

MEMORANDUM
APPEAL NO. 4473

762, 764, & 766 West Railroad Avenue, Bryn Mawr, PA 19010
known as tax map parcel nos. 40-00-48496-00-1; 40-00-48500-00-6; and
40-00-48504-00-2
a.k.a. 762, 764, & 766 Old Railroad Avenue West, Bryn Mawr, PA 19010

1. Description: 766 West Railroad Avenue is a triangular shaped lot with approximately 50 ft. of frontage along West Railroad Avenue and 60 ft. of frontage along County Line Road. The parcel is improved with an attached one-story commercial building and parking area. 764-762 Old Railroad Avenue are irregular shaped lots with 32 ft. of frontage along West Railroad Avenue and 38 ft. of frontage along County Line Road. The parcels are improved with an attached three-story residential/commercial building.
2. Applicant and Applicant's interest in property:
762-766 Railroad Ave Partnership - Owner
766 W. Railroad Outdoor, LLC - Applicant
Robert W. Gundlach, Jr. - Attorney for Applicant
3. Present zoning classification: C 2 Commercial District
4. Relief sought: The Applicant proposes to install a billboard sign on the exposed party wall between 762 and 764 West Railroad Avenue and is challenging the substantive validity of the Zoning Ordinance, in accordance with the PA Municipalities Planning Code (MPC) sections 909.1(a)(1) & 916.1(a)(1). The Applicant contends that the Lower Merion Township Zoning Ordinance improperly restricts the development and use of land in the Township for billboards (i.e. off-site premises signage); specifically that 1) §155-93.3 E of the Zoning Ordinance limits the placement of billboards to properties only within the Manufacturing and Industrial zoning district, along with the dimensional requirements for billboards are a) unreasonable, arbitrary, unduly restrictive, exclusionary, and not a valid exercise of the Township's police powers, and b) unreasonably infringe upon an affected landowner's constitutionally protected right to freely use and enjoy the landowner's property for a billboard, 2) the provisions of §155-93.3 E, when taken together, make it such that there is no area within the Township where a billboard sign would be permitted, 3) §155-93.3 E is illusory in that it gives the impression that billboards are permitted but takes that ability away with the imposition of the restrictions found in its provisions, and 4) §155-93.3 E is contrary to the MPC and PA case law as to billboard signage. The Applicant also challenges the ability of the Township to require the Applicant to fund an escrow account that reimburses the Township consultants and its legal counsel to provide services in opposition to this challenge application. The Applicant requests that the Zoning Hearing Board find that §155-93.3 E of the Zoning Ordinance is invalid.
5. Miscellaneous: The Applicant proposes to install a billboard sign on the exposed wall above the one-story commercial building facing the intersection of Bryn Mawr Avenue, Haverford Road, County Line Road and West Railroad Avenue. In the application, the Applicant noted the address of the one-story commercial (corner) property as 762 West

Railroad Avenue, however, it appears the address is 766 West Railroad Avenue and the address of the attached 3-story building is 764-762 West Railroad Avenue. The one-story commercial tenant is a clothing cleaner (*Sun Cleaners and Launderers*). The Applicant did not indicate the size of the proposed billboard or the proposed method of illumination. The Applicant is challenging the validity of the Lower Merion Township Zoning Ordinance §155-93.3 E *Billboards* and challenges the ability of the Township to require the Applicant to fund an escrow account that reimburses the Township consultants and its legal counsel to provide services in opposition to this challenge application (pursuant to §A167-1 *Schedule of fees*). The Applicant requests that the Zoning Hearing Board find that §155-93.3 E of the Zoning Ordinance is invalid.

6. Previous appeals:

Appeal No. 4204, October 14, 2010: the appeals of AdSmart Outdoor Advertising, Inc. from the June 16, 2009 enforcement notice and the October 30, 2009 determination of the Township Zoning Officer that the off-premises sign on the building on the property at 764 Old Railroad Avenue is prohibited is DENIED; (2) the application for a variance by estoppel or a vested right to allow the sign to remain on the building is DENIED; (3) the retaliation claim under 42 U.S.C. §1983 is DENIED; and (4) the claim for costs and counsel fees is DENIED.

7. Any known objections: neighbors will oppose

8. Estimated hearing time: 3 hours

9. Hearing date: September 19, 2019
Hearing deadline: September 27, 2019

10. Applicable codes:

§155-92. Definitions.

BILLBOARD

A sign which directs attention to a business, product, commodity, service, entertainment or facility not located, conducted, sold or offered upon the premises where such sign is located or which calls public attention to a candidate, cause or public issue and which may be either freestanding or mounted upon the roof of a building.

[Added 4-15-1992 by Ord. No. 3281; amended 7-21-2010 by Ord. No. 3919]

§155-93. Prohibited signs.

Except as may be hereinafter specifically permitted, it shall be unlawful for any person, firm or corporation to erect any of the following signs within the Township of Lower Merion:

C. Any off-premises sign, except as may be provided for within this article.

E. Any sign which advertises or publicizes an activity or business not on the premises where the sign is located, except where adjoining premises are part of a single, integral business identity such as a shopping center or business park and cross easements for

the sharing of parking, signage, site access and/or other site improvements have been legally established and are recorded with the Township.

§155-93.3. Signs in commercial, manufacturing and industrial districts.

The following types of signs shall be permitted within commercial, manufacturing and industrial districts:

A., B.D.

E. Billboards. Billboards shall be a permitted use in manufacturing and industrial districts only, subject to the following regulations:

[Added 4-15-1992 by Ord. No. 3281]

(1) Surface area. The surface area of a billboard shall not exceed 675 square feet on each of not more than two sides.

(2) Height. Freestanding billboards shall not exceed 35 feet in height measured from the surface of the ground to the highest point of the billboard. Roof-mounted billboards shall not exceed 50 feet in height measured from the surface of the ground to the highest point of the billboard.

(3) Billboards shall not be mounted to the facade of any building.

[Added 7-21-2010 by Ord. No. 3919^[1]]

[1] *Editor's Note: This ordinance also renumbered Subsection E(3) through (5) as Subsection E(4) through (6).*

(4) Illumination. Illumination of billboards shall be allowed only upon grant of a special exception by the Zoning Hearing Board, subject to the following requirements:

[Amended 5-26-2010 by Ord. No. 3915]

(a) The illumination of billboards within 500 feet of a residential zoning district or residential use shall not be permitted.

(b) All illumination shall be external, shielded, and shall be mounted directly above each illuminated face of the billboard.

[Amended 7-21-2010 by Ord. No. 3919]

(c) The location, luminaire type, wattage, and illumination patterns, and the means of control shall be specified. The lighting shall be designed to prevent the direct off-site transmission of light directly from the light source, to shield the source of illumination and to prevent glare as viewed from off-site.

[Amended 7-21-2010 by Ord. No. 3919]

(d) The source of illumination shall be screened from view from vehicles on adjacent roadways and from adjacent properties.

(e) No light source emanating from behind, within or on the face of the billboard shall be permitted.

(f) Rotating, flashing, pulsing, moving or oscillating light sources, lasers, light emitting diodes (LEDs), organic LEDs, beacons or strobe lighting shall not be permitted.
[Amended 7-21-2010 by Ord. No. 3919]

(5) Separation. Each billboard shall be located not less than 1,500 feet from any other billboard, not less than 500 feet from a residential zoning district and no closer than 1,000 feet from the entrance or exit ramp or merging traffic lane of a limited access highway.
[Amended 7-21-2010 by Ord. No. 3919]

(6) Obstruction. No billboard shall overhang a public or private right-of-way nor shall it interfere with a two-hundred-foot line of sight in any direction at an intersection.

§A167-1 Schedule of fees.

The following schedule consists of a compilation and consolidation of provisions pertaining to fees for the various applications, licenses and permits required or provided for under Township ordinances, rules and regulations as included in this Code. This schedule was approved and adopted by the Board of Commissioners at the time of adoption of this Code (9-21-1977 by Ord. No. 1802) and continues in effect the fee provisions existing at that time in the various ordinances of the Township. Specific regulations, application procedures and requirements, conditions and approval provisions with respect to which each fee is required may be found in the pertinent chapter of this Code referred to below.

Chapter 155, Zoning

[Last amended 11-19-2018 by Ord. No. 4147]

Challenges to the validity of the Zoning Ordinance or Zoning Maps, to the Board of Commissioners or to the Zoning Hearing Board	
Each appeal or application	\$1,750
*Plus initial consultants' review fee escrow deposit	\$1,200
Each postponement or continued hearing requested by appellant or applicant	\$300

*Should the balance of the escrow account fall below 25% of the original amount deposited, additional deposit(s) may be required to restore the escrow account balance to the amount originally deposited or to pay the anticipated balance of the actual cost, whichever is lesser, in order for the review process to continue. Any amounts remaining in the escrow account after all professional consultant review fees are paid from the account will be returned to the applicant.

PA Municipalities Planning Code (MPC) sections 909.1(a)(1) & 916.1(a)(1):

Section 909.1. Jurisdiction.

(a) The zoning hearing board shall have exclusive jurisdiction to hear and render final adjudications in the following matters:

(1) Substantive challenges to the validity of any land use ordinance, except those brought before the governing body pursuant to sections 609.1 and 916.1(a)(2).

Section 916.1. Validity of Ordinance; Substantive Questions.

(a) A landowner who, on substantive grounds, desires to challenge the validity of an ordinance or map or any provision thereof which prohibits or restricts the use or development of land in which he has an interest shall submit the challenge either:

(1) to the zoning hearing board under section 909.1(a); or