

COMMUNITY PLANNING
LAND DEVELOPMENT AND DESIGN
LANDSCAPE ARCHITECTURE

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B U R G I S
A S S O C I A T E S , I N C .

MEMORANDUM

To: River Edge Land Use Board
From: Thomas Behrens, Jr., P.P., AICP
Subject: IAAT Services, LLC – Proposed Billboard
Preliminary/Final Site Plan Approval w/ 'd'(1) Use, 'd'(6) Height & 'c' Variance Requests
Block 1405 Lot 4
41 Grand Avenue
Date: May 22, 2025
BA#: 4265.07

INTRODUCTION

The Applicant, IAAT Services, LLC is requesting preliminary and final site plan approval as well as 'd'(1) use, 'd'(6) height and 'c' variance relief to install a freestanding 60-foot high, two-faced static billboard at the above-referenced site currently developed with an office building and associated site improvements to remain. The property is located in the C-2 Commercial Office Zone wherein billboards are not listed as a permitted principal use. The nature of proposed improvements and extent of required variance relief are detailed herein.

SUBMISSION

Our office is in receipt of the following items for review:

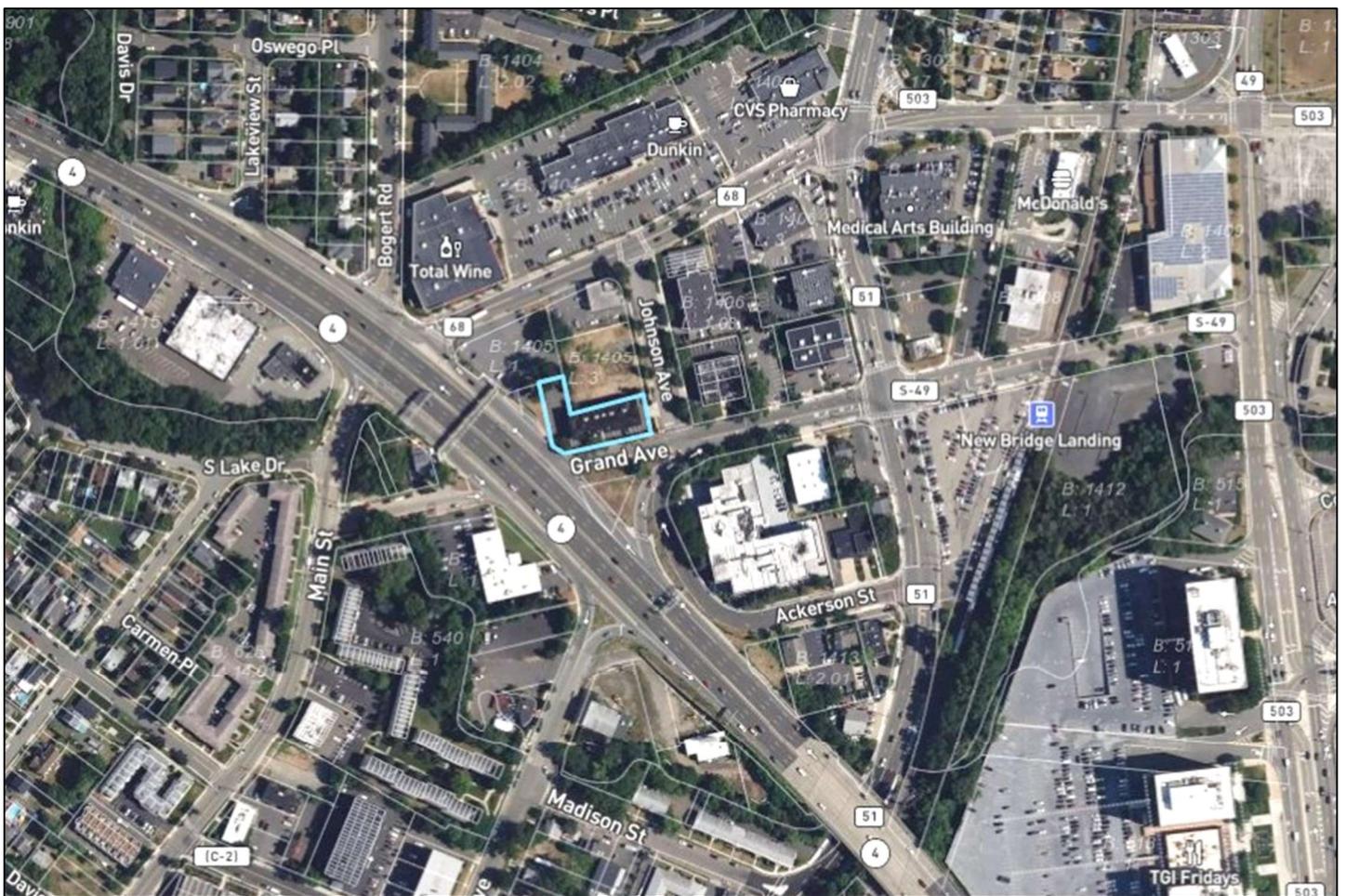
1. Application forms and documents.
2. Property survey prepared by Lakeland Surveying dated January 9, 2025.
3. Site plan (3 sheets) prepared by L2A Land Design, LLC dated April 21, 2025.
4. Letter from Law Offices of Stephen P. Sinisi, Esq., LLC dated May 21, 2025.
5. Rider to Application – Planner's Variance Justification prepared by Law Offices of Stephen P. Sinisi, Esq., LLC dated April 29, 2025.
6. Rider to Application - Photo renderings undated.

PLANNING REVIEW

Property Description

The site, identified as Block 1405 Lot 4 in Borough tax records, is an 18,597 square foot, L-shaped corner lot with frontage on Grand Avenue, Johnson Avenue and Johnson Street/Route 4 Marginal Road. The property is developed with a three-story office building with ground level parking and associated site improvements. The site is characterized by 95% impervious coverage. An undefined portion of the site is located within the 100-year floodplain associated with Coles Brook. Development surrounding the property consists of commercial uses to the north, office and commercial uses to the east, office uses and Route 4 to the south and Route 4, office and residential uses to the west. The aerial image below provides a general overview of the site and surrounding development pattern.

Image 1 - Site Aerial Photo



Source: NJ Parcel Explorer, Rowan University. Accessed May 22, 2025.

Proposed Development

The Applicant is proposing a LED illuminated 60-foot high, two-sided, v-shaped static billboard at the southwest corner of the site. The existing three-story office building and associated site improvements including ground level parking will remain. Each of the two 14-foot by 48-foot sign faces will have a sign area of 672 square feet. The Applicant shall confirm if the Billboard will be illuminated 24/7.

The following is offered for the Board's consideration with regard to specific elements of the development application:

1. Photo Renderings. The document submitted with the application entitled "Rider to Application – Photo/Colorized Renderings" does not attribute any authorship. The Applicant shall confirm who prepared this document and that the renderings and measurements are accurate and to scale. In addition, the date of the photos and document preparation are not provided. The renderings depict a maximum sign height of 76.32 feet measured from a point of 0 feet which is not elevation 0. Other application documents indicate the maximum elevation is 76.32 and the proposed height is 60 feet. The proposed billboard height must be confirmed by the Applicant and the renderings revised if necessary to depict the proposed billboards true dimensions.
2. Space for Signatures. The space for Borough signatures on the site plans should be revised from "Zoning Board of Adjustment Approval" to "Land Use Board Approval".
3. Billboard. The application materials represent the billboard as being "static" which is generally defined as not moving or changing. The Applicant shall confirm this is the case and that a digital billboard is not proposed. In addition, the Applicant shall confirm whether a static sign can be replaced with a digital billboard in the future.

It is our understanding that there are different standard billboard sizes including 14 ft x 48 ft, 10 ft x 40 ft, 10.5 ft x 36 ft, etc. The Applicant shall confirm why the proposed 14 foot by 48 foot size and 60 foot height are necessary for this location in lieu of alternatives, including those that exist along Route 4, and at least two of which are located in River Edge less than 1,000 feet from the site.

It is noted that the existing building has two building mounted signs, one on each the south and west building elevations facing Route 4 that are nonconforming with respect to sign height and sign area.

4. Lighting. Each billboard face will be illuminated with 4 LED floodlight type fixtures. The site plans indicate these fixtures will have color temperatures of 5,000 Kelvin which is indicative of bright white light or day light. The Applicant shall confirm if lighting fixtures with a reduced or adjustable color temperature are available. Given the proposed orientation and elevation of the two-faced billboard, the Applicant shall address impacts to surrounding residential and nonresidential uses.
5. Parking & Traffic. The proposed location of the billboard sign base is in an existing landscape island and therefore does not impact on-site parking and circulation. The Applicant shall address impacts to surrounding roadways and traffic, particularly on Route 4.

6. Landscaping. The proposed billboard base is located in a landscape island in the southeast corner of the site which is generally the only significant landscaped bed of the site given the existing impervious coverage over 95%. This, among other reasons including existing and proposed nonconformities, brings into question whether the site can accommodate a second principal use and structure. Based on Google Street View imagery of the site dated August 2023, it appears that at least 5 trees have since been removed from the site including 3 in the landscape area where the billboard base is proposed. The Applicant shall confirm the extent of proposed tree replacement.
7. Compliance with Prior Site Approvals. The Applicant shall address compliance with all conditions of prior site approvals.

Master Plan. The Borough’s Master Plan contains the following relevant goals and objectives:

- Maintain and upgrade existing commercial areas to provide a complete range of office, retail and ancillary development.
- Assess all proposals for commercial development in reference to market conditions, traffic impacts and general impacts on community affairs.
- Maintain adequate traffic circulation, improve safety and minimize impacts of traffic on community.

Zoning. The site is located in the C-2 Commercial: Office Zone wherein the existing office use is permitted but the proposed billboard is not listed as a permitted principal use requiring ‘d’(1) use variance relief. The following table illustrates the requirements of the C-2 Zone as compared to the existing and proposed conditions.

C-2 Zone Requirements

| Requirement | C-2 Zone | Existing | Proposed |
|------------------------------|----------------|--------------------------------------|---|
| Min. Lot Area | 15,000 sf | 18,596.90 sf | No Change |
| Min. Lot Width | 150 ft | 200 ft | No Change |
| Min. Lot Depth | 100 ft | 75 ft (E) | No Change |
| Min. Front Yard | 30 ft | Building: 14.61 ft (E) N/A | No Change Billboard: 10.78 ft (V) |
| Min. Side Yard (one/both) | 15 ft/35 ft | Building: 3.27 ft (E)/40.3 ft N/A | No Change Billboard: 10 ft (V)/37.86 ft |
| Min. Rear Yard | 20 ft | Building: 3.27 ft (E) N/A | No Change Billboard: 17.86 ft (V) |
| Max. Building Coverage | 40% | 40.61% | No Change |
| Max. Lot Coverage | 80% | 95.4% (E) | 95.55% (V) |
| Max. Building Height | 2.5 sty /35 ft | Building: 3 sty (E)/<35 ft N/A | Building: No Change Billboard: 60 ft (V) |

(E): Existing nonconforming condition; (V): Variance relief required.

Relevant purposes of the Borough's Zoning Ordinance as stipulated in Chapter 416-3 are as follows:

- Promote orderly development to protect and enhance the character of the Borough of River Edge through the regulation of the uses of land and lots within all zoning districts specified herein.
- Regulate incompatible land uses and land use development and prohibit uses, buildings or structures which are not compatible with the character of the surrounding development or those uses permitted within the specified zoning districts.
- Provide adequate light, air, open space and privacy and convenience of access to property.
- To promote a desirable visual environment through creative development techniques and good civic design and arrangements;

Required Variance Relief.

We agree with the Applicant's Attorney that the current prohibition of billboards in Section 416-44.A.(1) of the Borough Code is not enforceable. In addition, we agree the Board cannot regulate sign or billboard content that would violate free speech as protected by the First Amendment. This should not be misconstrued to conclude the proposed billboard is then permitted by default. As such, the Board should disregard the explicit billboard prohibition provision in Section 416-44.A.(1) in its consideration of the application to be treated as a typical 'd'(1) use variance application for a nonpermitted use in its review of the applicable statutory criteria summarized herein.

Based on our understanding of the applicable case law and regulations, local land use boards when reviewing applications for billboard development are able to consider "time, manner and place" requirements with respect to freedom of speech that are content-neutral and narrowly tailored to serve a governmental interest such as traffic safety or aesthetics. These may include requirements for display timing, location, size and number of signs per distance of roadway. Setback and aggregate number of signs requirements may also be acceptable in the appropriate context. The Board must also consider whether there are other available channels of communication.

The following is an overview of required variance relief:

1. 'd'(1) Use. The proposed billboard constitutes a second principal use and structure on the property and is not listed as a permitted principal use in the C-2 Zone wherein the site is located. In addressing the applicable statutory criteria for 'd'(1) use variance relief, the Applicant shall address the several existing billboards within ¼-mile of the site, including two in River Edge, one on each side of Route 4, in demonstrating need and site suitability. It is noted that the subject site does not appear to have direct frontage on Route 4 as do the other sites in River Edge with existing billboards. Nevertheless, it is assumed that NJDOT approval is required.
2. 'd'(6) Height. The C-2 Zone permits a maximum height of 35 feet where the application materials indicate the proposed billboard height is 60 feet but the renderings seem to depict a height of 76.32 feet. The Applicant shall confirm the proposed billboard height.

3. 'c' Maximum Lot Coverage. The C-2 Zone permits a maximum lot coverage of 80% where the site has an existing nonconforming lot coverage of 95.4% that will be increased to 95.55%. The Applicant shall address provisions for on-site stormwater management.
4. 'c' Maximum Front Yard Setback. The C-2 Zone requires a minimum front yard setback of 30 feet where the proposed billboard will have a nonconforming front yard setback of 10.78 feet.
5. 'c' Minimum Side Yard Setback. The C-2 Zone requires a minimum side yard setback of 15 feet and the billboard will have a nonconforming side yard setback of 10 feet.
6. 'c' Minimum Rear Yard Setback. The C-2 Zone requires a minimum rear yard setback of 20 feet where the proposed billboard will have a nonconforming rear yard setback of 17.86 feet.

STATUTORY CRITERIA

'd'(1) Use Variance Relief

The Municipal Land Use Law (MLUL) sets forth the statutory positive and negative criteria for variance relief. It permits a Zoning Board of Adjustment to grant a 'd' variance "in particular cases and for special reasons." The courts have determined that special reasons include a showing by the applicant that the granting of the variance will effectuate the intents and purposes of the MLUL and advance the goals and objectives of the local master plan. This is the "positive criteria" of the statute.

An applicant for a 'd'(1) use variance is obligated to address the planning issues raised in *Medici v. BPR, Co.*, 107 NJ 1 (1987). In accordance with the guidelines set forth in *Medici*, an applicant for a use variance must demonstrate that special reasons are satisfied by either showing that the proposed use is one which "inherently serves the public good" or that the proposed use promotes the general welfare because the proposed site is particularly suitable for that use. The *Medici* decision provides that in conjunction with the demonstration of the negative criteria, an enhanced quality of proof must be demonstrated to indicate that the granting of the requested use variance is not inconsistent with the intent and purpose of the Master Plan and Zoning Ordinance.

'd'(6) Height Variance

The application requires variance relief pursuant to NJSA 40:55D-70(d)(6) for the height of a principal building or structure which exceeds the zone's maximum height permitted by ten (10) feet or ten percent (10%). As noted above, an applicant requesting a 'd' variance must demonstrate that special reasons exist for the granting of the variance, and that the granting of such variance will further the purposes of the MLUL (positive criteria). In addition, the applicant must prove that there will be no substantial detriment to the public good and no substantial impairment to the intent of the Master Plan and Zoning Ordinance (negative criteria).

In *Grasso v. Spring Lakes Heights*, 375 N.J. Super. 41 (App. Div. 2004), the court explored reasons for adopting height controls in residential zones and some of the special reasons and negative criteria arguments that might be advanced in seeking a variance from such controls, likening the test established for 'd'(4) FAR variance relief applications. As such, the applicant is not obligated to show that the site is particularly suited for the proposed height. Rather, an applicant

requesting 'd'(6) variance relief must show that the site can accommodate the problems associated with a height which is greater than that permitted by the ordinance. The applicant may also discuss the topography of the site, and whether there are any unusual aspects of the topography which would warrant variance relief.

'c'(1)'/c'(2) Variances

The statute provides two approaches to 'c' variance relief, commonly referred to as the 'physical features' test and the 'public benefits' test. These are identified as follows:

1. Physical Features Test: An applicant may be granted 'c'(1) variance relief when it is demonstrated that the noncompliant condition is caused by 1) an exceptional narrowness, shallowness, or shape of the property, 2) exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or 3) by reason of extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon.
2. Public Benefits Test: An applicant may granted 'c'(2) variance relief where it can prove the following: 1) that the granting of the variance will advance the intents and purposes of the Municipal Land Use Law; 2) that the benefits of granting the variance substantially outweigh any potential detriments. The benefits are required to be public benefits rather than a benefit that simply accrues to the property owner.

In addition to the above, an applicant must address the Negative Criteria of the statute. To meet the negative criteria, an applicant must demonstrate the variance can be granted without substantial detriment to the public good and it will not substantially impair the intent and the purpose of the master plan and zoning ordinance.