

RECOMMENDATION ON THE VARIANCE APPLICATION OF
Kearny/Digital Billboard & Variance
File #14-323

I. INTRODUCTION

Pursuant to Public Law 2015, Chapter 19, the New Jersey Meadowlands Commission (NJMC) has become part of the New Jersey Sports and Exposition Authority (NJSEA), effective February 5, 2015.

An application for two (2) bulk variances has been filed with the NJSEA by Christopher Wiss of Allvision for the premises located along the New Jersey Turnpike Eastern Spur, identified as Block 285, Lot 11, in the Town of Kearny, New Jersey. Said premises are owned by the Town of Kearny and located in the Intermodal A zone of the Hackensack Meadowlands District (District). The bulk variances are sought in connection with the applicant's proposal to erect one free-standing double-faced billboard on the subject property.

Specifically, the applicant is requesting relief from the following:

1. N.J.A.C. 19:4-8.14(h)7ii(1), which requires that billboards be installed within a ROW having a posted speed limit of 55 mph or higher, or within 50 feet thereof, and shall be oriented towards such ROW, whereas the billboard is proposed to be located 80 feet from the New Jersey Turnpike Eastern Spur ROW.
2. N.J.A.C. 19:4-8.14(h)7v, which requires that the maximum permitted height of a billboard shall be 30 feet above the grade level of the adjacent roadway surface, whereas the applicant is proposing to install the billboard with a height of 52 feet above the adjacent New Jersey Turnpike Eastern Spur roadway surface.

A public hearing was held at the Office of the NJSEA on Wednesday, December 16, 2015. Notice was given to the public and all interested parties as required by law. The public notice of this hearing was published in The Jersey Journal newspaper. No written comments were received. All information submitted to the Division of Land Use Management relative to this application is made part of the record of this recommendation.

II. GENERAL INFORMATION

A. Existing and Proposed Use

The subject premises is an irregularly-shaped, vacant 29.6-acre parcel fronting Harrison Avenue to the north and the New Jersey Turnpike (Turnpike) Eastern Spur to the west. The site is located in the District's Intermodal A zone. The Northeast Corridor rail line abuts the property to the south, while a utility ROW abuts the site to the east. The adjacent properties are predominantly vacant, with light industrial and warehouse uses nearby.

The applicant is proposing to erect one 115-foot-high above grade, freestanding, 14-foot by 48-foot, double-faced billboard on the subject property. The top of the billboard will be 52 feet above the adjacent New Jersey Turnpike roadway surface. A digital display will be located on the southerly sign face, directed towards northbound traffic on the Turnpike, while a static display will be located on the northerly sign face, oriented towards southbound traffic on the Turnpike.

B. Response to the Public Notice

No written comments or objections were submitted to the NJSEA regarding this application prior to the public hearing.

III. PUBLIC HEARING (December 16, 2015)

A public hearing was held on Wednesday, December 16, 2015. NJSEA staff in attendance were Sara J. Sundell, P.E., P.P., Director of Land Use Management and Chief Engineer; Sharon Mascaró, P.E., Deputy Director of Land Use Management and Deputy Chief Engineer; Mark Skerbetz, P.P., AICP, Senior Planner; and Mia Petrou, P.P., AICP, Senior Planner.

A. Exhibits

The following is a list of the exhibits submitted by the applicant at the public hearing and marked for identification as follows:

<u>Number</u>	<u>Description</u>
A-1	Copy of NJDOT Outdoor Advertising Permit and Notice of Approval for the subject billboard, dated July 10, 2013.
A-2	"Site Plan," Sheets No. 1 of 2 and 2 of 2, prepared by Anthony Marucci, P.E. & L.S., P.P., of Marucci Engineering Associates, LLC, dated March 14, 2014, revised through September 10, 2015.
A-3	"Outdoor Advertising Report," prepared by S. Maurice Rached, P.E., PTOE, of Maser Consulting, P.A., dated August 10, 2015.

B. Testimony

David Roskos, Esq., of the firm Eckert Seamans represented Allvision at the hearing. The following witnesses testified in support of the application:

1. Christopher Wiss, Allvision.
2. Anthony Marucci, P.E. & L.S., P.P., Marucci Engineering Associates, LLC.
3. Nicholas Aiello, P.E., Maser Consulting, PA.

Staff findings and recommendations are based on the entire record. A transcript of the public hearing was prepared and transcribed by Beth Calderone, Certified Court Reporter.

C. Public Comment

No members of the public were present to comment on the application.

IV. RECOMMENDATION

A. Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 19:4-8.14(h)7ii(1), which requires that billboards be installed within a ROW having a posted speed limit of 55 mph or higher, or within 50 feet thereof, and shall be oriented towards such ROW.

The District Zoning Regulations at N.J.A.C. 19:4-4.14(e) state in part that, *a variance shall not be granted unless specific written findings of fact directly based upon the particular evidence presented are made that support conclusions that...*

1. *Concerning bulk variances:*

- i. *The variance requested arises from such condition that is unique to the property in question, is not ordinarily found in the same zone, and is not created by any action of the property owner or the applicant.*

The subject property is approximately 29.6 acres in size, substantially larger than the minimum one acre lot size required for the zone. The site is located within the District's Intermodal A zone, fronting along two roadways, Harrison Avenue to the north and the New Jersey Turnpike Eastern Spur to the west. The property in question contains extensive frontage on these rights-of-way (ROWs), having a northerly lot line of over 1,000 linear feet along Harrison Avenue, and a westerly frontage of over 1,600 linear feet along the New Jersey Turnpike Eastern Spur. The Turnpike's road surface is approximately 63 feet above the grade level of the subject property. There is direct access to the premises from Harrison Avenue and no access from the Turnpike. However,

the proposed billboard is oriented to motorists traveling on the Turnpike, and not toward drivers on Harrison Avenue.

The applicant proposes to install the billboard at a location that is set back 80 feet from the New Jersey Turnpike Eastern Spur ROW. The proposed location will allow for adequate visibility of the billboard by motorists traveling along the Turnpike. Because of the uniqueness of the site, having a significantly greater area than the minimum required in the zone, as well as having a substantial frontage along a major roadway with a posted speed limit of 55 mph or greater, the proposed location of the billboard effectively meets the intention of the regulations, which require that billboards be erected adjacent to high-speed, high-capacity regional arterial roadways.

- ii. The granting of the variance will not adversely affect the rights of neighboring property owners or residents.*

The subject property is located within the District's Intermodal A zone and contains frontage along both the New Jersey Turnpike Eastern Spur and Harrison Avenue. There is direct access to the site from Harrison Avenue. Adjacent properties are essentially vacant. There are no residential properties situated within 2,500 feet in any direction from the proposed billboard location.

The billboard will be oriented towards motorists traveling on the New Jersey Turnpike Eastern Spur, and not towards any adjacent properties or motorists along Harrison Avenue. The proposed billboard is similar to other billboard installations found along the Turnpike. As such, the granting of the requested variance to

permit the billboard to be located 80 feet from the New Jersey Turnpike Eastern Spur ROW on the subject premises will not interfere with surrounding properties, nor prevent them from being utilized as intended.

iii. The strict application of the regulations will result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the property owner.

The strict application of the regulations requiring the placement of a billboard 50 feet from the New Jersey Turnpike Eastern Spur ROW would result in exceptional practical difficulties and hardship as applied to the particular characteristics of the subject property. The site is located within the District's Intermodal A zone, fronting along both the New Jersey Turnpike Eastern Spur and Harrison Avenue.

The applicant proposes to install the billboard so that it is oriented toward drivers on the New Jersey Turnpike Eastern Spur. The proposed location is required to comply with NJ Department of Transportation (NJDOT) spacing regulations that require the proposed billboard to be located 665 feet from the New Jersey Turnpike Western Spur.

There are no alternative practicable locations available on the subject property for the billboard to be placed in a conforming location that would not impact the visibility of the sign towards motorists on the New Jersey Turnpike Eastern Spur. The proposed location is the optimal location to safely view the billboard as the

sign is approached by northbound and southbound drivers on the New Jersey Turnpike Eastern Spur.

- iv. The variance will not result in substantial detriment to the public good and will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.*

The granting of the requested variance will not result in substantial detriment to the public good and will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare. Public safety will not be compromised by the placement of the billboard 80 feet from the New Jersey Turnpike Eastern Spur ROW. Rather, the proposed location will place the billboard within the appropriate, peripheral cone of vision where it may be safely viewed by motorists.

The billboard will not negatively impact the subject site or surrounding properties, and is similar to other billboard installations found along the New Jersey Turnpike. Scenic viewsheds will not be negatively impacted by the proposed billboard location.

Additionally, the applicant has obtained an outdoor advertising permit for the billboard from the NJDOT, which reviews public safety requirements as part of the state permitting process. The proposed digital face of the billboard complies with the maximum billboard sign area permitted by the District zoning regulations, and will comply with the District's billboard regulations governing the safety of its digital operations, including the utilization of automatic dimming technology to adapt to ambient illumination

levels, and a minimum time lapse of eight seconds between message changes.

v. The variance will not have a substantial adverse environmental impact.

The granting of the requested variance to permit the billboard to be located 80 feet from the New Jersey Turnpike Eastern Spur ROW will not result in any substantial adverse environmental impacts. The billboard is proposed to be erected on a site consisting of upland areas. No environmentally sensitive areas and minimal open space will be disturbed by the placement of the billboard at the proposed location. The illumination of the billboard will meet all requirements, and performance standards will not be exceeded for noise, vibration, airborne emissions, glare, hazardous and radioactive materials and wastewater.

vi. The variance represents the minimum deviation from the regulations that will afford relief.

The requested variance to permit the billboard to be located 80 feet from the New Jersey Turnpike Eastern Spur ROW represents the minimum deviation from the regulations that will afford relief. The New Jersey Turnpike Eastern Spur is a high-volume interstate highway, not a local road, allowing for adequate billboard visibility for traveling motorists. The proposed location is required to comply with NJDOT spacing requirements from the Western Spur of the Turnpike. The particular and unique site conditions detailed above make the subject property an appropriate site to accommodate a billboard at the specified location, in a zone where billboards are permitted. The proposed billboard is compatible with other billboards located along the Turnpike. As such, the requested variance represents the minimum deviation from the regulations that will afford relief.

vii. Granting the variance will not substantially impair the intent and purpose of these regulations.

The District zoning regulations require that a billboard be installed within a right-of-way having a posted speed limit of 55 mph or higher, or within 50 feet thereof. The intent of this regulation is to ensure that billboards are directed towards highways and situated in appropriate locations and in appropriate zones. The subject billboard is proposed to be located 80 feet from the New Jersey Turnpike Eastern Spur ROW. The subject site is located in the Intermodal A zone, where billboards are a permitted use. This right-of-way is a high-volume interstate highway, not a local road,

and will allow for adequate billboard visibility for traveling motorists. Therefore, the proposed billboard at this particular location will not substantially impair the intent and purposes of the regulations.

B. Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 19:4-8.14(h)7v, which requires the maximum permitted height of a billboard to be 30 feet above the grade level of the adjacent roadway surface.

The District Zoning Regulations at N.J.A.C. 19:4-4.14(e) state in part that, *a variance shall not be granted unless specific written findings of fact directly based upon the particular evidence presented are made that support conclusions that...*

1. Concerning bulk variances:

- i. The variance requested arises from such condition that is unique to the property in question, is not ordinarily found in the same zone, and is not created by any action of the property owner or the applicant.*

The requested variance to permit the installation of the billboard at a height of 52 feet above the grade level of the adjacent roadway surface of the New Jersey Turnpike Eastern Spur, where a maximum height of 30 feet above the grade level of the adjacent roadway is permitted, arises from conditions that are unique to the property in question.

The subject property is approximately 29.6 acres in area, substantially larger than the minimum one acre lot size required for the zone. The site is located within the District's Intermodal A zone, fronting along two roadways, Harrison Avenue to the north and the New Jersey Turnpike Eastern Spur to the west. The property in question contains extensive frontage on these rights-of-

way (ROWS), having a northerly lot line of over 1,000 linear feet along Harrison Avenue, and a westerly frontage of over 1,600 linear feet along the New Jersey Turnpike Eastern Spur. The Turnpike's road surface is approximately 63 feet above the grade level of the subject property. There is direct access to the premises from Harrison Avenue and no access from the Turnpike. However, the proposed billboard is oriented to motorists traveling on the Turnpike, and not towards drivers on Harrison Avenue.

The proposed billboard height of 115 feet, or 52 feet above the grade level of the adjacent roadway surface of the New Jersey Turnpike Eastern Spur, is proposed in order for the billboard to provide adequate visibility to Turnpike motorists. These are conditions that were not created by the property owner.

- ii. The granting of the variance will not adversely affect the rights of neighboring property owners or residents.*

The granting of the requested variance to permit the installation of a billboard having a height of 52 feet above the grade level of the adjacent roadway surface of the New Jersey Turnpike Eastern Spur, whereas a maximum height of 30 feet above the grade level of the roadway is permitted, will not adversely affect the rights of neighboring property owners or residents.

The subject property is located within the District's Intermodal A zone and contains frontage on both the New Jersey Turnpike Eastern Spur and Harrison Avenue. There is direct access to the site from Harrison Avenue. Adjacent properties are essentially vacant. There are no residential properties situated within 2,500 feet in any direction from the proposed billboard location.

The billboard will be oriented towards motorists traveling on the New Jersey Turnpike Eastern Spur, and not towards any adjacent properties or motorists along Harrison Avenue. The proposed billboard is similar to other billboard installations found along the New Jersey Turnpike. As such, the granting of the requested variance to permit the installation of the billboard at a height of 52 feet above the roadway surface of the New Jersey Turnpike Eastern Spur on the subject premises will not interfere with the site or surrounding properties, nor prevent them from being utilized as intended.

iii. The strict application of the regulations will result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the property owner.

The strict application of the regulations requiring the billboard to be erected at a height not exceeding 30 feet above the adjacent roadway surface of the New Jersey Turnpike Eastern Spur will result in practical difficulties and undue hardship to the property owner. The particular characteristics of the property present practical difficulties in the installation of the proposed billboard on the site, resulting in a proposed billboard height that exceeds the maximum permitted height.

In order to accommodate a billboard on the subject property, which is a permitted use in the Intermodal A zone, the billboard must be visible to its intended audience of northbound and southbound motorists on the adjacent New Jersey Turnpike Eastern Spur. The applicant's traffic engineer testified that the further the billboard was installed from the Turnpike right-of-way, the higher it must be erected above the roadway surface to establish the appropriate visibility to the intended audience. If the requested variance were not granted, the billboard would not be optimally visible to the motorists along this roadway. The proposed height is required to allow the billboard to be safely viewed by motorists traveling along the New Jersey Turnpike Eastern Spur.

iv. The variance will not result in substantial detriment to the public good and will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.

The granting of the requested variance to permit the billboard to exceed the maximum permitted height will not result in substantial detriment to the public good and will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare. The proposed billboard will not interfere with surrounding properties, and is similar to other billboard installations found along the New Jersey Turnpike. No scenic viewsheds will be negatively impacted by a billboard at the proposed height.

Additionally, the applicant has obtained an outdoor advertising permit for the billboard from the NJDOT, which reviews public

safety requirements as part of the state permitting process. The proposed digital face of the billboard complies with the maximum permitted billboard sign area permitted by District zoning regulations, and will comply with the District's billboard regulations governing the safety of its digital operations, including utilization of automatic dimming technology to adapt to ambient illumination levels, and a minimum time lapse of eight seconds between message changes.

v. The variance will not have a substantial adverse environmental impact.

The granting of the requested variance to permit the billboard to be greater than 30 feet above the adjacent the New Jersey Turnpike Eastern Spur roadway surface on the subject premises will not result in any substantial adverse environmental impacts. The billboard is proposed to be erected on a site consisting of upland areas. No environmentally sensitive areas and minimal open space will be disturbed by the placement of the billboard at the proposed location. The illumination of the billboard will meet all requirements, and performance standards will not be exceeded for noise, vibration, airborne emissions, glare, hazardous and radioactive materials and wastewater.

vi. The variance represents the minimum deviation from the regulations that will afford relief.

The requested variance to permit the installation of the easterly billboard at a height of 52 feet above the grade level of the adjacent New Jersey Turnpike Eastern Spur roadway surface, whereas a maximum height of 30 feet above the grade level of the roadway is

permitted, represents the minimum deviation from the regulations that will afford relief. In order to accommodate a billboard on the subject property, which is a permitted use in the Intermodal A zone, the billboard must be visible to its intended audience of motorists on the New Jersey Turnpike Eastern Spur. If the requested variance were not granted, a billboard erected at a conforming height of 30 feet would be placed in a potentially unsafe location. The proposed height is the minimum required height to allow the billboard to be safely visible to motorists. As such, the requested variance represents the minimum deviation from the regulations that will afford relief.

vii. Granting the variance will not substantially impair the intent and purpose of these regulations.

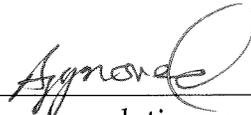
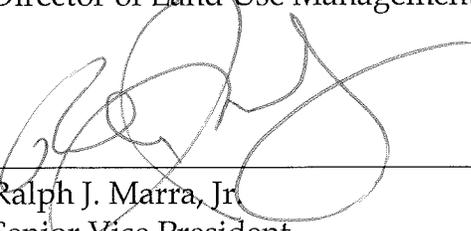
The requested variance to permit the installation of the proposed billboard at a height of 52 feet above the grade level of the adjacent roadway surface of the New Jersey Turnpike Eastern Spur, whereas a maximum height of 30 feet above the grade level of the roadway is permitted, will not substantially impair the intent and purpose of the regulations. Although the billboard is proposed to be higher than the maximum permitted height of 30 feet above the roadway surface, the proposed height of 52 feet will not result in a significant negative visual impact for the surrounding area. The proposed height of 52 feet is required in order for the billboard to provide adequate visibility to motorists in a safe manner. The billboard will be oriented towards motorists traveling along the New Jersey Turnpike Eastern Spur, a high-speed interstate roadway, and not towards adjacent properties or motorists along Harrison Avenue. As such, the granting of the requested variance

will not substantially impair the intent and purpose of the regulations.

V. SUMMARY OF CONCLUSIONS

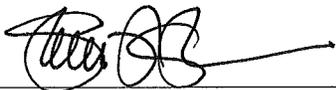
- A. Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 19:4-8.14(h)7ii(1), which requires that billboards be installed within a ROW having a posted speed limit of 55 mph or higher, or within 50 feet thereof, and shall be oriented towards such ROW.

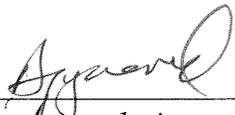
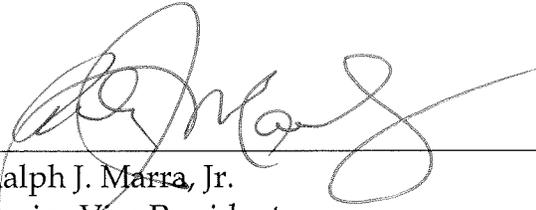
Based on the record in this matter, the bulk variance application to permit a billboard to be located within a maximum distance of 80 feet from the New Jersey Turnpike Eastern Spur ROW is hereby recommended for APPROVAL.

<u>APPROVAL</u>	<u>2/2/16</u>	
Recommendation on Variance Request	Date	Sara J. Sundell, P.E., P.P. Director of Land Use Management
	<u>2/2/16</u>	
Recommendation on Variance Request	Date	Ralph J. Marra, Jr. Senior Vice President Legal & Regulatory Affairs

B. Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 19:4-8.14(h)7v, which requires the maximum permitted height of a billboard to be 30 feet above the grade level of the adjacent roadway surface.

Based on the record in this matter, the bulk variance application to permit a billboard with a maximum height of 52 feet above the grade level of the adjacent New Jersey Turnpike Eastern Spur ROW roadway surface is hereby recommended for APPROVAL.

<u>APPROVAL</u>	<u>2/2/16</u>	
Recommendation on Variance Request	Date	Sara J. Sundell, P.E., P.P. Director of Land Use Management

	<u>2/2/16</u>	
Recommendation on Variance Request	Date	Ralph J. Marra, Jr. Senior Vice President Legal & Regulatory Affairs