

**ZONING HEARING BOARD OF DOYLESTOWN TOWNSHIP
BUCKS COUNTY, PENNSYLVANIA**

File No. Z-9-2010

Applicant: Outdoor Partnership, LLC
79 Boxwood Road
Churchville, PA 18966

Owner of Premises: Antonio and Josephine Carosi
44 Tinsel Road
Levittown, PA 19056

Subject Property: Tax Parcel #9-19-5, which is located at 36 Duane Road in Doylestown Township, PA

Prayer of Relief: The Applicant has filed an appeal from a determination of the Doylestown Township Director of Code Enforcement to deny its application for changes to a billboard which is located on the subject property. Alternatively, the Applicant requests a special exception, pursuant to §175-103.11 of the Doylestown Township Zoning Ordinance (“Ordinance”), in order to permit changes to the existing sign and/or variances from §175-103.11.M.1 and .3 of the Ordinance in order to permit a light source to be visible from a point off of the property upon which the sign is located, and/or to permit flashing, moving, changing, or animated display on the existing sign.

Hearing History: The application was filed in Doylestown Township on November 1, 2010. Pursuant to the grant of a waiver of rights to a prompt hearing under the Pennsylvania Municipalities Planning Code, the initial hearing was scheduled for January 27, 2011, but continued, at the request of the Applicant, in order to permit the hearing to occur before a full Zoning Hearing Board. Due to the occurrence of the regularly scheduled Zoning Hearing Board dates on Federal holidays in February, and already pending hearings, the Applicant agreed to the scheduling of the hearing on March 21, 2011. The hearing was held at the Doylestown Township Building, 425 Wells Road, Doylestown, PA. 18901.

Appearances: Applicant by: William E. Benner, Esq.
Benner and Wild
174 West State Street
Doylestown, PA 18901

Doylestown
Township by: John P. Koopman
Begley, Carlin & Mandio, LLP
680 Middletown Boulevard
Langhorne, PA 19047

Date of Issuance:

DECISION

FINDINGS OF FACT:

1. The Zoning Hearing Board of Doylestown Township met the requirements of the Zoning Ordinance, the Municipalities Planning Code, and other relevant statutes as to legal notice of the hearings held.
2. The Applicant has constructed and maintained an outdoor off premises advertising sign (billboard) on the subject property pursuant to a declaration of easements and restrictions, received into evidence as Exhibit "A-1". Accordingly, the Applicant is possessed of the requisite standing to make Application to this board.
3. The subject property is located in the C-1, Commercial Zoning District of Doylestown Township. It is approximately 3.36 acres in size and accommodates a 2-faced, V-shaped, billboard.
4. Each face of the billboard is 14' x 48' (672 sq. ft.) in size. It is supported by a monopole and extends to a height of thirty-five (35) feet.
5. The billboard was constructed pursuant to a permit granted by Doylestown Township on September 20, 2006 (Exhibit "A-3").
6. That building permit was issued pursuant to a settlement agreement dated July 25, 2006, (Exhibit "A-2") which resolved a pending lawsuit between the Applicant and Doylestown Township.
7. In addition to granting the Applicant the right to construct the billboard as it presently exists on the subject property, the Township reserved the right to enact a zoning ordinance amendment that regulates off premises advertising signs.
8. On February 7, 2007, the Township inspected the billboard after its construction and certified it as consistent with the terms of the settlement agreement.

9. On or about March 6, 2007, Doylestown Township enacted a Zoning Ordinance Amendment (Ordinance 337) that regulates off premises advertising signs, permitting their location in certain zoning districts within its borders. Among other provisions, it limits the size of off premises advertising signs to 250 square feet.

10. Upon the enactment of Ordinance 337, the billboard on the subject property became nonconforming, dimensionally, to the Ordinance as to its size.

11. Pursuant to the settlement agreement and the building permit, the use of the subject property for an off-premises outdoor advertising sign is permitted and therefore conforming.

12. On or about September 24, 2010, the Applicant applied to Doylestown Township for a zoning permit to convert the billboard to a digital one. (Exhibit "T-1").

13. On October 1, 2010, the Township's Director of Code Enforcement, Sinclair G. Salisbury, issued a letter determining to deny the request for change.

14. The Applicant filed a timely appeal from that determination.

15. Accordingly, Doylestown Township proceeded initially to meet its burden of proof to establish the merit of Mr. Salisbury's determination.

16. Salisbury testified that, prior to that determination, he met with the Applicant and its representatives and as a result of that meeting, he ascertained that the digital billboard proposed would be illuminated by means of LED lighting on the face of the billboard. The existing sign is indirectly lit by a light source at the base of the sign that limits illumination to the sign only.

17. As a result, Salisbury determined that the source of the lighting for the proposed digital billboard would be from the face of the billboard itself and would be, obviously, visible off-site.

18. Ordinance §175-104.M.1 states: "The source of light may not be visible from any point off the property upon which the sign is located." Salisbury interpreted that language to exclude a digital billboard, as proposed.

19. He also ascertained, confirmed by the Applicant's representative in his testimony, that the digital billboard would be capable of flashing, animating and fading.

20. Based upon Salisbury's credible testimony, the Board also finds that, at that meeting, the Applicant informed Salisbury that he proposed that the face of the digital billboard would change every eight (8) seconds.

21. Ordinance §175-104.M.3 reads as follows: "No portion of an outdoor advertising sign may contain any flashing, moving, changing or animated display."

22. Based upon his investigation, Salisbury testified that he ascertained that that even if the Applicant would restrict the digital billboard to eliminate flashing, moving, or animation, it would still change every eight (8) seconds.

23. The Board finds that Salisbury correctly determined to deny the permit application based upon his investigation and analysis of the language of the Zoning Ordinance.

24. He is required to interpret the Ordinance, to the best of his ability, in strict accordance with its terms.

25. Alternatively, the Applicant has requested that this Board grant a special exception, pursuant to Ordinance §175-103.11 to permit the billboard to be changed to a digital display.

26. Receipt of such a special exception is possible only by compliance with all of the criteria and conditions imposed upon it, set forth in §175-103.11.

27. Included among the conditions are the two (2) Ordinance sections upon which Salisbury validly determined to deny the application. Therefore, in order to obtain a special exception, the Applicant must obtain variances from those provisions, which are also, alternatively, requested in this application.

28. The Applicant's testimony and evidence was presented entirely by Michael DiCrocce, a principal of the Applicant.

29. According to him, the Applicant has erected and maintains ten (10) off premises outdoor advertising signs in Bucks County, including the subject billboard. The other signs are located along the Pennsylvania Turnpike.

30. The proposed digital billboard will be of the same size, shape and height as the existing one. However, the existing monopole would have to be removed and replaced by a stronger one in order to support the additional weight of the digital billboard.

31. The billboard accommodates its message by means of "stress face vinyl" which is manually attached to the faces of the structure. On average, the message changes approximately monthly and is accomplished manually, requiring two laborers.

32. DiCrocce testified that the Applicant's motivation for this request is as follows:

a. Technology has advanced since the installation of the sign that now permits multiple messages to be displayed from the same place without manual installation;

b. There have been multiple inquiries from area businesses to advertise on the sign space on the billboard.

c. There is a market for this sign that would accommodate multiple users at the same time at this billboard.

d. The sign could be used for emergency and community messages.

33. DiCroce also frankly testified that there was no necessity that caused this application, but that if granted, it would result in an increase of revenues from the use of the billboard.

34. The existing billboard is functioning as proposed and is generating income.

35. Stephen White, Doylestown Township's Police Chief of twenty-three (23) years, testified with concerns about the change of the billboard to a digital display.

36. Based upon that testimony, the Board finds that the property's fronting street, Route 611, is a heavily traveled 4-lane highway with unlimited access, and that within approximately 2/10 of a mile of the subject property, there are located many commercial and residential properties with numerous driveway and roadway intersections.

37. Indicating that the area of the subject property is "very congested", Chief White recounted the accident history for the past three (3) years at or near the intersection closest to the subject property, Edison Furlong and Almshouse Roads.

38. Of the 138 accidents that occurred during those three (3) years in this vicinity, well over 2/3 of them were rear-end collisions, caused by distracted drivers due to the traffic conflicts in this area.

39. Chief White opined that a digital billboard at this location would be an additional distraction for drivers and would contribute negatively to highway safety in Doylestown Township.

40. Further, the Board notes that the settlement agreement that enabled the construction of the existing billboard (Exhibit "A-2") contains language, relevant to this application, as follows: "...after receipt of permission to erect a sign on the Carosi property (the subject property) Outdoor Partnership...shall not at any time hereafter...erect or assist in or consult for the erection of an outdoor advertising sign, including a free-standing advertising sign, on any property in the Township except in strict conformance with the Township zoning ordinance as the same may be amended from time to time, and shall not apply to the Zoning Hearing Board or Board of Supervisors for a variance, validity challenge or any other form of relief from the Zoning Ordinance provisions relating to or in connection with the erection of a sign."

41. Neighboring residential property owners testified in opposition to the application with concerns about the existing impacts of the billboard and the potential for any exacerbation of them; and, in addition, with concerns about an additional distraction at this congested intersection.

CONCLUSIONS OF LAW:

1. The determination of Doylestown Township's Code Enforcement Officer, Sinclair G. Salisbury, to deny the Applicant's request for a permit to change the billboard to a digital display was valid.

2. A strict reading of the words of the Ordinance provisions relevant to this matter indicates a violation of those provisions due to the source of the light being visible off the premises and because a digital display would result in a change of the sign which is prohibited by §175-104.M.3.

3. Further, significant to the request for the special exception, the credible and competent evidence presented at this hearing leads the Board to no other conclusion that a special exception could only be granted if variances from the two (2) provisions of subsection "M" are granted.

4. The billboard existing on the subject property is conforming to the use requirements of the Ordinance but nonconforming, dimensionally, to the maximum sign area requirements of 250 square feet.

5. There is no right of natural expansion that attaches to a dimensional nonconformity.

6. The modernization of the billboard is not necessary to enable its continued use. The billboard's nonconforming size, in fact, operates as an advantage to the Applicant.

7. The competent evidence of Doylestown Township's Police Chief indicates that the change to a digital display, at its very least, will constitute one additional distraction in an already distracting area for motorists and will, therefore, adversely impact and affect the public safety.

8. The Applicant's testimony indicates that the billboard is being used as permitted, does not require change, and generates revenue.

9. Read collectively, §175-104.M.1 and .3 indicate a legislative intent to preclude the type of billboard display proposed in this application. The Ordinance permits off premises commercial advertising signs in locations in the Township deemed appropriate for that use.

10. No evidence presented by the Applicant justifies a hardship that would warrant a variance from the language of the Ordinance.

11. Accordingly, the Doylestown Township Zoning Hearing Board determined, unanimously, to deny relief to the Applicant as is more fully set forth hereafter.

WHEREFORE, the Zoning Hearing Board of Doylestown Township DENIES the Applicant's appeal from the October 1, 2010 determination of Doylestown Township's Director of Code Enforcement. Further, it DENIES the Applicant's request for a special exception pursuant to §175-103.11, by reason of the Applicant's failure to meet all of the criteria of that section. Additionally, the Board DENIES the Applicant's request for variances from §175-103.11.M.1 and .3.

**ZONING HEARING BOARD OF
DOYLESTOWN TOWNSHIP**

By: W. Andrew McPherson, lsl
W. Andrew McPherson, Chairman

William J. Lahr, lsl
William J. Lahr

Rick Gaver, lsl
Rick Gaver

IMPORTANT NOTE: Pursuant to §175-136 and §175-137 of the Doylestown Township Zoning Ordinance, the relief granted herein shall expire five (5) years from the date of this decision.