

IN THE MATTER OF : **BEFORE THE FAIRVIEW TOWNSHIP**
THE APPLICATION OF : **ZONING HEARING BOARD**
LAMAR ADVERTISING COMPANY : **YORK COUNTY, PENNSYLVANIA**
: **DOCKET NO. 2017-02**

**DECISION GRANTING THE REQUESTED SPECIAL EXCEPTIONS
AND VARIANCE TO AN OUTDOOR ADVERTISING STRUCTURE UNDER
SECTION 300-68 OF THE FAIRVIEW TOWNSHIP ZONING ORDINANCE**

The Applicant applied for: (1) a special exception for erection of a billboard; (2) a special exception regarding the height of the billboard; and (3) a variance with respect to the location of the billboard, all pursuant to Section 300-68, Specific Sign Uses, and Table 5-2 of the Fairview Township Zoning Ordinance. The application pertained to the proposed installation of an illuminated sign at 258 Lincoln Drive, New Cumberland, in the Commercial Business Zoning District in Fairview Township, PA. A hearing on the application was held on April 20, 2017, at 7:00 p.m. at the Fairview Township Municipal Building, 599 Lewisberry Road, New Cumberland, PA 17070.

FINDINGS OF FACT

1. The Applicant is Lamar Advertising Company, 308 S. 10th Street, Lemoyne, PA 17043. The Applicant as lessee of the property located at 258 Lincoln Drive, Tract #2, New Cumberland, PA, which is the subject of the application has legal standing to submit this application.¹ The property is owned by Donald and Delores Spink, 709 Fishing Creek Road, New Cumberland, PA 17070.

2. The Applicant is requesting: (1) a special exception pursuant to Section 300-20, Table 5-2, for the erection of a billboard sign; (2) a special exception to Section 300-68.A.2(a)

¹ See 53 P.S. §10107.

with respect to the height of the proposed sign; and (3) a variance from and/or to appeal the Zoning Officer's interpretation of Section 300-68.A.2(c) relating to the location of a sign along an interstate highway.

3. Under the Ordinance, a billboard sign is permitted in the Commercial Business Zoning District only by special exception and subject to various other requirements, including maximum height and location. Because he determined that the proposed location of the sign was not the required 500 feet from the "beginning or ending of pavement widening at the exit from or entrance to" a limited-access highway, on March 2, 2017, the Codes Administration Officer denied the Applicant's zoning permit application.

4. Notice of the hearing was properly advertised; the property was properly posted; and all neighboring property owners required to be notified of the hearing were notified in accordance with the Township Ordinance and the Pennsylvania Municipalities Planning Code.

5. The Applicant was represented by Peter R. Henninger, Jr., Esquire, of Jones & Henninger, P.C., 339 West Governor Road, Suite 201, Hershey, PA 17033. Testifying on behalf of the Applicant was Andrew Rebeck, General Manager/VP of Lamar Advertising Company.

6. Lamar Advertising Company proposes to install a single-pole, single-sided 14' x 48' digital advertising structure along I-83 on the subject premises which adjoins the east side right-of-way of I-83. The Applicant represented that, if the requests which are the subject of this application are met, the sign will meet all other applicable state and local requirements, including those regarding illumination.

7. The sign will feature an electronic changeable advertising panel facing north toward traffic traveling south on I-83 – on the opposite side of the highway from the sign itself.

The south side of the sign structure will not have an advertising panel, will not be illuminated and will basically not be visible to the traffic traveling in the northbound lane of the highway.

8. The electronic nature of the sign will allow advertisers to change the message frequently and will be equipped to provide, as a courtesy service to police agencies, Amber Alerts to motorists traveling along I-83 South.

9. The premises where the sign is proposed to be located is on a 0.39 acre triangular tract of land, located between I-83 and Lincoln Drive. At its widest section, the tract slopes sharply away from Lincoln Drive toward I-83. The location, size, shape, and topography of the tract makes it of very limited practical use for other permitted purposes.

10. As noted above, two special exceptions are requested by the Applicant. All special exceptions must meet the general criteria for special exceptions as detailed in Section 300-99.E.3 of the Zoning Ordinance. In addition, the Applicant must meet all other requirements which address the particular special exception requested. With respect to the sign itself, there are no additional criteria beyond those in Section 300-99.E.3 applicable. With respect to the height issue, under Section 300-68.A.2(a), a special exception may be granted to increase the 40 feet height requirement by up to 10 feet provided that an applicant can show that excessive grades or visual obstructions exist. The current request is for an additional 5 foot allowance which would make the structure 45 feet in height.

11. The application, with respect to the sign location, is necessitated by Section 300-68.A.2(c) of the Zoning Ordinance which provides, as pertinent, that “along the interstate system and limited-access highways” no sign may be within 500 feet of an “interchange or safety rest area. . . measured. . . from the beginning or ending of pavement widening at the exit from or entrance to the main travel way.” The basis for this restriction is plainly to avoid distractions to

motorists exiting or entering an interstate or limited-access highway.

12. Stephen M. Waller, Codes Administration Director, testified and explained that he denied the permit on the basis of Ordinance Section 300-68.A.2(c) since the northbound lane of I-83 widens for exit purposes to the Lewisberry Road exit immediately adjacent to the subject property and, therefore, the location does not conform with the Ordinance requirement.

13. The Applicant's testimony demonstrated that the general criteria for special exceptions were met. The property is quite appropriate for a highway sign and the sign will not depreciate the neighborhood in any manner. Furthermore, with respect to the height, the Applicant showed that the additional 5 feet in height will allow the signage to be more readily visible to southbound I-83 traffic as the lower height could tend to be obstructed, in part, by truck traffic in the northbound I-83 lane because of the topography.

14. With respect to the appeal of the Zoning Officer's decision and the variance request for the sign location, the appeal should be denied. The Zoning Officer clearly applied the Ordinance correctly as it is written. However, the variance should be granted under the unique circumstances of this application where the proposed sign will not be visible to the northbound traffic exiting the highway and, therefore, the purpose of the location restriction will not be impaired by the variance.

CONCLUSIONS

1. The Applicant has the burden of establishing its entitlement to the requested special exceptions and variances in accordance with Fairview Township Zoning Ordinance Section 300-99.E.

2. On the basis of the testimony and documentary evidence presented, the Board concludes that the Applicant has established entitlement to the requested special exceptions and

variances related to the height and location of an illuminated sign along I-83 South on the basis of the topography and other characteristics of the lot. The application is granted subject to the condition that no illumination or signage shall be placed on the southbound face of the billboard so that it does not present any distraction to northbound traffic.

DECISION

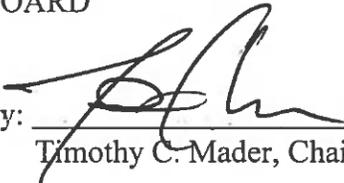
On the basis of the foregoing findings and conclusions and on the basis of all the testimony and evidence presented to the Board at the hearing, the following requested special exceptions and variances relating to the installation of an illuminated sign are granted:

1. A special exception permitting an electronic billboard sign to be erected at the premises located at 258 Lincoln Drive, Tract #2, along I-83 in Fairview Township;
2. A special exception allowing the billboard to be not more than 45 feet in height above the grade of I-83; and
3. A variance from the requirement that no structure may be erected adjacent to or within 500 feet of an interchange or safety rest area, measured along the interstate or limited-access highway from the beginning or ending of payment widening at the exit from or entrance to the main traveled way to allow the sign at the location requested.
4. These permits are granted subject to the condition that the only the north-facing side of the sign will be illuminated and bear sign messaging so that the sign provides no visibility to northbound traffic.

The Application was granted as stated upon the motion of Mr. Bashore, seconded by Mr. Maxwell and adopted 3-0 by the Board Members present and voting.

FAIRVIEW TOWNSHIP ZONING HEARING BOARD

Dated: May 26, 2017

By:  _____
Timothy C. Mader, Chairman

Distribution: Peter R. Henninger, Jr., Esquire
Andrew Rebuck, General Manager/VP, Lamar Advertising Company
Donald and Delores Spink