
BEFORE THE WHITPAIN TOWNSHIP BOARD OF SUPERVISORS

Applicant:

Keystone Outdoor Advertising Company, Inc.

Property:

1273 Dekalb Pike
Blue Bell, PA 19422

Parcel No:

66-00-01567-00-5

Application No.:

CU47-23

CONDITIONAL USE DECISION

FINDINGS OF FACT

1. On or about November 27, 2023, Keystone Outdoor Advertising Company, Inc. (“Applicant”) submitted to the Whitpain Township Board of Supervisors (“Board”) an application for conditional use approval (“Application”) under the Whitpain Township Zoning Ordinance of 1950, as amended (“Ordinance”).
2. Specifically, the Application sought conditional use approval pursuant to Section 160-191.2 of the Ordinance related to the property located at 1273 Dekalb Pike, Blue Bell, PA 19422 (“Subject Property”) to permit an off-premises advertising sign (“Proposed Billboard”).

3. On April 2, 2024, the date requested by the Applicant after waiving all relevant timeliness provisions of the Pennsylvania Municipalities Planning Code (“MPC”), a hearing on the Application was held at a publicly-noticed meeting before the Board.
4. Applicant has entered into a lease agreement for use of the Subject Property, which is located in the C - Commercial District and the Off-Premises Advertising Sign Overlay District of Whitpain Township (“Township”).
5. The Ordinance permits off-premises advertising signs within the Off-Premises Advertising Sign Overlay District by conditional use only.
6. The Board met all of the requirements of the Ordinance and the MPC as to the requisite notice.
7. Applicant was represented by Vincent B. Mancini, Esquire.
8. The following members of the public were granted party status:
 - a. Thomas Scott Ryan, owner of 1257 and 1265 DeKalb Pike. Mr. Ryan was represented by Scott Denlinger, Esquire.
 - b. Sarah Winkelvoss, tenant of 1265 Dekalb Pike. Ms. Winkelvoss was unrepresented and proceeded *pro se*.
 - c. Timothy Zahner, owner of 1379 Michaels Lane. Mr. Zahner was unrepresented and proceeded *pro se*.

d. Michael Zahner, owner of 1379 Michaels Lane. Mr. Zahner was unrepresented and proceeded *pro se*.

9. The following documents were offered by the Applicant and the Township, marked as indicated, and received into evidence:

- T-1: Application Packet
- T-2: Proof of Mailing
- T-3: Affidavit of Posting with Attachments
- T-4: Proof of Publication
- T-5: MCPC Review Letter
- T-6: Township Planning Commission Memorandum
- A-A: Conditional Use Application
- A-B: Deed
- A-C: Lease
- A-D: Ordinance No. 4-262
- A-E: Resume of Mike Tantala
- A-F: Site Plan
- A-G: Aerial Photograph
- A-H: Tantala Photograph Rendering
- A-I: MCPC Review Letter
- R-1: Deeds for 1257 and 1265 Dekalb Pike
- R-2: Whitpain Township Zoning Map
- R-3: Lease with Cubby's Canine Castle
- R-4: Township Zoning Ordinance Section 160-119
- R-5: Aerial View of Cubby's Canine Castle
- R-6: 11/20/2006 Certificate of Use and Occupancy
- R-7: Township Zoning Ordinance Section 160-7
- R-8: Photograph
- R-9: Photograph

10. Michael Tantala was accepted as an expert in civil and transportation engineering as it relates to billboards and offered the following testimony on behalf of the Applicant:
 - a. Applicant retained Mr. Tantala to assist in the development of the Proposed Billboard.
 - b. Mr. Tantala designed the site plan for the Proposed Billboard.
 - c. The Proposed Billboard is single-faced and is directed north to advertise to southbound traffic on the Pennsylvania Turnpike.
 - d. The face of the Proposed Billboard is 10 feet tall and 36 feet wide.
 - e. The face of the Proposed Billboard is internally illuminated and made up of digital, LED diodes.
 - f. A digital face projects “directional light,” which can be controlled to direct the light from the sign to the intended area of interest.
 - g. The light projected from a digital face diminishes as a function of the angle and distance from the intended area of interest.
 - h. The Proposed Billboard would not depict animated images and would only display static images.
 - i. Applicant proposes that these static images would change on an 8-second interval.
 - j. The Subject Property is bounded on three (3) sides by a utility-owned right-of-way on which overhead transmission lines are

located, the Pennsylvania Turnpike – Northeast Extension (Interstate 476), and DeKalb Pike (U.S. Route 202).

- k. The posted speed limit on the Pennsylvania Turnpike is 70 miles per hour, which is the equivalent of 100 feet per second.
- l. Drivers on the Pennsylvania Turnpike would first notice the Proposed Billboard at a distance of approximately 800 feet, which gives them about eight (8) seconds to take fleeting glances at the Proposed Billboard.
- m. Billboards that are too small, too far away from the road, too low, too high or that are obstructed present safety concerns for drivers.
- n. The back panel of the Proposed Billboard would have a neutral color.
- o. The structural support of the Proposed Billboard would be a single 5-foot diameter pole.
- p. The Proposed Billboard would have a 5-foot wide landscaping strip around the structural support.
- q. It is Mr. Tantala's opinion that the digital face of the Proposed Billboard would not be visible from any residential property.
- r. The Proposed Billboard would not emit noise, odor or any gas.

- s. The portion of the Subject Property upon which the Proposed Billboard would be constructed is on a hill that is approximately 25 feet above the Pennsylvania Turnpike.
- t. The top of the Proposed Billboard would be 40 feet above the grade of the hill, and would therefore be 65 feet above the grade of the Pennsylvania Turnpike.
- u. It is Mr. Tantala's opinion that the height of the Proposed Billboard is the minimum necessary on the Subject Property to be a safe and effective sign.
- v. The Proposed Billboard would be illuminated throughout the nighttime.
- w. It is Mr. Tantala's opinion that the setbacks proposed by the Applicant on the Subject Property comply with the requirements found within Section 160-191.2.D of the Ordinance.
 - i. The Proposed Billboard would be no closer than 20 feet from any property line.
 - ii. The Proposed Billboard would be no closer than 25 feet from any street or road measured from the ultimate right-of-way.
 - iii. There are no other off-premises advertising signs within 1,000 from the Proposed Billboard.

- iv. The Proposed Billboard would be no closer than 500 feet from any right-of-way of any interchange.
- v. The Proposed Billboard would not be located within the clear sight triangle of any intersection.
- vi. It is Mr. Tantala's opinion that the Proposed Billboard would not be within the setback requirements related to the uses set forth in Section 160-191.2.D.6 of the Ordinance.
- x. Applicant would not use the Proposed Billboard to advertise any adult or sexually-oriented business or material, nor to display any obscene or profane language, nor to emit any verbal noises, nor to depict any content prohibited by 18 Pa.C.S.A § 5903.
- y. The Proposed Billboard would not generate glare so as to interfere with a passing driver's operation of his or her motor vehicle.
- z. The face of the Proposed Billboard would have a photocell that would adjust automatically depending on the exterior brightness from the sun.
 - aa. The Proposed Billboard would accordingly be its most bright during the day and its darkest at night time.
 - bb. Applicant would comply with all maintenance requirements as set forth in Section 160-191.2.J of the Ordinance.

- cc. Applicant would not remove any trees from the Subject Property for the purposes of the Proposed Billboard.
- dd. Applicant would maintain all landscaping on the Subject Property in good condition.
- ee. Applicant would comply with all owner identification requirements established in Section 160-191.2.N of the Ordinance.
- ff. The Proposed Billboard was designed to be integrated into a network of other billboards in the region, such that it could provide public service announcements and other warnings.
- gg. The Proposed Billboard would have no detrimental effect on public health, safety or the public interest.
- hh. The Proposed Billboard would be approximately 60-70 feet away from the building located at 1265 Dekalb Pike (“Neighboring Property”).
 - ii. The face of the Proposed Billboard would directly face the Neighboring Property, though it would be at a different elevation.
 - jj. An occupant of the Neighboring Property would be able to see some light from the face of the Proposed Billboard, though it would be diminished in comparison that seen by drivers on the Pennsylvania Turnpike.

11. Mr. Ryan offered the following testimony in opposition to the Application:

- a. Mr. Ryan has owned the Neighboring Property as well as 1257 Dekalb Pike since 1998.
- b. The Neighboring Property shares a property line with the Subject Property.
- c. The Neighboring Property and the Subject Property are not separated by any roadways.
- d. The current occupant of the Neighboring Property is Cubby's Canine Castle, which is dog daycare and boarding facility.
- e. Mr. Ryan has a lease agreement with Ms. Winkelvoss, owner of Cubby's Canine Castle.
- f. Cubby's Canine Castle has existed on the Neighboring Property continuously since 2006.
- g. Mr. Ryan is concerned that the Proposed Billboard would have a negative impact on the dog daycare and boarding use.
- h. There is also a residential dwelling on the Neighboring Property, which is permitted in both the Ordinance as well as the lease agreement with Cubby's Canine Castle.
- i. The residential building has full time occupants who live there as their primary domicile.
- j. The residential dwelling has been occupied with a tenant since 2006.

12. Ms. Winkelvoss offered the following testimony in opposition to the Application:

- a. Ms. Winkelvoss owns and operates Cubby's Canine Castle.
- b. The facility on the Neighboring Property has several recreational and playground areas for the dogs.
- c. These recreational and playground areas are not open to the general public but instead are only available for paying customers.
- d. The business recently spent a significant amount of money to upgrade the play areas.
- e. The Township-issued Certificate of Use and Occupancy for Cubby's Canine Castle approved an R-3 Residential use on the Neighboring Property.
- f. The residential dwelling on the Neighboring Property has been consistently occupied by a tenant since November of 2006.
- g. One (1) of the two (2) current tenants in the residential dwelling is a part-time employee of Cubby's Canine Castle.
- h. Ms. Winkelvoss is concerned that the Proposed Billboard might negatively affect the sleep of the boarded dogs.

13. Laura Caldwell offered the following testimony in opposition to the Application:

- a. Ms. Caldwell resides in the residential dwelling on the Neighboring Property and is concerned that the Proposed Billboard would negatively impact her.
- b. The Neighboring Property is her only home.
- c. Ms. Caldwell uses an outdoor space attached to the residential dwelling on a daily basis.
- d. Ms. Caldwell provides nighttime care for the dogs at Cubby's Canine Castle.

14. Kim Zampirri, Township resident, offered public comment to question certain aspects of the Proposed Billboard.

15. Upon conclusion of its case, Applicant, through its attorney, conceded that that Proposed Billboard would not comply with certain criteria within the Ordinance, but asked the Board to grant the Application with the condition that Applicant obtain any necessary variances from the Whitpain Township Zoning Hearing Board.

16. Specifically, Counsel for Applicant stated:

So I have wanted to make a request of the Board to indicate that we would be willing to take a condition to allow us to go to the Zoning Hearing Board and attempt to secure a variance to permit change copies every eight seconds and to permit nighttime illumination, which is severely and significantly dimmed and in full compliance of your illumination of point three-foot candles under NIS [sic] standards.

DISCUSSION

1. Pursuant to § 160-191.2 of the Ordinance, “[o]ff-premises advertising signs may be permitted by conditional use in the Off-Premises Sign Overlay District subject to the requirements contained in this section.”
2. The numerous requirements for off-premises advertising signs are found with Sections 160-191.2.B-P.
3. Most pertinent to the record developed during the April 2 hearing, the following criteria applies:
 - a. Section 160-191.2.D.6:

No off-premises advertising sign shall be erected within a 300-foot circumference of the nearest property line of any historic site, school, religious institution, retirement or nursing home, cemetery, government building, community center or public park, playground or recreational area or within 1,000 feet of any existing residential dwelling except where separated from such property by a highway in the Interstate Highway or United States Numbered Highway (U.S. Route) Systems or a utility-owned right-of-way or property on which overhead transmission lines are located.
 - b. Section 160-191.2.G.4: “The copy or image on an LED sign shall not change more than once per minute.”
 - c. Section 160-191.2.G.8: “LED signs shall not be operated between 10:00 p.m. and 6:00 a.m. the following morning.”
4. “A [conditional use] is not an exception to the zoning ordinance, but rather a use to which the applicant is entitled provided the specific standards enumerated in the ordinance for the [conditional use] are met

by the applicant.” In re AMA/Am. Mktg. Ass'n, Inc., 142 A.3d 923, 934 (Pa. Commw. Ct. 2016).¹

5. An applicant is entitled to a conditional use as a matter of right, unless it is determined “that the use does not satisfy the specific, objective criteria in the zoning ordinance for that conditional use.” In re Drumore Crossings, L.P., 984 A.2d 589, 595 (Pa. Cmwlth. 2009).
6. An Applicant for conditional use has the burden to demonstrate compliance with the specific criteria of the ordinance. In re Thompson, 896 A.2d 659 (Pa. Commw. Ct. 2005).
7. In reaching a decision on a conditional use application, “[t]he board is the factfinder, with the responsibility for credibility determinations and the weight to be assigned the evidence.” Brookview Solar I, LLC v. Mount Joy Twp. Bd. of Supervisors, 305 A.3d 1222, 1233 (Pa. Commw. Ct. 2023).
8. However, in “conditional use cases, the standard is whether the plan as submitted complies with all zoning requirement.” K. Hovnanian Pennsylvania Acquisitions, LLC v. Newtown Twp. Bd. of Sup'rs, 954 A.2d 718, 725 (Pa. Commw. Ct. 2008).
9. “A promise or intention to comply is insufficient to show entitlement to a conditional use approval.” Id.

¹ “Because the law regarding conditional uses and special exceptions is virtually identical, the burden of proof standards are the same for both.” In re Thompson, 896 A.2d at 670.

10. Similarly, the potential for related zoning hearing board relief does not negate an applicant's inability to meet the objective standards of a conditional use provision. Northampton Area Sch. Dist. v. E. Allen Twp. Bd. of Sup'rs, 824 A.2d 372, 377 n.5 (Pa. Commw. Ct. 2003).
11. In sum, “[w]here... the applicant fails to meet all of the ordinance requirements for a [conditional use],” the governing body must deny the application. Elizabethtown/Mt. Joy Assocs., L.P. v. Mount Joy Twp. Zoning Hearing Bd., 934 A.2d 759, 768 (Pa. Commw. Ct. 2007).
12. Based upon the record and the evidence presented, Applicant failed to sustain its burden of proof in demonstrating that the Application met the specific criteria of the Ordinance set forth in Section 160-191.2.
13. While Applicant's witness, Mr. Tantala, testified that the Proposed Billboard would not be within 1,000 feet of a residential dwelling, the Board concludes that record contains credible evidence proving otherwise.
14. Ms. Caldwell's residence is clearly within 1,000 feet of the Subject Property and the Proposed Billboard, as it is on the abutting Neighboring Property.
15. These two properties are not separated by any road or a utility-owned right-of-way or property on which overhead transmission lines are located.

16. Further, Applicant's offer to seek variances from the Ordinance to modify the objective criteria do not change the requirement in a conditional use case to submit compliant plans.
17. The Proposed Billboard would display an image that would change every eight (8) seconds, where a minimum of sixty (60) seconds in between images is required.
18. The Proposed Billboard, and its LED face, would also operate between the hours of 10:00 p.m. and 6:00 a.m. the following morning.
19. While Applicant undoubtedly desires variances from the above requirements, they have not yet received such relief, and the Board must consider the objective standards as they presently exist.

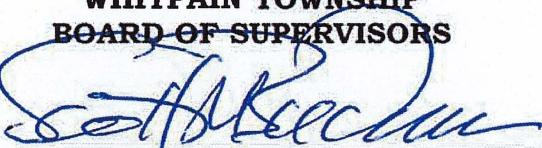
CONCLUSIONS OF LAW

1. The Application does not meet the objective criteria of the Whitpain Township Zoning Ordinance as stated in Section 160-191.2.D.6, Section 160-191.2.G.4 and Section 191.2.G.8.
2. The Proposed Billboard would be located within 1,000 feet of an existing residential dwelling that is not separated by a highway in the Interstate Highway or United States Numbered Highway Systems or a utility-owned right-of-way or property on which overhead transmission lines are located.
3. The Proposed Billboard would display an image that would change every eight (8) seconds, where a minimum of sixty (60) seconds in between images is required.
4. The Proposed Billboard, and its LED face, would operate between the hours of 10:00 p.m. and 6:00 a.m. the following morning.

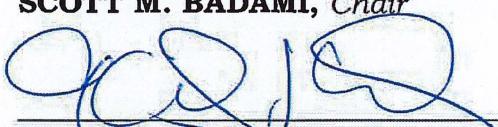
ORDER

AND NOW, this 7th day of May, 2024, the Application, seeking conditional use approval for an off-premises advertising sign pursuant to Section 160-191.2 of the Whitpain Township Zoning Ordinance of 1950, as amended, based on the testimony and documentary evidence presented, is **DENIED**.

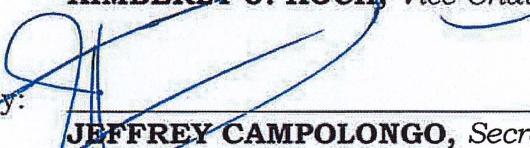
**WHITPAIN TOWNSHIP
BOARD OF SUPERVISORS**

By: 

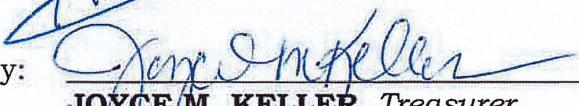
SCOTT M. BADAMI, Chair

By: 

KIMBERLY J. KOCH, Vice-Chair

By: 

JEFFREY CAMPOLONGO, Secretary

By: 

JOYCE M. KELLER, Treasurer

By: 

SARA SELVERIAN, Assistant Secretary

A copy of this Decision and Order
was sent via E-mail or U.S. Mail
to all Parties on:

May 9, 2024

THIS DECISION AND ORDER OF THE WHITPAIN TOWNSHIP BOARD OF SUPERVISORS IS FINAL, AND ANY APPEAL OF IT MUST BE FILED WITH THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY WITHIN THIRTY (30) DAYS FOLLOWING THE ABOVE-STATEMENT MAILING DATE.