

**BOROUGH OF RIVER EDGE
LAND USE BOARD
MEETING MINUTES
ZOOM MEETING
February 25, 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.

There will be a curfew of 10:00 p.m. this evening.

Roll call:

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

ALSO PRESENT: Marina Brown, Esq., Thomas Behrens, Robert Costa, Jessica Hall and Lisa Ciavarella

CORRESPONDENCE

None

DISCUSSION ITEM(S):

- (1) Appointment of Conflict Counsel – Marc E. Leibman, Esq.

Ms. Brown advises the Board that her firm has a conflict on a recent resubmitted application, so they have prepared another Resolution like they did for this current billboard application. Motion made by Mr. Chinigo – Second – Mr. Gibbons. Roll Call vote – Mayor – yes; Chairman Caslin – yes; Mr. Krey – yes; Ms. Boland – yes; Mr. Gibbons – yes; Mr. Chinigo – yes; Mr. Salva – yes; Mr. Gautier – yes; Councilman Glass – yes; and Ms. Levine – yes.

- (2) Public hearing on Amended Housing Element and Fair Share Plan

Mr. Behrens is sworn in by Ms. Brown. He advises that the Board adopted a Housing Element Fair Share Plan in June 25, 2025, to address the Borough’s 4th Round state mandated affordable housing obligations.

As they went through the process a few updates were made that he will explain. He explains the goal in participating in the process and trying to achieve what is known as compliance to is to preserve the Borough's zoning ordinance, for the 10 year compliance period beginning July 2025 until 2035 assuming the Borough gets certification which will make them immune to what is called builders remedy lawsuits whereby if the Borough didn't have immunity – a builder could come in, pick a site, sue the town in order to build affordable housing. This avoids all that. He gives an overview of the new legal framework which he shares on the screen and can be viewed on the Borough's website. Going through the list he states that River Edge had one challenger in the way of Fair Share Housing Center who is the state's affordable housing advocate where they also challenged over 420 municipal plans. River Edge had to work with them through the Affordable Housing Dispute Resolution Program known as "The Program" for short. He gives an overview of how that program works to the Board. Having worked through that the Borough was able to achieve a middle ground and the Fair Share Housing Center executed a settlement agreement with the Borough in January of 2026 and the next step in the process and the reason we are here tonight is to essentially implement the terms of those agreements and make adjustments to the June plan that was adopted and once these adjustments are adopted to the housing plan the Borough also has to adopt the implementing ordinances by March 15th so its anticipated that those ordinances will be introduced at the Borough council meeting tomorrow. Then this Board at the next meeting will conduct a Master Plan consistency review on those ordinances and then the Borough council will adopt those ordinances by the deadline. He then explains the steps going forward.

Then he gives an overview and how the Borough complied (all of which is posted on the Borough's website). He then goes through the Borough's fair share obligation. He shares a chart showing an overview of the Borough's various obligations beginning with the first and second and third round and now fourth round. The Borough has satisfied rounds one, two and three having the senior residents at St. Peter's Apostle Church on 5th Avenue, utilizing 18 units. There are three other group homes in the Borough – New Concepts for Living, Community Options and EIHAB Human Services. In the third round the Borough adopted new redevelopment plans for the New Bridge Landing Station Redevelopment Area and Kinderkamack Road Redevelopment Area. He continues going through the fourth-round compliance plan. The next step is the Board's adoption of this amended housing plan as recommended by Mr. Behrens. Then if all goes well the Borough has met their deadline by March 15 – then it will be reviewed by the Mount Laurel Judge who will then have the opportunity to grant the Borough compliance certification.

Questions and comments follow from the Board. No one in the public. Mr. Imbarrato speaks regarding the half-acre density – states they are already in need of redevelopment so is that part of across from (inaudible) he wanted to know if this was in that. Mr. Behrens stated that it is as it was a plan that was adopted from the prior round so it allows for multi-family 20 units per acre something like that. It's not something that is new. Mr. Imbarrato asks that if he were to increase the number of units he would have to get a density variance and he wanted to know what would be the percentage of affordable – would that be standard 15% or would it go up to 25%. Mr. Behrens stated he would have to look at what the plan stated. Mr. Behrens thinks it is 20%. Mr. Behrens recommends that he stay in touch with the Borough. Mr. Imbarrato is asking about the percentage for affordable housing, which at one point was 15% - does it still stay at that 15%. Mr. Behrens explains the process to him. Mr. Imbarrato stated so it's not changing as a result of this. Motion to adopt – (inaudible) Second – Ms. Boland. Roll Call vote – Mayor – yes; Chairman Caslin – yes; Mr. Krey – yes; Ms. Boland – yes; Mr. Gibbons – yes; Mr. Chinigo – yes; Mr. Salva – yes; Mr. Gautier – yes; Councilman Glass – yes; and Ms. Levine – yes. Motion passes.

There is a recess at this time it's 8:00 p.m. Motion made by Mr. Gibbons – Second – Ms. Boland. Meeting reconvened at 8:09 p.m.

Roll Call –Chairman Caslin – here; Mr. Krey – here; Ms. Boland – here; Mr. Gibbons – here; Mr. Chinigo – here; Mr. Salva – here; Mr. Gautier – here; and Ms. Levine – here. Also in attendance Special Counsel Marc Leibman, Esq., Robert Costa, Borough Engineer, Tom Behrens, Borough Planner.

OLD BUSINESS

IAAT Services (*Carried from 2/11/26*)
41 Grand Avenue
Lot 1405, Block 4

Preliminary and Final Site Plan Approval with Use, Height and Bulk Variance relief to construct and operate a double-faced “static” Billboard sign on a Single Monopole.

Robert Falkenstern, Esq. from Mr. Sinisi's office begins. He opens by stating that they have concluded their testimony and that they are back this evening as the objectors will present their witnesses.

Charles Sarlo, Esq., on behalf of Dark Star Development, LLC who is the property owner of 335 Johnson Avenue, Block 1405, Lot 3 adjacent to the subject property which is the premises of this application. His second client inter related is Let It Grow who also has a corporate office in River Edge who is also the tenant at 335 Johnson Avenue. He has two witnesses. He goes on to remind the Board about how hard he worked on getting the application for Let It Grow passed regarding the roof top amenity. He explains how popular roof top amenities have become.

Victor Filletti, registered architect 143 Terrace Street, Haworth, New Jersey is sworn in. He gives the Board his qualifications. He was the project architect for 335 Johnson Avenue, and he testified before this Board on that application. Mr. Sarlo submits Mr. Filletti as an expert in the field of architecture. Mr. Filletti starts his testimony by stating that he was hired to prepare a representation of what the proposed double-faced sign would look like from the rooftop amenity plan that they had proposed for his building. Mr. Sarlo marks this Exhibit O-1 title of the drawing is proposed study for neighbor sign for Dark Star Development LLC, 335 Johnson Avenue, dated September 23, 2025. The drawing was created with the site plan and the engineer information that was provided (inaudible). It is a scaled, accurate size of the proposed sign and it is orientated, laid out similar to the sign that is being proposed here. He explains the drawing and what it depicts to the Board. Talks about the sun and casting shadows. The height of the sign to the parapet wall. He states that the sign is about 48 feet long, 17 feet high, 20 feet in its widest dimension, it is 43 feet from the bottom of the sign. He states that the sign is approximately the length of the room the Board is in now and width is the width of the dais, and the height is about the height of the room. The bottom of the sign is about a foot in elevation above the parapet wall – the parapet wall is four feet high at elevation 3. The distance of the sign to 335 Johnson Avenue is approximately 32 feet. It's 17.8 feet to the property line and they are 15.3 inches set back from the property line. Mr. Filletti shows another drawing which is an elevation drawing showing the sign with the building next door, the height of that sign above that building next door and how that sign would be relevant to 335 Johnson Avenue. Exhibit is marked O-2- Elevations 9/23/2. He does through the elevations. Exhibit O-3 labeled Site Plan January 12, 2023. He states this was the site plan for their building. He states this drawing was used in the presentation for the new building and it is dated January 19, 2023, and its labeled Prospective

Rendering 82 marked as Exhibit O-4. He explains the drawing to the Board. Mr. Leibman asks for electronic copies. The next drawing depicts the rooftop and how it will be used and is marked Exhibit O-5 dated January 19, 2025. Mr. Sarlo requested more specific details regarding the drawing. Mr. Filletti describes what is depicted on the drawing to the Board. Mr. Sarlo asks Mr. Filletti to point out where the rooftop billboard would be. He stated where there are tables and chairs with an umbrella. The billboard is on the south side, where the tables, chairs and umbrellas are located. Mr. Sarlo asks Mr. Filletti from an architectural standpoint and architectural opinion would the proposed billboard have detrimental impact on 335 Johnson Avenue and specifically to the rooftop. Mr. Filletti refers to a previous drawing that he uses to illustrate that fact – it would block the sun, casting a shadow on that building that is the impact it would have on that space. Mr. Sarlo stated is it his testimony – air, light. Mr. Filletti testified it would impact air and light significantly. Mr. Sarlo countered – aesthetics to which Mr. Filletti responded – unless you like the backside of a billboard and find that aesthetically pleasing it will be a negative impact. Mr. Sarlo has no further questions at this time.

Mr. Falkenstern, states that Mr. Filletti is not a licensed planner to which Mr. Filletti responded – he is not and he is not a licensed engineer and/or traffic engineer. Mr. Falkenstern asked if Mr. Filletti conducted a traffic study, a glare study – to which he responded he did not. He did prepare a shadow study as illustrated on the drawing. He explains the software they use to depict and prepare the shadow study. He continued to explain the shadow study and answer questions from Mr. Falkenstern. Mr. Filletti testifies that the drawing is a scaled representation of both the building and the sign in size, dimension and location. Mr. Falkenstern asks if Mr. Filletti did any structural analysis of the billboard, to which Mr. Filletti stated he did not. Mr. Falkenstern asks if Mr. Filletti if the billboard encroaches on the client’s property, to which Mr. Filletti responded it does not. Mr. Filletti states that the drawing shows exactly what will be built. There have been no deviations whatsoever. The building plans have been submitted for variance approval. Mr. Falkenstern asks Mr. Filletti if he believes this sign will block his clients view – Mr. Sarlo objects – stating Mr. Filletti doesn’t need to read his clients’ mind. Mr. Falkenstern asks if the view is the main concern of the rooftop amenities to which Mr. Filletti responded it’s a main concern, the light is another concern. Mr. Falkenstern speaks about access to the billboard, construction etc. He asks is the billboard blocking the view in all directions, to which Mr. Filletti responded it is not. Mr. Falkenstern states that the chief concern is the view off the roof. Mr. Filletti states that he is testifying as to the fact as to what impact this would have on the building, the negative impacts and how it would affect his client and the occupants of the building. Mr. Falkenstern states that from an architectural standpoint what would be the impact of the billboard. Mr. Filletti responds that it would restrict views, restrict sunlight and restrict air from the south direction. Mr. Falkenstern asks if he has identified any safety concerns to which Mr. Filletti responded – he has not. Mr. Falkenstern has no further questions.

Mr. Sarlo asks Mr. Filletti regarding the terms of the software and whether or not he performed a survey = Mr. Sarlo asks if it is permissible under the architectural licensing regulations to use a licensed surveyor’s survey on his plans even if he developed a site plan. Mr. Filletti responded yes, he is legally allowed to rely on the accuracy of those surveys. Mr. Sarlo asks if to his knowledge his plans project is fully approved by the zoning board, to which Mr. Filletti responded yes, it is. Mr. Sarlo speaks regarding Exhibit O-1 he asks Mr. Filletti- based on your data input and the software that he used he asks Mr. Filetti if he testifies that this is an accurate depiction of what this billboard will look like from the rooftop to which Mr. Filletti responded – yes, it is. Mr. Sarlo had no further questions.

Questions from the Board

Mr. Krey is speaking – he asked something regarding the shadow study (which was inaudible). Mr. Behrens stated that Mr. Filletti was very thorough and he did not have any further questions. Mr. Costa speaks regarding the shadow study. He states it changes every day isn't that correct – to which Mr. Filletti responded – yes. He speaks regarding the size of the billboard and as to the lighting. He states that they redid the lighting plan and he states that the spillage miraculously stops at the billboard. He further states that the billboard would have some impact on their client at night. He asked if that would have an effect on the adjacent neighbor to which Mr. Filletti stated yes there can be some reflective light. Mr. Costa speaks regarding the survey and he believes it is a material issue in front of this board within the jurisdiction whether he is correct or incorrect. Mr. Falkenstern stated that they were looking into it and they did not have a definite answer. It's related to the frontage and will not affect any of the variances they are seeking. It's basically how much frontage sits on Rt. 4. It's not the actual lot line it would have no impact on the proposed billboard. Mr. Costa continues stating that this billboard most likely would have an impact at night. Mr. Filletti agreed that within 30 feet there would be some reflective light impacting the adjacent property. Mr. Costa is addressing his review letter. He states that they always put a catch all stating "it could be subject to change under new circumstances" which it did. He goes back to the adjacent survey stating that he responded and copied everyone and never received a response back from the applicant as to whether he was correct or incorrect. He believes it is a material issue in front of this board within the jurisdiction if he is correct or incorrect. Mr. Falkenstern states that they were looking into it and they don't have an answer but certainly can be a condition for approval revise it as it is related to the frontage and it would not affect any of the variances that they are seeking. Again, it's basically how much frontage sits on Rt. 4. It would have no impact on the proposed billboard. Mr. Costa states that he believes there was testimony that they had a permit from the state of New Jersey and there is frontage on there, that was one and cars have to get in to change the sign. Mr. Falkenstern stated that he believes the record fully supports that the site can be accessed. Mr. Costa asked how they do that. Mr. Falkenstern responded that they come in a standard-sized SUV. They had present testimony to that fact. Mr. Costa wants to make it crystal clear for the record that they have not done a shadow study to see the effects of the height variance they are requesting on the adjacent property. Mr. Falkenstern responded that they have submitted all of their evidence and they have no further evidence to submit – they did not perform ... Mr. Costa states that they submitted voluminous documents about Dr. Atkins, which he elaborates upon further regarding ice falling etc. Mr. Leibman interjects at this time but Mr. Costa continues with his point. Mr. Leibman again states it's ridiculous to talk about someone in New York City who died from a falling icicle. Mr. Costa states he is generally speaking regarding ice in general. He wants to know what cautions the applicant is taking to avoid the possibility of falling ice in the future. Mr. Falkenstern did not have an answer as his experts are not at the meeting.

Mr. Sarlo calls his next witness Mr. Peter Seck, professional planner. Mr. Seck is sworn in by Mr. Leibman. Mr. Seck goes through his credentials with the Board and his license is in good standing. Mr. Seck distributes a handout to the Board members. Mr. Seck goes through the handout page by page and it is marked Exhibit O7. Mr. Seck states that the property is an L-shaped property that has a number of non-conforming dimensions. It has a non-conforming depth, it has slightly excessive building coverage, it has a violation of the front setback, it has a violation of the rear setback, and it has a violation of the buffer required. He states that one can look at the property and state it is slightly overdeveloped as it is now. He explains the look of the building. He states that that the applicant is proposing as he sees it, two buildings, a height of 60 feet where in the allowed is 35 feet. He further states that in his view the reason for the height is the applicant would like to garner as much view as possible and they do not have enough room on the property to put a billboard except they now have to cantilever it over the building.

He states that if the lot were larger and underdeveloped and there were more space around it, they can have a classic billboard that would not have to be 60 feet tall. He states the applicant is now putting a new second use on the property because there is not enough room and they are violating the front and the side yard setbacks, He further states that this is a pipe that has already driven by the fact that there is already full development on the subject property. Mr. Steck states that the property is in a commercial corridor. He states that there are some residential uses, but it doesn't have buildings that are 60 feet tall. He further states there are no buildings in River Edge that has buildings 60 feet tall. He states that Mr. McDonough did not address the residential uses in the area and the future of residential uses in the area. Mr. Steck stated that he reviewed the 1984 Master Plan and the re-examination reports 2009 and 2020. He states that the Borough is concerned with aesthetics in the area. He states this is a C2 zone and while billboards are not permitted in any zone it is conceded that you cannot prohibit them automatically and the applicant is requesting a D1 variance. He stated that Mr. McDonough admitted that this is not inherently of beneficial use. This is a commercial use and because it is a use that is not permitted it is subject to the standards if the *Medici* case where you have to show there is some public purposes that are advanced and you must show particular suitability and the applicant must meet the negative criteria under the enhanced burden of proof. He explains what a D variance is. He states there is a second principle use on the property which is also a D variance not the high standard of *Medici* but it is still a D variance. He states the property is also overbuilt with regard to impervious coverage. The maximum is 80% and the applicant is going from 95.4 to 95.6%. He further states that it violates the front yard setback significantly. The requirement is 30 feet and the applicant is doing 10.78, there is a side yard of 15 feet and the applicant is doing 10 and there is also a rear setback of 20 feet and the applicant is doing 17.6. So, this property is already over built and the applicant is not only asking for a use variance they are asking for a height variance and in his opinion the reason for the height variance and all of the setbacks is because there is not enough room on the property. He states they do not have enough room to put these two billboards on a pylon and have to cantilever over the top of the building. Mr. Steck goes through Mr. McDonough's testimony stating that he relied a lot on the state statute for billboards. He states because someone has a permit from the state it does not mean that it automatically meets the negative criteria in terms of the Borough's ordinances and variances. He states that there is no evidence on the record that an evaluation of this Rt 4 corridor, Mr. McDonough generically stated this part of the municipality has a state highway that's where it should be. He did not analyze any portion of this that might be better suited or equally suited and kind of generically said this billboard should be along the Rt. 4 corridor. He inherently admitted that it is not of beneficial use to which Mr. Steck concurs with. Mr. Steck stated that Mr. McDonough cited three purposes of the municipal land use land, Purpose G, H and M. Mr. Steck paraphrased these for the Board. He states G talks about sufficient space in an appropriate location. He states there is not sufficient space, he's violating the setback, he's violating the height, he has to cantilever over the building that means there is not enough space on the property so Mr. Steck doesn't know how they promote Purpose G. Mr. Steck continues stating the Mr. McDonough talks about Purpose H as promoting the free flow of traffic – Mr. Steck asks how does a billboard help the free flow of traffic. In citing that it met the distance requirements of the DOT that might be looked at as a negative criteria issue but it clearly does not promote the free flow of traffic to have a billboard and then Purpose M talks about a more sufficient use of land and Mr. Steck stats – where do you stop -its already over developed, putting a billboard now violates the front and side setbacks, it increases the impervious coverage on a site that is already overly paved.

Mr. Steck states that Mr. McDonough referred to Goal 8 of the Master Plan that states there is a need for diversity – that's in different kinds of land use. He states just saying this responds to the goal of diversity in Mr. Steck's opinion does not advance that purpose of the Master Plan. Mr. Steck states that the applicant has the burden of proof. In Mr. Steck's opinion the applicant has not met that burden.

He goes on to say this billboard will be seen by several residential units, things to be developed in the future, etc. Mr. Steck states that in his opinion there is no municipal land use law purposes that are advanced at least as they are described by Mr. McDonough. Mr. Steck states that this site is particularly unsuited because it is already over built as evidenced by the statistics of impervious coverage, the setbacks, the dimensions of the lot – the applicant is asking for a second principle use and one that has to be jury meandered around the building. Why is there 60 feet in height because there is no room to do a billboard 50 feet in height that's why it's that high, it's an overcrowded site. Mr. Steck states that in his opinion there are no municipal land use law purposes that are advanced – this site is particularly unsuited for a billboard, it's already over developed, its overcrowded and the fact that it is cantilevered as to the height which would not necessarily be the case at another site. In Mr. Steck's opinion if this application is granted it will result in substantial detriment to the public good in that it will be the tallest structure in the area and it has a volume to it because it is V shaped it will adversely affect his clients' building with the rooftop amenity. Southwest of this rooftop is the New York City skyline that is one of the reasons he invested in plans and wants to build that because his is going to block part of that New York City view, aside from being ugly from the back. In Mr. Steck's opinion granting this application would result in substantial impairment of the Master Plan.

Mr. Sarlo asks Mr. Steck if he agrees with the *Price* case standard for a use variance which is the general welfare is served because the site is particularly suited, to which Mr. Steck responded – yes that is the standard that started out in the *Medici* decision. Mr. Sarlo asks Mr. Steck if any of the general purposes Mr. McDonough testified to deal with promoting the general welfare, to which Mr. Steck responded they do not in his opinion. Mr. Sarlo asks if it's true that a very specific purpose of the municipal land use law specifically is the purpose to promote the general welfare, safety ... Mr. Steck states that purpose A talks about encouraging the most appropriate use of land and to advance the public welfare; Purpose I talks about aesthetics. Those two purposes clearly are not advanced by this application. Mr. Sarlo - Mr. Steck in his opinion did Mr. McDonough's testimony support the promotion of the general welfare. Mr. Steck responded he did not recall that – what he stated was regarding commercial use from a business standpoint it would serve as an advertisement for a church or a hospital etc. Mr. Steck states that in his opinion that is an incidental benefit. Just having a billboard a commercial use does not by itself in his opinion advance the general welfare. Mr. Sarlo rests.

Questions from the Board

Mr. Behrens asks Mr. Steck from his prospective because the applicant is requesting a number of variances, does that impact the site suitability in this case. Mr. Steck responds that in his opinion it does very much. Because not only is the use not permitted, but there are so many items of dimensional relief and they are not minimal, they are significant dimensional setback issues in his opinion that composite means that this site is not particularly suitable. Mr. Behrens states – based on the planner's testimony his justification seemed to be summed up as just being proximate to a highway is enough. He asks Mr. Steck in his opinion is just the proximity to the highway enough. Mr. Steck testified that it is not in his opinion. Mr. McDonough did state that this is a state highway and most of the houses are to the north but, he was unaware that there is new housing proposed and, in his opinion, just because it is on a state highway does not satisfy the statutory criteria. Mr. Behrens states that Mr. Steck mentions housing developments surround development - he asks – in how many directions are there existing and proposed residential developments around the building. Mr. Steck states across Rt 4 are the garden apartments, behind the liquor store and the municipality is promoting fairly intensive housing east bound on Rt. 4 and particularly the Kinderkamack redevelopment area that is opposite one of the faces of the billboard and

since that zone allows four story buildings at 55 feet in height, those upper units will be looking right at the billboard. Mr. Behrens asked where is the residential development existing and proposed in reference to the billboard. Mr. Steck responds the R1 zone and R3 zones are to the northwest, to the southwest is the closest residential building which is at the foot of the pedestrian overpass and to the southeast are the redevelopment areas proposed for affordable housing. Mr. Behrens asks how close is the train station to the proposed billboard. Mr. Steck responded about 1,000 feet. Mr. Behrens asked Mr. Steck if he would consider the area around the train station to be transit oriented, to which Mr. Steck responded yes. Mr. Behrens asked if the transit oriented. Mr. Steck responded yes. Mr. Behrens asked if the transit-oriented nature of this commercial area of River Edge make it unique along other areas of Rt. 4. Mr. Steck responded it is a strong state policy to promote development by the train stations and that has a density of 36 units in acres so there is a recognition that is an area that is proposed for new growth including residential use. Mr. Behrens asks if Mr. Steck is aware of any other similar transit-oriented areas along Rt. 4 that have proximity of two or three blocks to a train station. Mr. Steck responded he does not recall as that was beyond the scope of his description. Mr. Behrens asks Mr. Steck if it is his understanding that aesthetics is considered a compelling governmental interest. Mr. Steck responded that the purpose of the municipal land use law and it's not just the color or the building volume – it will be the tallest structure in this part of the municipality which is significant. He states while it's aimed to look at east bound/west bound traffic on Rt. 4 by virtue of the fact that it's sticking up in the area more than any other building in River Edge it draws attention. Mr. Behrens states that the applicant's planner alluded to the fact that all the C variances being requested are essentially subsumed under the D1 variance and he says that he knows in some cases that is accurate where the nature of the use variance being requested requires that all of the aspects of the bulk issues to be required. Mr. Behrens asks Mr. Steck if it is his understanding that these C variances being requested are a function of the billboard in terms of setback, height etc. Mr. Steck responds and states that when its subsumed it doesn't mean that they just appear – in his opinion the magnitude and number of dimensional deficiencies go hand and hand with the fact that this site is not particularly suited for this use. Mr. Behrens asks if Mr. Steck would agree that if they are not necessarily subsumed then, to which Mr. Steck responds that subsumed means that because a billboard was a permitted use when the dimensional standards were drafted they were not thinking billboards but the answer is because this is a structure that is kind of in face all the improvements are supposed to be back behind the front yard setback. This is like one-third of the setback, it's right by the sidewalk, it's more intrusive than any other structure in the area. Mr. Behrens states that if it wasn't developed with a three-story building and had adequate space in theory it could meet more of the criteria Mr. Steck then stated that the applicant could probably comply with the 35-foot height and all the dimensional standards except for the use. Mr. Behrens states that they would have to entertain the idea that the applicant would have to address both the C1 and C2 criteria from that prospective – Mr. Behrens asked Mr. Steck as a planner if he could address the public benefit. Mr. Steck stated that there is no hardship here because the property is already developed and in fact, it is over developed and the fact that there is a magnitude a number and size of setbacks only tell him that this is particularly unsuited. Mr. Behrens asks that if this application was not approved would it rendered the site (inaudible) to which Mr. Steck stated no because the site already has a building on it and the property is already over developed. Mr. Behrens asks if the property that is on the property is a permitted use, to which Mr. Steck stated -yes, it is.

Mr. Costa states that Mr. Steck has stated a few times this evening, unsuitable – Mr. Costa asks – what about constructability. Mr. Steck responds that he does not think that is a major issue. It will be more difficult but once it is constructed it's going to be there. He does not believe that is a significant factor in his opinion. Mr. Costa speaks about room on the site. He states that if they had more room on the site wouldn't you have all your construction equipment on the site when they built it. Mr. Steck responded that responded that it would be easier if you did not have to do gymnastics because of the

existing building. Mr. Costa states to do this in a practical standpoint you physically cannot do it on this site. Mr. Steck states that is not his area of expertise.

Mr. Caslin asks Mr. Steck in his professional opinion is there any impact on light air office space. Mr. Steck states that the reason you have height limits in the borough's zoning ordinance is that you want to protect a certain amount of open space. This will be the tallest structure in the area, it has a volume to it and it happens to be positioned between his client's rooftop amenity space and the view of the New York skyline. Mr. Krey is referring to a picture on page five and the height of the building and the parapet on the building. He further discusses hardships and no beneficial impacts. Mr. Steck explains to Mr. Krey that there are three things the applicant must do – is there a public purpose; is the use particularly suited for the property and independent of that can it be granted without substantial detriment to the public good (to Mr. Steck that is blocking views) or is there substantial impairment to the zone plan and zoning ordinance. In his opinion there is, because of the importance of aesthetics and the fact that it is so much taller than what the zoning ordinance anticipated. Mr. Krey is asking about the hardships of a C variance. Mr. Steck states that the applicant has to show that there is one or more purposes in the municipal land use law to advance. He states with C variances there is that balancing tests there really is no balancing test here. There are two separate proofs. There are three separate things that the applicant has to do. Is there a public purpose to advance; is the use particularly suited for the property and independent of that can it be granted without substantial detriment to the public good and to Mr. Steck that's blocking views or is there substantial impairment to the zone plan and zoning ordinance. In Mr. Steck's opinion there is because of the importance of aesthetics due to the fact that it is so much taller than what the zoning ordinance anticipated. Mr. Steck does not think the applicant meets any of the three proofs, there's no public purposes advanced – just because it's a business use does not (inaudible) the business use has to be in an appropriate location – just because it's a business use because is on a crowded site in his opinion there is none of those two purposes under *Medici* are advance and he thinks independently this is detrimental to the public good because its so tall and it detracts from the purpose of the Master Plan. Mr. Krey continues to talk about aesthetics etc. Mr. Steck states that he does believe that the applicant meets any of the three proofs. There are no public purposes advanced – just because it's a business use its not under the municipal(inaudible) the business use has to be in an appropriate location.

Also, his client marketed the property with a rooftop amenity with view of the New York skyline, and the billboard will be in the middle of the view of the New York City skyline. Mr. Gibbons has a question regarding constructability – he never gave the power lines a thought and to see how close they are to the proposed billboard. He asks if there are any construction guidelines or codes that would prevent a structure being built a certain distance to the power line. Mr. Steck stated that he did not know of any local code, there might be something in the uniformed construction code. Sarlo states that there is a federal OSHA code – 10 feet that you cannot construct. Mr. Falkenstern states that the applicant would comply as a condition of approval. If they could not build after it was approved – it's definitely a condition of approval. Mr. Costa again, brings up the fact that Mr. Steck kept saying unsuitable and overdeveloped so that is why he wanted to know how you physically do this – he ever got that answer. Mr. Steck reiterated the fact that the site is already overbuilt. Mr. Costa talks about a project he worked on in Bogota wherein a billboard went right through the center of that building, so they can build this through the center of the building. Mr. Falkenstern asks Mr. Steck if he knows of any zone in the municipality wherein a billboard is permitted, to which Mr. Steck stated at the current time no. Mr. Falkenstern any billboard would require a variance and he asked of there were any bulk standard for a billboard to which Mr. Steck responded – not specifically for a billboard. A billboard going into a zone you take those standards into account. Mr. Falkenstern stated, so the only way a billboard can come to River Edge is through a variance to which Mr. Steck responded – yes. And Mr. Falkenstern stated that,

that determination would be made on a site-specific basis, to which Mr. Steck responded – in his opinion yes. Mr. Falkenstern responds that is all he has. Chairman Caslin asks if there are any questions from the public. No questions from the public.

Mr. Cheney, from Connell Foley for Rt 4 Main Street LLC and Estate of Tamburelli Trustee and 41 Grad Avenue, LLC. Mr. Cheney states that the applicant seeks four D variances, but they have not carried their burden. Under the D1 variance the billboard does not enhance the public good nor does it promote general welfare leaving the Board with one conclusion that the site is not particularly suitable. The height variance is needed because the existing site conditions the building not the billboard. He states that the Planner also admitted that a 35-foot billboard would service the Rt. 4 corridor in the borough. The applicant's planner also spoke with regard to Purpose H of the Land Use board the free flow of traffic. Yet the traffic expert never testified that the billboard increases the flow of traffic. He speaks regarding distraction times of drivers in parking lots. He speaks regarding Purpose M of the municipal land use law wherein the property is already intensely developed. He further states how can it be an efficient use of land when there are ordinances outright and specifically prohibiting billboards. Mr. Cheney continues regarding the negative criteria the applicant's traffic engineer testified on cross examination that adding another sign for drivers along Rt. 4 would have minimal impact it simply does not follow that a billboard that forces people to look up in an already signed up area along a several lane highway would have minimal impact. Mr. Cheney states – finally as to the height variance the applicant has created their own hardship by proposing a billboard that exceeds its own height almost twofold. The height is only needed so the applicant can service Rt. 4 from the site but the signs that generate the applicant the most money does not carry today on a D6 height variance application. 41 Grand Avenue is an unsuitable location for this billboard therefore he respectfully requests that the Board deny this application and he thanks the Board for their time and consideration. Charles Sarlo also thanks the Board for their time and consideration during the course of these hearings.

Mr. Sarlo gives his summation of the hearings and asks the Board to deny the application. Mr. Falkenstern states that he does not agree with the objectors, and they believe the applicant has met its burden and specifically identified the negative criteria and the record reflects that. He asks that at this time he respectfully requests that the Board close the record and proceed to a vote. Mr. Behrens states that the Board in its deliberations whether it is for or against the application should just focus on the statutory and he would note for the record that the borough's ordinance and definition of billboards are nearly identical to the ones in Mt. Laurel New Jersey which was held up by the Appellate Division and the one in Texas which was held by the Supreme Court. That aside Mr. Behrens suggests that the Board not represent prohibition in its deliberation but just acknowledge by virtue that billboards not being permitted therefore requires D1 variance relief anyway and that municipalities aren't required to permit billboards. Again focusing on statutory criteria there was the D1 use variance issues at hand and the applicants test with the burden on them to demonstrate (1) that it advanced one purpose of the MLUL that addresses issues of site suitability as well as the negative criteria in this case has the enhanced burden of proof that the applicant must demonstrate that the granting of relief would not substantially impair the intent and purpose of the Master Plan and zoning ordinance. He further states that there are a number of C variances. It's Mr. Behrens opinion that they are not necessarily codified because the ordinance doesn't contemplate them but nevertheless there are instances where a billboard could be compliant it's just that this site happens to be developed and in that case, Mr. Behrens still believes that the C1 and C2 criteria have a place in these deliberations. The C1 criteria relating whether or not there are any hardships to prevent the applicant from complying and C2 whether there are any public benefits that outweigh any

detriments. There was much talk about impact to surrounding development. The office building in particular, the three objectors that participated in this application. He states while the applicant glosses over that there was no credible testimony, no credible information as far as shadow studies renderings from different perspectives and a comprehensive traffic analysis that would suggest that the application is impact free. He believes that is a question for the Board – are there no impacts being generated from this and how does that weigh against any perceived benefits. Mr. Behrens repeats that he would concentrate on the statutory criteria. Mr. Krey asks a question regarding the D variance which is inaudible. Mr. Leibman states that there is an expansive record, he has 46 pages of notes. He states he will draft a Resolution for your consideration (very hard to hear Mr. Leibman) M. Krey makes a motion that the Board accept and approve the C variances in question (someone says something, but it is inaudible) there is no second, Mr. Chinigo moves to deny the application, Second -Mr. Gautier (there's discussion between Chairman Caslin and Mr. Leibman which is inaudible regarding the motions) Chairman Caslin states there is a Motion by Mr. Chinigo and second by Mr. Gautier to deny the application. Mr. Gibbons wanted clarification that the Board is saying yes to deny and no to accept. Chairman Caslin states that the motion is to deny approval of the application so if you vote in the affirmative, it's a vote to deny. Chairman Caslin calls the roll – Mr. Krey – yes; Ms. Boland -yes; Mr. Gibbons – yes; Mr. Chinigo – Mr. Salva – yes; Mr. Gautier -Ms. Levine – yes and Chairman Caslin votes in the affirmative as well. The Motion passes and the application for approval is denied. Chairman Caslin thanks Mr. Leibman and the Borough's professionals. Mr. Costa wants to put on the record that he apologizes to Mr. Leibman.

Motion to adjourn meeting – Mr. Gibbons; Second – Mr. Krey. 10:16 p.m.