maybe the board votes, just to make absolutely, because he thinks the variance they need is the rear yard setback for the platform.

Mr. Bruno states that are at 27.2 to the building wall and they are going to subtract three feet four inches for the depth front and back of the platform, which brings them to 23.86 or 23 feet 10 inches. Mr. Costa states that he sees a builder in the in the audience. He continues stating what if he gets a piece of wood that's not perfectly straight? He asks Mr. Bruno if he thinks he would want to just add an inch or two to that number, just in case? Mr. Bruno states why don't we make it 23.5. Mr. Costa continues that they are going to need building coverage and the proposal stays the same 27.19 – Mr. Bruno states 27.2 is what the existing rear yard setback is.

Mr. Costa states no, building coverage. Mr. Bruno states building coverage – 27.19 that's with the shed. Mr. Costa asks about the AC units and that he may want to put a little bit extra in for a pad for the AC unit. Mr. Bruno states that is not building coverage it would be lot coverage. Mr. Costa states that what he is saying is, so it's very clear for the zoning official, so everybody's on the same page. (a few board

members are speaking at the same time – hard to pick up everything they are saying) Mr. Behrens states that they are asking for 30.26, but if that goes up 18 square feet, we're just trying to get the applicant what he needs to make this work. Mr. Behrens states that brings it down another quarter of a percent to 30.5%. Mr. Bruno responds, let's do the numbers then. He brought it down by doing the permeable pavers. It reduced by 302, so before the final improvements it was 2,304 minus 302, that gives us two 2,002 square feet. He adds 18 square feet to that 2020, divided by area of the lot 6,614. That gets them to 30.54%. Mr. Behrens states that's the ask just for the record, before the board votes, that'll be 30.54%. Mr. Costa states that maybe just round it up a little and go to 31%. Mr. Costa states that for the amenities they don't need a variance, but those would be the three variances they need. Building coverage is good at 27.2. Lot coverage is 31%. Ms. Goldstein lists the conditions of the approval – permeable pavers for the driveway and the patio, adding the location of the AC units, the three variances are – rear yard setback, building coverage and lot coverage excluding the yard amenities. Mr. Bruno states that he testified that the entirety of the roof will be calculated for the purpose of the size of the storm water chamber and any other conditions listed in Mr. Costa's letter of September 3, 2026.

Chairman Caslin looks for a motion on the application. Mr. Gibbons makes a motion for Block 906 Lot 19 to be approved for the three variances read and all the conditions that have been testified to and agreed to – Second – Mr. Salva. Roll call – Mayor Papaleo – yes; Chairman Caslin – yes; Mr. Krey – yes; Ms. Boland – yes; Mr. Gibbons- yes; Mr. Salva – yes; Councilman Glass – yes; and Ms. Levine - yes. Motion passes.

Moving to old business section of the agenda. The Mayor and Councilman are excused from the old business portion of the agenda. The Mayor and Councilman Glass and Ms. Goldstein leave the dais. Conflict counsel confirms that Ms. Boland and Mr. Salva watched the video from the last meeting – which they stated they did.

Old Business

Pacific Outdoor Advertising, LLC

14 Route 4 West

Block 1402, Lot 4

Preliminary and Final Site Plan Approval with use, height and bulk variance relief to install and operate a two-sided “static” billboard.

Mr. Falkenstern gives a brief reminder, the applicant is Pacific Outdoor Advertising is seeking approval for a double-sided static billboard at 14 Route 4 West, together with necessary D1 use variance, D6 site variance relief, bulk relief and site plan approval. Since the last hearing, Mr. Boyd testified to the shadow study. They agreed they would provide the Board with the color copy, and have submitted that on September 2, 2026. It included additional time frames in color. It's basically the same thing. Mr. Falkenstern states that tonight they intend to complete the applicant's professional presentation with our final witness, Mr. John McDonough, our professional planner. We'll address the applicable planning and variance criteria and the overall justifications for the relief requested, and with that, Mr. Falkenstern calls Mr. McDonough. Conflict counsel, Erica Parlavecchio, Esq., swears in Mr. McDonough. Mr. McDonough is a licensed professional planner in the State of New Jersey, and his license is current and in good standing.

Chairman Caslin asks if there are any questions from the board as to Mr. McDonough's professional qualifications? Mr. Costa states that he wasn't at the last meeting, but Jason from his office filled in, and

he tried to understand what took place at the last meeting. But the shadow study was submitted. His office didn't have it, but he believes the applicant submitted a new shadow study. But we're not going to testify on the submission of the study that he finally got. Mr. Falkenstern stated that they presented at the last hearing, and they were asked to supplement it, and they did supplement it. Their engineer is not available today, so no, they're not going to offer additional testimony.

Chairman Caslin explains that the board asked them to modify the plan to fix the contrasting because the shadowing was not very legible on the copy presented. So, as matter of substance, nothing was anticipated to have changed other than just delineating those. Mr. Costa further states that what he was trying to decipher from Mr. Flores, there wasn't a quorum, but the meeting proceeded. Counsel clarifies that there was a quorum because there were four members, but because they needed a "d" variance, they could never get approved. That's why it was carried to his evening. There was four, which is a quorum, but because it's a "d" variance, that's why it was carried to this evening. Counsel asks Mr. Falkenstern for purposes of the record, if he could confirm, really the purpose of the shadow study was just to colorize the shadows better. Was anything else changed on this drawing? He states that they did add as requested additional time frames that were not previously there. They removed the shadows from the buildings. Mr. Behrens states not to complicate it, he thinks what it reveals is that some of the testimony that was offered may need to be revised. He understands this is but one part of the application, but the point he is trying to raise is he thinks the application, or Mr. Vogt originally said that the shadow would impact three or four houses where it seems like there are more being impacted. The board has what they have in front of them the applicant's professionals are not planning to address it, whether or not the board has questions about it at some point we'll find out. He continues that it does what the applicants were asked to do.

Mr. Costa states the board should review it and comment and if they're planning on getting a vote tonight, then the board can't do that. Mr. Falkenstern would like to call their planner and then see where they are at when they're done with it. Mr. Costa just wants to put it on the record if it's a new plan – Mr. Falkenstern states there's no new plan. This was a shadow study. It is not requirement. They provided it at the request of the board, and they had testimony to the shadow study at the last hearing. Mr. Costa asks if Mr. Falkenstern is suggesting that the board not review it. Erica Parlavecchio, Esq., asks Mr. Falkenstern if he could clarify. She asks if the shadow study that was testified to at the last hearing, when was that submitted, or was that an exhibit. Mr. Falkenstern states it was an exhibit at the last hearing. And so, this drawing has added new times, but it's not new, it was presented at the last hearing in similar substance to what is shown now. The colors are different, and maybe to Mr. Behren's point, there might be some information that's been revealed because the colors have been changed. Erica Parlavecchio, Esq. doesn't know that it's accurate to say - it's a brand new shadow study, unless others disagree. Mr. Behrens is not saying that it's new in the information may have been there, but the last version was illegible, and you couldn't decipher where the thing was. Counsel asks Mr. Behrens if he received it in advance. Mr. Behrens responded yes and he reviewed it, and he thinks that what they've submitted is exactly what the board asked for, they adhered to that request. But he does think it was different than the one and he is just drawing a distinction, it's an issue.

Mr. Falkenstern asks to briefly describe what his scope of engagement is with respect to this project. Mr. McDonough testifies that they conducted a standard planning analysis in connection with the application. They reviewed existing conditions. They reviewed proposed conditions. They reviewed the borough's zoning, the applicable zoning regulations, and there is relief here. So, they then reviewed the statutory criteria for that relief to see if grant of same is reasonable and appropriate. Mr. Falkenstern asks Mr. McDonough in undertaking that review what materials did he review. Mr. McDonough stated he

reviewed the submitted application again to get the sense of proposed conditions, they reviewed the borough's zoning ordinances, the Master Plan documents, and they've been to the site on multiple occasions. Mr. Falkenstern asks Mr. McDonough specifically, if he reviewed the borough's zoning and signage ordinance, to which he responded – yes. Mr. Falkenstern asks Mr. McDonough if he can briefly describe the proposed project as he understands it.

Mr. McDonough stated that he wanted to try to give the board just some visual aids here. Counsel asks if this is a new exhibit to which Mr. McDonough states – yes. It will be marked planning exhibits for Pacific Outdoor. It's four pages, and one is just going to be a municipal boundary map showing the site location, a roadmap and then the rest are just drone photographs. The drone photographs were taken on March 11, 2026. It's marked A4. Mr. McDonough continues, for the record with today's date 9/9/26, is a three-part exhibit. The first page is simply a roadmap. It's taken from GIS, and you can see the municipal boundaries. The borough is centered, River Edge. They put a flag on where the subject sign location is going to be, down in the south corner of the borough, over by Hackensack, by Paramus, by municipal borders, along Rt. 4 which is the main corridor in the borough. It's the only corridor that's classified as a major highway in the borough, and this is a land use that naturally follows road networks, especially higher order roadways, and that's why this applicant has selected this location. To the north in the borough, there are approximately 3,500 parcels of land here in the borough. Most of them are residential, but to get an outdoor advertising permit from NJDOT, an applicant has to be on land that is either zoned commercial or industrial, non-residential. So, there are limited locations for this applicant to serve its purpose, which is to provide for outdoor advertising or information messaging as part of its public purpose. The applicant has selected a location that is on Rt. 4, a major highway, away from interchanges that you are along Kinderkamack, and he believes that all goes towards the site suitability, particularly the fact that this is a permitted location or has been established as a permitted location by our outdoor advertising regulations, which govern the citing of billboards as far as NJDOT is concerned at the state level, so it passed muster, with the first layer of governmental regulation as far as locating this land use goes. It doesn't preempt this board from any authority at all, but the key point is, it's made it through that that first pass, and of those 3,500 parcels in the borough, there would be limited capacity to do this elsewhere. It's a single tax lot. It's identified as Block 1402, Lot 4. It is about 7,032 square feet, and it's developed with what was a converted dwelling to commercial use. He knows there were some questions about whether a residence is in there or not, and he will leave that open for discussion, but they are on the Rt. 4 highway corridor. The surrounding uses are commercial along the corridor, and then obviously there is the residential behind. Mr. McDonough continues stating that Rt. 4 is the only road in the entire borough that's classified as a major highway. The proposal before the board is the construction of a billboard. They have two panels. They're static display. They're not multi-message electronic display at a height of 60 feet above grade level or AGL. The sign panels are going to be in a V configuration, so a single monopole with two panels constitutes one sign. 10.5 feet high by 36 feet wide, which comes out to 378 square feet. That is undersized in terms of industry standard at 14 by 48, this is substantially less than that. Industry standard is 674 square feet. This is about half of that at 378. Mr. McDonough repeats that 674 square feet is your standard 14 by 48 sign. This is proposed as a 378 square foot sign per panel.

Mr. McDonough continues stating that the purpose of these next few exhibits here is they went out to the site in May before the leaves came out, and they basically hovered the billboard at 60 feet above, hovered the drone at 60 feet above grade level, which is really the height of where the top of the billboard would be. They focused it west in frame number two, and then we focused it east in frame number three, just to show the viewshed or the reverse viewshed of what the sign would be looking at, looking out. This is the height that the applicant is proposing. The intent of this land use is to focus primarily on the motoring public. That's the audience, and that's essentially what is on the roadway. So again, that's why the

applicant has selected this location. Rt. 4 is a multi-lane highway, again targeted at the motoring public. So that's why the land use is here or proposed here. Frame number four is just a top-down view to give the board a sense of the spatial arrangement of the site. You can see the drone operator sort of standing in the middle of the parking lot there, looking top-down. If you carry over to where that curb stop would be, that's the general location of where the sign pole is going to be. He continues stating that Mr. Vogt plans show where the V would be with respect to the overall site plan and on the site. The applicants are seeking use relief here, not only for a use that's not permitted in the zone. They know there's a blanket prohibition municipal wide on this particular land use, but also to have two principal uses on one piece of property. That building now houses a commercial use, a tarot card reader that's there now, as advertised. Basically, what they are trying to show is that there's no interference, at least from a parking standpoint, with the location of the base of this sign and the parking that is presently there. Mr. McDonough has been out on the site and states that there's a nice row of mature vegetation along the common border with that residence that would be behind the sign. It's Rose of Sharon. It does go deciduous in the winter months, but right now, if you go out there, you see a nice green wall effect of approximately 20 feet or so along that common property line. There is also a fence, a solid privacy fence, separating the subject site from those two immediately adjacent residential uses. That's the backdrop of the application before the board from a physical planning standpoint. In terms of the actual zoning ordinance, they are in the C1 neighborhood business district. This is a zone that is aimed at economic development. It permits a wide range of commercial oriented uses, according to the C1 zone, there are 21 permitted principal use categories, and another three permitted conditional use categories. All of those uses generate some form of traffic waste or other potential uses. They will have a drawdown on water and sewer demand on public services. Mr. McDonough states that he will come back to this when they look at the negative criteria. But he thinks it's well established that, from a functional standpoint, this is a functionally inert land use that is not going to draw down on those public services. He further states with this land use, the consideration is all about visual impact, and he will go through that as he goes through the planning proofs. Also, conceivably, all of those permitted uses will generate light. None of those permitted uses are as high as what the applicant is proposing here, but those uses could conceivably be bulkier, even though they are lower. The relief list is listed well in Mr. Behrens report, but in synopsis the applicant needs two D1 use variances. One is that billboards are not permitted in any zone district in the borough, and two another D1 for dual use or two principal uses on one lot. One is permitted. The applicant is asking the board to move on two, and from a planning standpoint, Mr. McDonough sees no interference of one use with the other use. So that's really the primary reason why he thinks the legislative intent is to avoid two uses on one particular piece of property. The third D variance that the applicant is asking the board to move on, and this would require the supermajority vote of five members, regardless of the number here. D6 height relief, where 60 feet above grade level is what's proposed, where 30 feet is the maximum that's allowed, and he states that's inherent to the use for clearance purposes, for visibility, for readability, and necessary for this use to effectuate its purpose. He continues that there's a bucket of C relief for the front setback, where the applicant is proposing five feet from the front property line or the street line along Rt. 4 where 30 feet is the minimum that's required. It is not a building per se, so there is much more open air than a building encroachment into the setback may have. There is much more open air below the sign. Rear setback relief as well, 9.37, where 20 feet would be the minimum that's required, same justification as above, in that this is not a building, and that there is much more open air below the sign. The existing building is non-conforming at 12.59 feet and certainly has more bulk at the base at the ground level than the sign itself. And then they are seeking any relief if needed, to reaffirm any existing conditions that are not changing, such as the existing lot size, which is undersized, and this is a lawfully plotted lot.

The applicant is not asking the board to create a new lot here, and as the board can see from the

photographs, there's no real land available to cure that deficiency, as these are developed pieces of property around the site, frontage on two roads, and then of course one of them being an active highway. In terms of the justifications for the D1 use relief, we're going to turn to the familiar *Medici* test and the four elements of proof required there. First of all, in terms of special reasons, this use is a message board that Mr. McDonough believes promotes the general welfare as a form of communication. He has some case law here as a foundation that this does represent a form of constitutional free speech, and he references the *Bell vs. Stafford* case in that regard. He further states that he is not a lawyer; he's a planner. They operate in a legal framework, so he states that he will defer on points of law to counsel here, but he does give deference to that case in terms of the public benefit of this land use as a form of constitutional free speech and communication. From a practical standpoint, these are words and graphics on a board. It's a way of people to communicate with each other. That certainly promotes business, which is something our state plan, as the cornerstone of planning here in New Jersey, and your master plan as well, recognizes that business is a foundation of a community, economic development, stable rateable base, all of that is what this land use goes towards. There are the state regulations that recognize this land use as a mechanism to stimulate economic development. He continues that business is good, and this is a tool or an instrument of business. It's going to promote companies they may work for, work with, or invest our nest eggs in. There are also inherently beneficial uses that benefit from this, and it's seen in the landscape as well. He further states that he is not saying this is an inherently beneficial use in and of itself, but it's certainly an instrument of those land uses, and by that he refers to higher education, academic institutions, healthcare, hospitals put messaging on these signs and religious uses as well. Words and messaging can also promote public service announcements, community events, and the like, which also can have benefit to the community as well. He continues that he would take all of these purposes to fundamental purposes of zoning in the land use law at N.J.S.A. 40:55D-2, including purpose A, the promotion of the general welfare, sort of their catch-all again here as a mechanism of communications and public constitutional free speech. He continues - additionally, purpose G to provide for a variety of uses in appropriate locations according to the needs of all New Jersey citizens. The beneficiaries of this land use are those who are sending the messages and those who are receiving the messages and its information, appropriate locations again based on the fact that it has passed muster with the first layer of control, the outdoor advertising regulations, and NJDOT as a permitted location. He thinks that adds credence, adds weight to the suitability of the site. It is a commercial zone in a generally commercial area, intended to aim at the highway away from those residential uses at the back. He knows that there is a shadow study that does show some impact on those homes, and he will come back to that as well as go through the negative criteria. It's somewhat circular in terms of site suitability because, as we consider site suitability, we consider the physical characteristics of the land. They also considered the physical context as well, and the impacts. In terms of site suitability, he believes that the site is particularly suitable for its use by virtue of its context on a transportation artery, also by virtue of its condition. This is a retrofit of an existing site. There's not going to be any tree trimming here or tree clearing to effectuate the use. He continues, as the board can see from the photographs looking out, they do have clear lines of sight here, and so no interference in in that regard. Also, as he previously said NJDOT has determined this is a permitted location as defined by its rules, and the relief here for setback also goes towards site suitability for sure, and given the unique shape of the property, the shallowness of the property, size of the property, they know that the allowable building envelope here is-he'll call it-pencil thin. There's limited capacity to fully conform with the setbacks on all sides. He continues stating that there is an element of stewardship there that does affect virtually any use of this particular land. What's nice about the billboard is, at least on the ground level, it is slender, so it does fit within the confines of a thinner building envelope. When it does rise above, it does work its way into those setbacks. In terms of public impacts, and moving on to the negative criteria, the use is functionally inert. It's an innocuous land use, unlike some permitted uses here. It's not going to generate any traffic that could impact those homes. It's

not going to generate any sound. It does not generate any solid waste or odors or any of those nuisances that may go with the permitted use. It needs no water. It needs no sewer. And visually, the use can be mitigated by the orientation, with the panels facing the road, angled towards the road, not towards the homes, and what Mr. McDonough calls visual saturation. This is not a visual desert, but well-populated area with a number of objects in the area, so this sign here will not stand out as an isolated object in the landscape. Mr. McDonough also thinks the board is also well familiar with the theory of apparent size. As we move away from an object, the object itself gets visually less obtrusive. So, there is a distance aspect here as well as you move further away or further to the north in terms of sign impact. The foot candle illumination levels will not exceed the ambient light levels that are already in the area. It is a lit highway. There are other signs lit along the corridor as well. Some of that is somewhat inherent to a multi-lane, fast-moving highway, and they know that there are multiple studies that conclude that billboards do not impair driver safety. We've got the USDOT studies out of Virginia Tech and Tantella, Associates as well, so there is some foundational predicate in that regard as well. Lastly, Mr. McDonough touches on these shadow studies, since this is before the board, and he tends to agree that this evidence was before the board last time. There's really a graphic clarifier here by making the shadow of the sign red. He knows there were some additional locations that the board or times of day that the board was concerned with.

He states that the sign certainly does cast shadows on homes. Again, it's a relatively narrow shadow that does open up when you get to the panel component on the top, but the shadow impacts are temporary as the object moves through the landscape or through the day. He states that he is not aware of any case law that says the casting of a shadow itself is a reason for denial, much like visibility alone is not reason for denial. Its visual impact, its shadow impacts, and whether there's a substantially adverse impact associated with those, he will say temporary shadows cast during the day as the object moves through the through the space. He has had applications, for example, where a shadow may cast an objectionable shadow over a swimming pool all day long, that's not the case here. As this object, again, given its size, its shape, and you can see the way it moves during the day. They are not denying it will cast shadows on those homes, but again, it will move across those homes during the course of the day. In terms of the impact to the zone plan, he believes that relief can be granted without causing substantial impairment to the zone plan, he has looked at the master plans going back to the 1980s up to the more recent 2020 and 2022. He believes the project promotes the overarching goal for economic development and stable rateable base. Clearly, it's about balance here. There are objectives in the ordinances to maintain the character of the community and that underlying policy to avoid negative intrusions in residential neighborhoods. This is a balancing here, and that's what the board is charged with as to whether the evidence given to them does constitute a substantially negative impact and impairment to the zone plan. In Mr. McDonough's opinion, it does not rise to that level. There will certainly be impacts but given consideration to the ambient aspects of the area, he doesn't believe that rises to the level of substantial detriment to the public or substantial impairment to the zone plan. The use is less intense and less impactful than any and other permitted uses that are allowed in the zone, and at least on the ground level, the sign has significantly less mass than bulkier buildings that are allowed here. This C1 lot is the last lot in the borough before we get our way lead our way into Paramus. So, lands to the west or Paramus lands on the opposite side of the highway are all zone C2, and are all developed with commercial uses. So, in that regard, Mr. McDonough believes the four elements of the *Medici* test are met for both the fact that the applicant is dealing with a use not permitted in the zone, and also with the fact that they have those dual uses here, those two uses on one lot, on the basis that neither use interferes with the other. In terms of the justification for the height relief, Mr. McDonough turns to the *Grasso* case. In terms of the positive criteria, Mr. McDonough believes that all of the use benefits cited above carry forth. Height relief here is necessary to effectuate the use and serve the purpose to communicate to the motoring public. The

height allows for proper clearance over vehicles, trucks, and objects along the roadway, trees, power lines, and the like. That's going to go towards the balancing here of considering site suitability and the fact that the sign does have to elevate with respect to the threshold in the ordinance. In terms of the negative criteria, he believes that none of the *Grasso* purposes for height control are violated here. The added height will not block scenic views, will not create substantially negative shadow effects, falling back on the study that's been given to the board. The added height is not going to create a population density that exceeds the carrying capacity of the lands, and in Mr. McDonough's view, will not give this site an unfair height advantage over other properties by elevating the grade so that the runoff is directed onto other lots. In Mr. McDonough's view, given the surrounding land use context, the added height, smaller panels here than the industry standard will not create an obtrusive, imposing structure compared to what would be allowed here on the ground level and towards the D6, and finally with respect to the C relief, the setbacks in the front yard and in the rear yard, he believes that all relief is justified under the flexible C balancing test, where the benefits of the application as a whole would substantially outweigh the detriments, and we turn in that regard to the *Pullen* case, which tells us to look at applications holistically in terms of the public benefits. They are just going to take those use benefits, carry them on down as the C relief necessary to effectuate a use that he believes does serve a good public purpose and does have merit to it. Mr. McDonough states in terms of detriment, that he believes that the setback relief can be granted without any substantially adverse impacts. The pole is slender. The sign panel is elevated, so the light and air is not materially impacted. The setbacks do not interfere with site circulation or any lines of sight, either on the road or surrounding the site. Lastly, Mr. McDonough makes some commentary on the borough's sign regulations. The borough has some sign regulations for on-premises signs. In his view, they don't apply here because this is an off-premises sign, so it's a totally separate animal from a land use standpoint. If the on-premises sign regulations were to apply, then the D relief would not be needed because the proposed use would be treated as an accessory use. He just wanted to add that commentary that he believes this is second principal use, therefore those accessory standards don't apply. He continues, we know a use can't be both a principal use. Mr. McDonough continues that the use is a form of constitutional free speech and belongs somewhere. He continues that the applicant has given good care to respect the ordinance to the extent it can and still effectuate its purpose, respecting the surrounding landscape and based on all of the testimony, the predicate testimony through Mr. Vogt and the evidence, he believes that this is a proper location for this use, and he also believes the criteria under the statute for grant of relief are all met, giving you the elements of proof under *Medici*, *Grasso* and *Pullen*, and therefore his conclusion is approval is warranted.

Mr. Falkenstern addresses Mr. McDonough with a few questions. He asks Mr. McDonough if he reviewed the board planner's letter of May 1, 2026, to which he responded yes, he did. Mr. Falkenstern continues and asks him if he agrees with the variance and design exception relief identified in that report, not which Mr. McDonough responded – I do. He continues stating that Mr. Behrens called out a couple of things that he didn't think he hit there. There's a minimum requirement for a landscape buffer of five feet existing and proposed, he sort of folded that into existing conditions not being exacerbated, and then he stated that he knows it had been talked about once before. There's overlapping sections of the ordinance that talked about signs projecting into rear, into yards being prohibited. Those are items eight and nine in Mr. Behrens report. He thinks 10 is off the table, that the applicant has demonstrated that it is not seeking relief in that regard, and he believe 11 and 12. 11 the applicant, as he understands it, is still looking to keep the sign on all night, so that relief is still being asked. Mr. Behrens just wants to make sure Mr. McDonough said 11 and 12, because he is looking at his May 1, 2026 – Mr. McDonough interjects - 10, and 12 he believes the applicant has addressed through its lighting plan that that relief is. (there is some back and forth regarding the number sequence in Mr. Behrens memo of May 1 and Mr. McDonough looking at a March 6, letter). Erica Parlavecchio, Esq. asks if they can clarify which variances they don't

need and which ones you do? Mr. McDonough will refer to the May 1, 2026, page 6 - One, they are requiring 2, 3,4,5,6,7,8, and 9. 10 the sign lighting glare through Mr. Vogt's testimony, he believes, compliance has been demonstrated, and then 11 the sign lighting hours are still being requested. So, all of the 11 are still there, except for number 10. Mr. Falkenstern asks, what about the design exceptions? Mr. Behrens states - as a reminder, those are related to the change in the parking configuration, striping in particular. Mr. McDonough responds, yes all of these are still being requested, one through seven, and he would really fall back on the engineering testimony as that relief meeting the lesser standard of reasonableness, appropriateness, impracticability, stricter or literal enforcement of the regulations he believes serves no practical planning purpose, given the fact that you have sworn testimony by an engineer that the site will flow and function safely and efficiently, notwithstanding those deviations with respect to parking location, parking stall dimensions and aisle width and dead end parking.

Mr. Falkenstern asks Mr. McDonough, based on his view of the application site, the surrounding area, and the boroughs zoning ordinance and master plan and testimony presented is it your professional planning opinion that this property is particularly suited for proposed billboard use. Mr. McDonough responded yes, for the reasons he stated. Mr. Falkenstern continues, in his professional opinion, does the billboard create any material adverse planning impact upon the adjoining residential properties? Mr. McDonough responds - no, every change, every land use has some impact, and the test always before the board to weigh is the operative word substantial, and that will be certainly part of the board's deliberations. His conclusion is no; it's not a substantially adversary. Mr. Falkenstern asks Mr. McDonough does the proposed billboard creating material, traffic, parking, circulation, noise, waste, water, sewer, other operational impact upon the site or surrounding area, he responds no, it's a benign land use functionally. Mr. Falkenstern continues stating - turning to the D6 height variance, is it his professional opinion that the site can accommodate the proposed height impacts associated with that height. Mr. McDonough responds - yes, for the reasons that he stated, he believes that none of the *Grasso* purposes of height control are violated here. Mr. Falkenstern continues asking in his professional opinion has the applicant satisfied the positive criteria for the D1 and D6 relief requested. He responds yes, site suitability, special reasons, nexus with the purposes of zoning in the land use law. Mr. Falkenstern as if he believes the applicant has satisfied the negative criteria to which he responds yes, two prongs of relief can be granted without substantial detriment to the public and without substantial impairment to your zone plan. Certainly, he thinks we can conclude that relief, if granted here, is not going to open a floodgate for this land use throughout the community. Especially given the fact that most parcels would not pass that first filter, that's the first layer, through NJDOT. Mr. Falkenstern continues now, finally, taking the application as a whole is it his professional planning opinion that the applicant is satisfied with the burden of proof and the requested approval should be granted. Mr. McDonough responds – yes. Mr. Falkenstern has no further questions.

Chairman Caslin turn to the board's professionals at this point.

Mr. Costa - Three things that jump out to him. Start with height, with the parking, because Mr. McDonough made a couple of comments. He said the height. You want to just stay with the heights of D6. That height, because of this use is necessary. He asks - did you do a study if it was lowered to what's allowed in the zone? Did you look at it, study it, plot it. He continues that he mentioned a couple of things that would impede it. Trucks could impede 35 feet. Mr. McDonough responds that he did not personally study it. He knows that is part of the applicant's due diligence in selecting things. Mr. Costa interjects you basically testified saying that you need this because of that. But in essence, you didn't study it. Mr. McDonough no. Mr. Costa - thank you. Mr. Costa - next question. You said that the height, and you touched very briefly on the shadow, and you said it would have very little, if any, negative impact on

adjacent residential properties. And maybe you weren't at the last meeting that I was at, but I think we brought this up. Would your opinion change if that gentleman had solar panels on his roof? Mr. McDonough responds that it does not change and that he did take that under consideration. He continues that he was at the last hearing where the board was certainly talking about that as well. Mr. Costa states so it wouldn't have any impact whatsoever. Mr. McDonough responded no, it will have impact on coverage over those panels for a period of time, but not all day. It's a moving shadow. There are trees and other objects in the area as well that could have impact on those panels. Erica Parlavecchio, Esq. asks Mr. Costa if he has an address for the house they are speaking about for the purpose of the record. Mr. Gibbons states it's 21 Lakeview because he has it up on Google as well. Counsel states that she understands that, but like you've just pulled this from Google Maps or – Mr. Behrens interjects the question though pertains to a parcel located two properties away from the subject property. Mr. Costa, states right, where a shadow study that they provided that the billboard at 60 feet cast a shadow, and again maybe I'm wrong, but I think you testified that it would have no negative impact whatsoever. Mr. Falkenstern states that they have to identify what the image is coming from. It's Google Maps. Mr. Costa continues - this was brought up by him at one of the previous hearings. He's just asking. Mr. McDonough states it is factually correct that this will have an impact on those solar panels for a certain period of time during the day, not all day. This location is due south of that dwelling, so as the sun moves across the sky, that shadow is certainly going to move. But there will be a period of time during the day where there is a linear shadow, and then of course, as you work your way to the actual panel, he's looking to see if the panels, at least in this study here, are ever actually directly over the home. It looks to him that's the second house in from Rt. 4. At least in this exhibit, it's showing that the line of the pole. So, there will be impact, and he's not saying there's not going to be - Mr. Costa interjects - What I'm saying is I believe you testified saying that there would be no impact, but there could be now an impact. But nothing would preclude the adjacent home from putting solar panels. Mr. Falkenstern states when we say impact, we're referring to an impact on this alleged solar system, right? When he testified to no impact, they identified there was shadows. I don't know. Mr. Costa responds no that's not what he said. We could read the record back, he is sure, but that's not what was said. It was said that there would be no negative impact from a 60-foot-high billboard casting a shadow and he said, did you realize there were solar panels, which was brought up at two meetings ago, so if there isn't, and - - Mr. Falkenstern interjects – for the record we don't know if there is an operational - Mr. Behrens states - that's a bold assumption. Mr. Costa continues stating he thinks he made it pretty clear. He thinks their planner stated on the record a certain thing, and certainly he thinks, in his professional opinion, I think there's an impact. Erica Parlavecchio, Esq. states she would say of Mr. McDonough's testimony is she is not sure he said zero impact at all. She thinks he said there's no substantial impact, which is the variance test. Mr. Costa states let's be right. We have a record. Erica Parlavecchio, Esq. states she thinks the board, regardless of this back and forth, the question for the board is - is there a substantial negative impact on adjacent property?

Mr. Costa continues he started with the height, and there was testimony saying that you can't lower the height to 35 feet with this use, and this use is so great because it does all these things. I'm not sure exactly what it does, but because it does all these things, and there was talk of healthcare and a few other things. It doesn't work at 35 feet. So, you would think if this billboard was at 35 feet, the shadow would be cast would be less, right? Wouldn't be more. It would probably be less. Erica Parlavecchio, Esq. states that she does not know the answer to that. Mr. Costa gives the following example. He states let's take me for instance, he's 6 foot 5'11 ½, if he had a person next to him at three feet his shadow would go a little bit further than the three foot person next to him – 60 foot cast a larger shadow than a 35 foot and he asked Mr. McDonough if he studied it at 35 feet because he made the bold comment that at 35 feet it just doesn't work. Then Mr. Costa asked another question, if there are solar panels does that change the testimony that it would impact at the end of it. Mr. Costa thinks he said yes, it would change it. He continues –

now let's go one step further, the parking, site circulation. Two meetings ago the backup distance doesn't work its 20 feet where 24 in order to back a car out and the two other spots you can't turn them around. So that would have no negative impact either because of this application. He continues stating that they don't have the proper backup distance, they are rearranging the parking lot but quite frankly they don't work – that would have no negative impact either? Mr. McDonough responds that he is going to fall back on a licensed professional engineer under oath who put his name on the plan that the site will function safely and efficiently without a substantially dangerous or adverse impact. Mr. Costa states that his recollection was that he was going to look at it but nothing got revised to his knowledge. Mr. Falkenstern stated there were no revisions. Mr. Costa continues – as far as the light for the billboard it's going to have no effect because if you go out there tonight because of the signs and everything that is on Rt 4, it's not going to matter. He asks if they have studied what is on Rt. 4 and the light spillage that comes off of the property now from that? Mr. McDonough stated that there is ambient lighting in the area related to the highway but there is also a photometric that has been provided with the engineering plans which is showing zero foot candles. Mr. Costa states that he doesn't think that was taken into account as to what he testified to. He states Mr. McDonough testified that the light that comes off of Rt. 4 and the signage that is currently on Rt. 4 spills onto these residential properties so this billboard with the light spillage would have no impact because of that. He further asks if Mr. McDonough studied that. Mr. McDonough states that it's only based on his observations in the dark. He did not take actual light meter readings. He would physically drive by the site at night after these hearings.

Mr. Behrens states going back to the shadow study and the one house in particular that has the solar panels while other houses are being impacted by the shadow, the one that has solar panels is being impacted it looks like at 12:05 p.m. and 1:05 p.m. which is at least an hour and probably more. Mr. McDonough asks if he can repeat that and Mr. Behrens states that 12:05 p.m. and 1:05 p.m. has the “v” or the flag shape of the billboard right over where solar panels are located. Mr. McDonough states that he just wants to stand corrected on one thing - he referred to the solar panel house as the second house in its the third one. Mr. Behrens states that the challenge here is that (a) solar panels are one of the few inherently beneficially uses listed in the MLUL. You can see by the exhibit that it's impacted for a minimum of an hour which in the winter is one hour out of 12 hours of daylight whatever that percentage is it may be more than one. Mr. Costa states it's less. Mr. Behrens continues – it's a challenge and the board is trying to balance things to and they understand the professional's testimony about the economic benefits and of course the board needs to consider the impacts to the entire community and in this case in particular. It strikes Mr. Behrens that the *Grasso* case in one of the prongs specifically points out shadows as one of the things to consider. Mr. McDonough responds stating that, that is a good point, and he understands what Mr. Behrens is saying. He continues stating factually the exhibit shows at 12:05 there's a shadow cast on that particular house, at 1:00 there's a shadow cast on that property, 2:00 its off for what its worth and the only other thing Mr. McDonough would say is he just happen to be looking at Google and when you look at the street view there are street trees and if you look at that particular house taken in December which is the same time as the shadow study there are shadows being cast on those panels by the trees, its in that Google image. Mr. McDonough states he gets the point – it's adding more shadows that are presently there. Mr. Behrens states if one of the houses has panels today if the other houses want it tomorrow – it's something the state of New Jersey has been encouraging for a few decades now.

In no particular order Mr. Behrens will go through whatever he has to ask. The property is developed its not deprived of economic utilization. It has a two-story building which like it was a dwelling at one point but now has two commercial uses. Despite its pencil thin building envelope its developed, functioning and occupied. Mr. McDonough states that is correct, at least the signs are up indicating that. Mr. Behrens

goes through a quick history of the house. About 20 years ago the borough changed it from an R zone to a C1 zone to accommodate the property owner's request. So, that points to the unique development attributes of this site. It may abut Rt. 4 or at least the on ramp of Rt. 4 but it's built with a house because it's next to houses. It's not developed like a normal commercial property, flat roof structure like you see up and down Rt. 4. He asks Mr. McDonough if that strikes him as being a unique aspect of the particular property on Rt. 4 in this part of River Edge. Mr. McDonough responds that clearly, it is a transitional lot, if you will between homes and the highway so to that extent he believes there is some merit to a higher intensity of use at this location as you start to step down from the highway to a non-residential land use to residential uses, so there is somewhat of a progression there that he will rely upon as a transitional lot. Mr. Behrens states that it is recognized that the borough did accommodate the property owner 20 years ago to encourage the economic vitality so, the idea that they need the billboard to it viable remains a question. Mr. McDonough states just for the record these were his notes they called it River Edge Professional Center, and it was occupied by a law firm, an architect then an accountant from 2012 through 2018. Since then, it's been occupied by Astrology Physic from then until now. So, he would offer that it has stepped down from a professional office to a lower order of commercial use. Mr. Behrens states with respect to Mr. McDonough's testimony regarding site suitability, he believes Mr. McDonough has acknowledged that the site is an undersized lot, has existing non-conforming conditions relating to its shape, to its lot width etc. and again. Mr. Behrens finds it to be a challenge to introduce a second principal use in this case to make it work where if it fell it would hit one of the houses – the billboard's sixty feet and the distance from the billboard base of the house is fifty feet or so. So, there's a question can the site be accommodated? He further states that Mr. McDonough's position was that the site has these unique features, can it accommodate it. He states that he is going to ask it the other way – because of those features can it actually accommodate a second use the way its proposed. Mr. McDonough responds that he thinks so with regard to fall zone, these structures are subject to strict UCC requirements to protect against that consideration. He continues, so this land use will have to comply with construction code in terms of wind loads and controls against falling. There are measures there that protects the public interest in that regard. Mr. Behrens asks Mr. McDonough considered existing billboards in proximity to this site. Mr. McDonough states that he knows there are other billboards and his photograph shows it, there is one right across the way and when you look to the left there are other billboards as well and as he drives up and down Rt. 4 he does see other billboards. So, it's not an anomaly in the landscape for sure. Mr. Behrens responds – not an anomaly but it begs the question about need. Mr. Behrens continues that his vague recollection is that the length of Rt. 4 that goes through River Edge is about 1/3 of a mile give or take. At the eastern end of that length on Rt. 4 the borough intersects with the City of Hackensack and at that intersection there stands two existing digital billboards on both sides of Rt. 4. Mr. McDonough responds – yes. Mr. Behrens asks Mr. McDonough if he was aware River Edge has an existing billboard along Rt. 4 on industrial property on the east bound side of Rt. 4, to which Mr. McDonough responds – yes. Mr. Behrens continues asking Mr. McDonough if he is aware that Mr. Behrens hasn't been there with a tape measure but it appears significantly lower than 65 feet in height, maybe the base is 10 feet off of the paved part of the road and he asks Mr. McDonough if that is something he experience driving up and down the road. Mr. McDonough responded yes and he thinks the billboard Mr. Behrens is referring to is the one that shows up in photograph number 3. Mr. Behrens responds it is not. He states that this billboard is further east and it's just to identify that River Edge does have a static billboard on the industrial property on Rt. 4. Mr. Behrens goes to page 3 of Mr. McDonough's document which shows that existing static billboard essentially across Rt. 4 to the southwest of threw Dunkin Donuts about 300 feet from the proposed location of the applicant's billboard, to which Mr. McDonough responded – yes. Mr. Behrens continues – within view there is a digital billboard on Paramus about 1/3 of a mile, to which Mr. McDonough responds yes. Mr. Behrens speaks about that digital billboard being installed and created an impact to the area of River Edge south of Howland Avenue the southern neighborhood of River Edge

where you could see the billboard illuminated at night definitely during the fall, early spring and possibly during the summer. Mr. Berhens asks Mr. McDonough whether or not the introduction of his billboard as proposed would compound that impact to that particular neighborhood as it rises in elevation to the north. Mr. McDonough asks for clarification as to the location of the billboard Mr. Behrens is speaking about. Mr. Behrens states that his question is addition another billboard in that area 60 feet in height what does that do to that neighborhood? Mr. McDonough thinks the photograph helps because it shows at distance the sign does shrink in the landscape. Mr. Behrens states that he believes they have identified at least six existing billboards within a quarter mile or a third mile from the site, so it begs the question about need. Mr. McDonough responds that all he can say that for whatever reason these signs are always filled up you rarely see empty signs, so it shows that there is certainly a demand from both business and beneficiaries of these signs to have them up. It's not an unpopular land use from a use standpoint. Mr. Behrens continues regarding the parking functionality, which has been previously discussed.

Erica Parlavecchio, Esq. steps in and swears in Mr. Costa and Behrens again. She states there was a blurring between questions and testimony, so she wanted to make sure. Mr. Behrens is referring to the *Grasso* case touching on one of the prongs of that case – it's in a C1 zone and allows a maximum height of 30 feet, the adjacent R1 zone allows a maximum height of 30 feet, this billboard is at 60 feet, it's twice the permitted height. He is struggling to understand in the *Grasso* case where the prongs how it doesn't become visually dominant. He states that Mr. McDonough speaks about how it nestles nicely with the other things going on there and billboards are meant to be seen and given those perimeters one begs the question about appropriateness but also how it's not contrary to that aspect of the case where it doesn't become visually dominant. He continues stating that frankly that is the intended purpose of the billboard to be visually dominant. Mr. Behrens continues stating that Mr. McDonough mentioned the MLUL purposes, purpose A the general welfare that's a double edge sword – on the one hand he understands the benefits that Mr. McDonough spoke about to the public, providing information, economic benefit etc., but general welfare also means impacts the Master Plan its own plan and residential development. So, he continues the Board has before it a balancing test. Mr. McDonough states that there is a lot of language in the Master Plan to protect the community's character so that's weighed against the economic benefit and the fact that there is a highway going through the community. Mr. Behrens states and where it does the history of Rt. 4 is it kind of bisects the southern corner in a sense. He would argue that it's a bit different how it relates to Englewood, Paramus where it has miles of roadway and different land uses etc. It is kind of unique as it relates to River Edge that's Mr. Behrens observation. He asks Mr. McDonough if he concurs with that. Mr. McDonough responds that he does not know if the length of the road has bearing of the suitability of the site location, it's really analyzing the area around the site. Mr. McDonough stated as he has said before just the form of the community – you have the highway at the base and then there are many, many residential uses beyond so, what appeals to Mr. McDonough about this application or this location is that it is away from the larger portion of the boroughs' residential uses and the municipality, substantially away. He continues that he knows there are houses right there but the greater mass of the community is further up the hill to the north. Mr. Behrens states that is true.

Mr. Behrens asks for clarification purposes he states Mr. McDonough mentioned the *Bell* case with respect to free speech, Mr. Behrens thinks there is a more recent federal or supreme court case from Austin Texas which does allow in certain instances and certain language municipalities to not permit or specifically prohibit off premises signs which seems to be consistent with the one River Edge has and in relation to the borough's aesthetic goals and the Master Plan impacts the residential development. Mr. McDonough acknowledges that case also and it's really a point of law that he will best leave to the lawyers. Mr. Behrens continues – final point – Mr. McDonough mentioned that DOT really looks at spacing and location on the highway. He asks – does it really take into consideration surrounding land

use impacts to surrounding land use. Mr. McDonough responds that he cannot state what DOT does or doesn't actually do in its review, but the preamble to the regulations that are mostly spatial controls distance. There are approximately a dozen - two dozen purposes of the act and they all pertain to safety and they are chock full of safety goals and objectives in there. Mr. Behrens interjects – safety goals he was talking about land uses and impacts. Mr. McDonough stated he had to go back and look at the outdoor regulations and all he can say of the regulations will only grant these permits in non-residential zones. Mr. Behrens states that those regulations stem from the Highway Beautification Act. Mr. McDonough responds yes and this is not to disparage anything Rt. 4 is not classified as a scenic highway. Mr. Behrens responds, no but the regulations would seem to stem from a concerted effort to conserve the aesthetic environment. Mr. McDonough responded it is certainly a valid consideration.

Questions & Comments from the Board

Mr. Krey states that Mr. McDonough testified that this site was particularly suitable for this use, and he said there were limited options elsewhere. Mr. Krey asked if he examined other potential sites for this. Mr. McDonough stated that he did not look at alternate locations as he said from a pure zoning standpoint of the 3,500 or so lots in the borough, the vast majority are residential where this land use could not go. There are imitated locations from a parcel standpoint, limited to commercial and industrial parcels for spatial reasons, separation from interchanges on Rt 4. Or other signs in other communities. There would even be limited commercial locations where the sign could go. This location happens to pass all of those separation requirements. Mr. Krey states – so reasonably unique. Mr. McDonough responded – yes. Mr. Krey states of someone is looking at a site and they say this is a suitable site, in his mind there are limited exceptions needed to use the site or the purpose. There are no limited deviations here. There's a usage change, a dual usage requirement there is a height requirement, there are multiple setback requirements, there is a laundry list of parking issues, and it goes on and on. Mr. Krey states that does not sound suitable to him. The very nature of the number of requests they have to make and exemptions they need tells Mr. Krey this site is not suitable. Mr. McDonough states how does he reconcile that, there are a number of factors and he gets it, you can say - they are asking for a height variance for twice the height of what's allowed how does that weigh into the suitability of the site itself. He continues that the site is at the bottom of the hill, so he thinks the typography mitigate the added height there. He thinks that the nature of the land form mitigate that height and that goes towards the location at the base of the terrain and also goes towards the suitability. There are mitigating factors that lessen the impact of those other variances that are subsumed within the use or the board can be looked at all as one thing that the package of relief and can certainly conclude that there are too many but in his point of view as he understands the law it's not a quantitative analysis where just the sheer amount of variances becomes the reason for a denial. It's a quantitative analysis and he thinks that you look at the whole thing. The benefits of the project as a whole and the mitigated impacts by the terrain and the surrounding land use context. Mr. Krey responds that its not just quantitative, its qualitative because the applicant is looking for use changes, things that are going to impact the environment, impact the residential value because of the solar panels, etc., etc. So, it's not just a question of how many it's how many in the nature of the request. Mr. Krey states that it's hard for him to land on that this is a suitable site where pretty much everything the applicant needs, needs a variance or exemption or some sort of change. Mr. Krey continues by asking about the pylons. He asks how far is it from the pylon to the first property directly east of this. Mr. McDonough states 50 feet from the base of the sign. Mr. Krey continues that he is having a hard time not thinking that a 4-foot-wide pylon going up the middle of that wall as not being visually unattractive and impeding on his ability to enjoy looking out his front window – that's a pretty negative impact and it will impact some of the other houses a well. There will be a four-foot-wide tower in their vision whenever they look south of their house. Mr. McDonough refers to sheet four in A4 which is the top-down view there is a nice green

wall along that common border so the vegetation are about twenty feet high. From the ground level in terms of the impact of that pole being 50 feet away there are mitigating factors – if that vegetation doesn't completely obscure the sign will certainly filter that base and there is a solid fence along the property line. There continues to be conversation regarding the houses facing that billboard. Mr. McDonough continues to speak about the vegetation and the fence. Mr. Behrens asks Mr. McDonough if he thinks the nine foot setback to the resident's lot line is sufficient. Mr. McDonough states in his view – yes. Mr. Krey states that his understanding is that these variances require that the benefits substantially outweigh the detriment. The positive has been the communication aspects of the billboard for businesses to send a message. Mr. Krey speaks about the costs of putting up and maintaining a billboard. He doesn't see a PSA being an expected use for River Edge. Mr. Behrens suggests that they not speak about content too much but another way to think about this is or question is – this is a static billboard once there is a message it stays there for a month and he thinks the testimony was that it was to be non-public announcements to Mr. Krey's point. Whether it is or not it's irrelevant. But the idea that it will regularly provide public announcements as a promotion of the general welfare may not be accurate or at least limited. Mr. McDonough states that's a good point from both Mr. Behrens and the board can certainly give that weight and whatever credence they want to give it, but it is a mechanism to do that. Mr. Krey continues that he would also put it in the context of communication of the environment we live in. There is broadcast tv, streaming, services, podcasts, etc. there is a plethora of ways to communicate, most of which most of which will be more nimble. Mr. McDonough states that is some way the board can consider but all he can say is that words and graphics are the way people communicate with each other and this is a medium for that. Mr. Behrens interjects and states for the sake of the record, he talked about the typography issue and how it rises up from there, the issues that he was bringing up is that it makes the billboard from his prospective because of his experience with the Paramus billboard it makes it more visible not less. He thinks of the board where to consider it's at a lower point that it somehow disguises it, the case here is that it actually makes it more visible in that neighborhood. That is based on experience because of other billboards. He just wanted to clarify that point.

Mr. Gibbons states that Mr. McDonough testified that this location is suitable and the way he sees it the suitability is that it is on Rt. 4. He continues that Mr. McDonough testified that there are just so many spots in River Edge that just to say if you have to put this in River Edge. There are many other spots in other towns that may be more suitable. They have spoken about Paramus, Rt. 4 covers a lot of ground. So, to say that it's one of the few spots in River Edge may be true but there are many other options the applicant has along Rt. 17 and other roadways that allow this. Mr. McDonough acknowledges that there are other highways in other towns. Mr. Gibbons continues regarding Mr. Krey's point from before, to him it seems that the location and the visibility on Rt. 4 is the only piece that makes this suitable. Just going through Mr. Behrens report it looks like there can be 17 variances give or take. That seems to Mr. Gibbons that the property is not suitable for this use, when you have in the teens the number of variances. Mr. McDonough states that just to be clear he thinks there are 10 variances going by Mr. Behrens report and 5 design exceptions which the board knows is a lesser standard. Mr. Gibbons states okay we will stick with 10 and to him that seems this lot is just suitable because of the amount of drivers that are driving by. Mr. Gibbons continues that one of the things that keeps getting mentioned is the 9 foot setback. A 9 foot rear setback would be hard to give for a deck in someone's back yard let alone a 4 foot diameter pole that's going 60 feet in the air. That's a big deal, and he looks at two large patios in the backyards looking at the photographs, are properties with large patios and people are on those patios on the weekends. So, they might not see it straight because they have fences and bushes but they are looking directly to the backside of a billboard and that's a severe detriment to those two properties and all the properties that line up Lakeview and even Bogert. So, when Mr. McDonough states that there is no significant detriment what is said to those neighbors that have patios in their back yards that are now

looking at not at the front side with the message but the back end of this sign. Ms. Levine would like to add that in addition to the east side of Lakeview they all have front porches, so when they are out on their front porch that is what they are going to see – a billboard and she thinks that speaks to the detriment portion of this. Mr. McDonough states that all he can say towards that is that the board is supposed to consider what the zone plan says is okay. Yes, there is going to be a sign 9 feet from a property line where people are in their backyard – he gets that. It will cast shadows, it will have impact. It will not generate waste, it will not be a dumpster right on the other side of their fence which the zone plan says is okay for food use or some type of use on that regard. It is not going to generate traffic, it is not going to generate emission, it is not going to introduce all of those functional impacts that the zone plan states is okay. He continues stating that he is looking at all of the uses that are allowed here i.e a convenience store, a 7-11 store operating all night. He continues stating that they are at the edge of a zone where there is commercial and residential. There is always tension there, friction for sure and all he is saying is that the board should consider the fact that there are many things that can happen there that could take away the peace, quiet and enjoyment of those residential properties that a sign may not do. Mr. Gibbons asks if any of those uses are being proposed to which Mr. McDonough states - that is not what the board is suppose – Mr. Gibbons states so you are telling him that it could be worse, it could be a dumpster, it could be a convenience store, are those things being proposed, the board can't consider them if they are not being proposed.

Mr. McDonough states that in his view the board is to consider the degree of departure from the zone scheme and he gets it, asking for an object that is twice as high than what is allowed in the zone scheme but it's a functionally quiet use compared to many things here that are louder. He continues – is that a substantial departure from the zone scheme that is all he is saying to think about those other things. Mr. Gibbons states that he understands other things are happening there but there is a functioning business on there and it's been there a while and they are not coming to the board for a 7-11. So, to say it could be worse doesn't make it okay that there are two properties with large patios that are now going to be looking up at the back side of a billboard. Mr. Gibbons continues that they have to understand that the board represents the town and everyone along Lakeview Street is going to be looking at the backside of not the advertisement but the back side of this, it's the ugly side that no one wants to look at and that's what these people will be looking at. Mr. McDonough states that he understands Mr. Gibbons point and Mr. McDonough happens to have a different point of view and he will leave it at that.

Mr. Krey had a follow-up question asking specifically what is the problem putting the billboard at 35 feet. Mr. McDonough stated that this is the applicant's proposal, its line of site and this is what the applicant believes is necessary to effectuate its use. So, what is the planning reason why it could not be lowered again because of the obstructions he previously talked about. Mr. Krey states so they want to clutter it more. Mr. Salvo asks if Mr. McDonough has considered in his analysis talking about the aesthetics, people having to look at this billboard, has he considered the impact on the property values of those homes adjacent to the billboard. He continues if someone wants to sell their property, realtors come, potential buyers and then they say they're not going to get what they can for their house because they have this obstruction. Mr. McDonough responded that he would be outside of his lane as he is not a real estate expert. Erica Parlavecchio, Esq. stopped the line of questioning regarding real estate values and how they would impact in this situation. Mr. Gibbons stated that Mr. McDonough previously testified that along Rt. 4 there were other signs that are visible along the route and this is in addition to it, is that a fair assessment, to which Mr. McDonough stated yes. Mr. Gibbons continued stating the people on Lakeview Street do not have that same obstruction so right now they don't see those signs. Their landscape is not changed by directional signs, other billboards but would this impact that view correct? Where typically if you drove down Lakeview Street towards Rt. 4 you likely would not see Rt. 4 signs

but now you will see this. Mr. McDonough responds that when you drive down Lakeview you will certainly see – well he states he will be careful drawing a conclusion, but he is looking at a Google image and you see Rt. 4 as you drive down Lakeview Street so you would also see the glow of Rt. 4 at night. Mr. Gibbons stated - but you're really not going to see the massive signs that you do when going down Rt. 4. He continues that he believes it was Mr. McDonough's testimony that there is already a lot of signs and a lot of things happening on Rt. 4 and this is an addition to that. Mr. McDonough responds yes- on the approach to Rt. 4 from Lakeview the line of sight sees Ethan Allen. Mr. Gibbons responds – right you are going to see something but now you will see the backside of this big sign. Mr. McDonough states that he does not know the extent of how far that sign would go as he has not done a crane test or a balloon test to see where you will or won't see the top of that sign, but certainly some houses will be impacted and drivers as you work your way down Lakeview Street will see that sign at a certain point. Mr. Gibbons continues – and his last point being the shadow, he knows that they have spoken about the impact mid-day which is his understanding that more of the stronger light you light you might get from a solar panel, that particular house is going to be covered for at least an hour, maybe a little bit more maybe a little bit less in the mid-day, in the best light of the day and its seriously going to be impacting that particular house more than the other houses. Mr. McDonough states that all he can say is that there will be a shadow impact on those homes, but he does not know what the impact will be on those solar panels – he does not know. It's not making them completely dark; there is ambient light even in the shade. Mr. Gibbons just thinks it's another detriment to the people living along that street.

Ms. Boland states that Mr. McDonough stated that it would be two principal uses versus accessory structure, she asks Mr. McDonough if he knows how many other properties in River Edge have proposed two principal uses. Mr. McDonough states that he does not know that. Ms. Boland states she thinks not many as it's not something the board would usually approve of, she would think, two principal uses. Erica Parlavecchio, Esq. interjects telling Ms. Boland that every application rises and falls on its own merits so whether or not the board would approve it on another site is not irrelevant but not entirely relevant to this application. Mr. Behrens asks if that speaks to consistency neighborhood consistency. Counsel responds it could, but the answer is he doesn't know. Ms. Boland continues with the fact that everybody has raised the location to residential. She has an issue with the fact that they plan on having the billboard lit all night long and at a residential location she doesn't see any reason why it hold be allowed to be lit all night long. She would say that from 11:00 p.m. to 7:00 a.m. it shouldn't be lit at all because of the impact on the residential property. Mr. McDonough states that the applicant's proposal is what the applicant's proposal is. Ms. Boland states that's all the issues she has other than the other significant issues raised by the board's planner and other members. Mr. McDonough states the board as a part of a use variance mechanism can impose reasonable restrictions including hours of operation. Mr. Falkenstern states that the applicant would stipulate as a condition of approval to shut the lights off at midnight. Ms. Levine states that she is not going to beat a dead horse – everybody touched on all the points that she happens to agree on, so she has nothing to add on that.

Chairman Caslin as for a motion to open to the public. So Made – Mr. Gibbons; Second – Ms. Boland. All in favor – Aye. There being no one in the audience in chambers or on Zoom Chairman Caslin asks for a motion to close o the public. So Made – Mr. Gibbons; Second – Ms. Boland. All in favor -Aye

Erica Parlavecchio, Esq. had a question for Mr. McDonough, she states that a lot of his testimony was well another use could go here that would use utilities and other things but her question to him would be unless it was moving into the same building there's two tenant spaces you could put another permitted use inside that building – of the applicant were to build another structure on the site it would still need another D variance because it would have two principle uses on the site – is that accurate. Mr.

McDonough responds states that if the applicant were to keep the existing building and put something else on the property yes, he would have to check to see if you allow for two principal structures on a property he doesn't know, but if they were two different uses yes they would be right back here in front of the board, but also what he considers land uses he not only considers what's permitted but reasonable probability of what could go there with the imposition of variances and conceivably he has to think about a knock down or something new. He says 7-11 but he doesn't know if it fits here or something along those lines, a mini mart or something along those lines. There is just a plethora of uses that could go here. He continues stating that what is nice about this is that you know what you are dealing with in terms of the visual and other impacts, you don't necessarily know that with a permitted or probably is. Mr. Behrens states to be clear it's not a vacant it's developed with a two-unit building with permitted uses. Mr. McDonough states that they have seen them knocked down with a higher and better use. Mr. Behrens asks if the applicant plans on knocking down the building, to which Mr. McDonough states no but the zone plan says you could. Erica Parlavecchio, Esq. states she is hearing a lot of testimony that it could be worse, we have a productive building and you're putting another use requiring an additional D variance. That is the only reason she asked. Mr. McDonough states all he is saying is that there are many things that could go there that could have more impact, and it could be a reuse of the existing building. Mr. Costa states clarity for the record – Mr. Gibbons touched on it very closely, site suitability, change on the use, adding another use to an undersized property you need every variance 10 possibly more. He continues going back to what he asked earlier – they didn't study to figure out whether or not they really needed these D6, they just drove by it, looked at and then said the client said no you need 60 feet. In reality they don't even know if they need 60 feet that's the first thing. The second thing, they are changing the parking, the parking doesn't work. Mr. Krey touched on numerous things. The site is not suitable based on all of the above and the studies really haven't been done to prove otherwise. He continues stating Mr. McDonough can't really say they need 60 feet, maybe 59 works but they don't know because he testified and answered his question and they didn't do it. Mr. McDonough states that he did not personally do it their applicant is a seasoned developer – Mr. Costa states what does that have to do with anything – he woke up one morning and said I need 60 feet. He continues stating that every site sits on its own merits – this particular site, not typical, this one. Mr. McDonough states all that he can say is this is the proposal before the board – 60 feet. Mr. Costa states that what he is saying for the record based on the comments from the board, it's an undersized lot, it changes the circulation which does not work in his opinion, there are no changes that came back to the board and from his recollection of the testimony from the engineer actually agreed that the spaces did not work. The back up distances do not work at 90 degrees, the other two spaces that are pointing to the west do not work, you cannot turn them around, so it impacts it. Then they have uses that exist. So, the parking lot is being utilized, now it's being changed where it doesn't work, so how can that be a positive and not a negative. He continues stating that Mr. McDonough then talks about all different other aspects where they could put it, what they can do. Mr. Costa had another question – if they put this on this site don't they impact the future development of this site. To a permitted use, to a permitted building. Mr. McDonough responded that it would trigger another use variance. Mr. Costa responds that it would not. He continues stating that if he tore this house down and built an office building on stilts because of the proximity on Rt. 4 that he can create more parking and have the parking work with a driveway that you can get in and out not a 12-foot driveway that exists today he could put a standard driveway wouldn't that be a better use. This particular proposal will defeat that purpose. Mr. McDonough states that in his view approval of this sign here does not foreclose the ability to redevelop or occupy the site. Mr. Costa asks – how does it not. Mr. McDonough responded- if the board were to grant the approval for the dual use here, for the two uses that would run with the land. He continues – if you were to knock down the building and put a new building here it would be an alteration – Mr. Costa interjects stating that they would impinge on any future re-development of this site to a permitted use that is allowed in the zone with ample parking, with the proper distances, back up

distances so on and so forth and the driveways, the circulation impacts it. Erica Parlavecchio, Esq. states that she is not sure if Mr. McDonough would be the best witness to be answering this question, she thinks he can answer from a planning prospective if the location of the sign makes sense but in terms of back up distances, driveway, setbacks and other items she is not sure he is appropriate to answer. Mr. Costa interjects stating that Mr. McDonough has made a lot of comments in his testimony- to use, to height those are the two big ones. Erica Parlavecchio, Esq. is saying in terms of potential future uses Mr. McDonough wouldn't design a site because he is a planning professional. He can answer the question from a planning perspective she is not sure if he can say if another building can be put on the site. Mr. Costa states that what he is trying to say is that they are talking about a 6-story building, nine feet off of the property line in a narrow lot that exits with something on it. We're not zoning it into utility there is something there today. But again, just for clarity for the record. Erica Parlavecchio, Esq. states that she feels Mr. McDonough provided some additional testimony and she knows no one participated. She asks Mr. Falkenstern if they should open to the public one more time in case people have comments on the additional testimony. Ms. Levine states – Mr. McDonough just used the words seasoned developer, to which he responded – yes. Ms. Levine continues – he is a seasoned developer and he is choosing this spot in a residential neighborhood, they have all of Rt. 4, all of Rt. 17, all of Rt. 46 there are all other highways where there is no residential homes around, has the applicant investigated all those areas that he may not need 10 or more variances for. Mr. McDonough responds that the applicant Pacific Outdoor Advertising has built billboards throughout New Jersey. It's not its first billboard application. Erica Parlavecchio, Esq. states that the applicant owns this site and there could be other sites in the municipality – that might be – she understands what he is saying but it may not be proper for him to say. Did he look at every property in the town? Mr. Behrens states that he thinks they just need to be careful -and he thinks the point well taken, there's plenty opportunity elsewhere. The board can't consider whether or not there are more suitable sites, they have to look at the one in front of them. They haven't had any testimony from the developer as to why he or she thinks it's a good site the board doesn't know, they would just be speculating, the board doesn't know. It goes to the question how does this site make sense.

Motion to open to the public – So Made – Mr. Krey; Second - Mr. Gibbons. All in favor - Aye There being no one in the public a motion to close to the public is made by Mr. Gibbons; Second – Mr. Krey. All in favor – Aye. Chairman Caslin asks if there are any further questions or comments. Mr. Behrens states- not to reiterate the statutory criteria the board has to respond to there is a hierarchy for different type of variance relief that is being requested there is one if not two D1 use variances. Behrens agrees with Mr. McDonough as far as the statutory framework that has to be addressed. One starts with the D1 use variance in accordance with the *Medici* case law for non-inherently beneficial uses. One addresses the issue of site suitability both within the context of the community and specific site attributes, whether or not the site can accommodate the use. Special reasons Mr. McDonough mentioned. There are a number of purposes advanced by the municipal land use law that the board can take into consideration. Then there is the negative criteria – the first prong is whether or not there's any substantial detriment to the public good to the granting of the relief. Then there is the enhanced burden of proof which is the second prong of the negative criteria - whether or not the relief would be inconsistent with the intent and purposes of the Master Plan zoning ordinance and the memo talks about some of the Master Plan and zoning ordinance considerations. That's one category of variance relief for the board to consider. The second is the D6 height variance a 60 foot billboard is proposed where a maximum principal building height of 30 feet is permitted. The test generally relates to the Coventry conditional use case law can the site accommodate the use – what does that mean – can it deal with the issues created by the number of variances etc. It also has to deal with the negative criteria as far as any substantial detriment to the public good, doesn't have the enhanced burden of proof but you have to consider whether or not there would be any substantial (and that's a key word- substantial) to the impairment to the intent and purpose of the

Master Plan and zoning ordinance and finally there is the litany of C variances. Again, there is a question as to whether or not there are hardships impacting the property or if there are any public benefits that outweigh detriments, the same negative criteria applies. Finally, for the design exceptions or waivers it is a question of whether not the applicant can practically accommodate that. Is there a practical reason why they can't comply.

Mr. Falkenstern states that they rest on the application and he just has a brief closing on the application. Mr. Falkenstern thanks the professionals and members of the board. He states that the applicant has now completed its proofs. They presented professional planning and engineering testimony addressing the proposed use, the requested height relief, the site plan and potential impacts on the surrounding properties. At the onset there is an important legal issue that should be clear on this record. The borough prohibits billboards throughout the municipality. There is no zoning district in River Edge in which a billboard is permitted. That borough wide prohibition implicates constitutional principles addressed by the New Jersey Supreme Court in Bell vs Stafford Township and E&J Equities v. Board of Adjustment of Franklin Township. Under the borough's present zoning scheme, an applicant seeking approval for a billboard must come before this board and request variance relief. The applicant has done exactly that and presented its proofs under the D1 and D6 and related variance standards. We note and preserve that the board and constitutional issue concerning the borough wide prohibition is not something for the board to decide tonight and the variance process must remain a genuine site-specific means of obtaining relief and cannot simply operate in practice as a continuation of the borough wide prohibition itself. Turning to this property Mr. McDonough explained why the site is particularly suited for the proposed use. It is located directly along Rt 4, the only roadway in the borough classified as a major highway in a commercial district permitting a broad range of commercial orientated uses. Also explained that the sign faces directly toward Rt. 4 rather than the adjoining properties. From a site plan standpoint Mr. Vogt testified that the existing billboard and uses are not enlarged or intensified by the billboard which generates no regular parking demand and it does not worsen the existing parking conditions on site. He further testified that the billboard generates no customers, employees, deliveries, trash or water demand. In short, the proposed billboard essentially adds no operational burden to the property or the borough. With respect to the requested D6 height relief, Mr. McDonough addressed the applicable *Grasso* considerations. He testified the proposed height is necessary to effectuate the use including appropriate clearance and visibility and that the additional height does not create any types of adverse impacts associated with height regulation. Ultimately this application must be decided upon the competent evidence contained in the record and statutory standards governing the relief requested. New Jersey law requires findings concerning specific adverse impacts to be rooted in substantial proofs rather than speculation or unsupported allegations. Here no adjoining property owner has appeared in opposition, there has been no competent, substantiated evidence in the record establishing any actual adverse impact upon the neighboring properties directly attributable to the proposed height. Taking the record as a whole they respectfully request that the applicant has demonstrated that this property is particularly suited for the proposed use and the site can accommodate the proposed height and the requested relief can be granted without substantial detriment to the public good and without substantial impairment to the intent and purpose of the zone plan and zoning ordinance. For those reasons we respectfully request that the board approve this application. Thank you.

At this time Chairman Caslin looks for a motion on the application. Mr. Krey makes a motion to approve the application as submitted with the conditions that were agreed to from lighting times and other exceptions that were agreed to during testimony for the use variances, the dual use variance as well as the site-specific variances that were listed on the initial denial. Erica Parlavecchio, Esq., asks Mr. Krey if he is making a motion to approve. Chairman Caslin states Mr. Krey has made the motion – is there a

second. Mr. Gibbons asks if they have to have a second to continue to which Chairman Caslin responds – yes. Ms. Boland will second that. Roll Call – Ms. Levine – no; Ms. Boland – no; Mr. Gibbons – no; Mr. Salva – no; Mr. Krey – no (Erica Parlavecchio, Esq. just wants to make it clear to Mr. Krey that he made the motion to approve but he is voting no on the motion to which Mr. Krey responded correct) Counsel continues stating there is a motion on the floor so we should continue with it but she is not sure its proper to make a motion to approve and then vote in opposition to that motion. She thinks to second it is fine but if you’re making the motion to approve the application, she thinks the better practice would have been to make a motion to deny. Mr. Falkenstern may disagree. She continues that there is already four no’s regardless of your vote so she thinks they can finish the vote. Chairman Caslin votes no. Counsel state that she thinks the cleaner thing to do is to make a motion to deny as she is not sure you can make a motion to approve and then vote against it. She thinks seconding that motion is fine. It’s a deemed denial because there are five affirmative votes. So, if the board has done it that way in the past, she is not going to buck the way the board typically does it. Chairman Caslin states for clarity on the record – is it fatal the fact that Mr. Krey has made a motion to approve and then voted on it. Erica Parlavecchio, Esq. states that she would have to look into that. Chairman Calin states – let’s make it clear and make another motion on the application.

They are looking for a motion to deny the application as presented. Mr. Gibbons makes a motion to deny the application for all variances requested; Second – Mr. Salva. Roll Call – Ms. Levine – yes; Ms. Boland – yes; Mr. Gibbons – yes; Mr. Salva – yes; Mr. Krey – yes; Chairman Caslin – yes. The vote is 6 to 0, the application is denied.

Motion to adjourn – So made – Mr. Gibbons; Second – Mr. Krey. 10:40 p.m.