

PRICE, MEESE, SHULMAN & D'ARMINIO, P.C.

50 Tice Boulevard

Woodcliff Lake, New Jersey 07677

201-391-3737

Louis L. D'Arminio, Esq. (022611977)

Edward W. Purcell, Esq. (0336332012)

Attorneys for Outfront, Outfront Media LLC

OUTFRONT MEDIA LLC,

Plaintiff,

vs.

ZONING BOARD OF ADJUSTMENT
OF THE BOROUGH OF RED BANK,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MONMOUTH
COUNTY
DOCKET NO. MON-L-

CIVIL ACTION

**COMPLAINT IN LIEU
OF PREROGATIVE WRITS
CERTIFICATIONS AND
DESIGNATION OF TRIAL COUNSEL**

Plaintiff OUTFRONT MEDIA LLC, (hereinafter "Plaintiff" or "Outfront"), by way of
Complaint against the Defendant ZONING BOARD OF ADJUSTMENT OF THE BOROUGH
OF RED BANK (hereinafter "Zoning Board" or "Defendant") says:

STATEMENT OF THE MATTER
(Application Background and History)

The Parties

1. Outfront is a limited liability company incorporated in the State of Delaware having an office in the State of New Jersey at 185 U.S. Highway 46, Fairfield, New Jersey 07004, and is engaged in the business of the erection and operation of outdoor advertising structures.
2. Zoning Board is a land use board of the Borough of Red Bank in the County of Monmouth (the "Borough"), authorized, empowered, and required to perform functions and powers

delegated to said board by the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1 to -163 (the “MLUL”).

3. Outfront is the lessee of a portion of that parcel of real property commonly known and designated as 187 Riverside Avenue in the Borough, also known and designated as Block 4.01, Lots 1 & 2 on the Borough’s Tax Assessment Map (hereinafter referred to as the “Property”).

The Proposed Modernized Sign

4. Outfront proposes to upgrade and modernize an existing static sign (the “Existing Ground Sign”) located on the Property by replacing same with a smaller, less visible, albeit slightly taller, and more compliant multi-message sign (the “Modernized Sign”) that will, unlike the Existing Ground Sign, be turned off overnight.
5. The Modernized Sign will be 100 square feet (“s.f.”) smaller than the Existing Ground Sign.
6. Where the advertising (i.e. copy) of the Existing Ground Sign is visible in locations within a 120 degree cone of visibility, the Modernized Sign’s copy, by use of special narrow view technology, can only be seen in a 50 degree cone of visibility. Outside of the cone of visibility, the signs will look blank.
7. Where the Existing Ground Sign violates 10 foot side yard setback requirement by being 0.1 foot from the lot line, the Modernized Sign improves this non-conformity by providing a 0.5 foot setback.
8. Where the Existing Ground Sign is lit all night, the Modernized Sign would be turned off every night between 11:00 p.m. and 7:00 a.m.
9. Unlike the Existing Ground Sign, the Modernized Sign could be used by the Borough on

an emergent and non-emergent basis.

10. Furthermore, Outfront offered to remove six (6) non-conforming sign faces in the Borough as a condition of approval.
11. Lastly, where the Existing Ground Sign structure was twenty-two (22) feet tall, the Modernized Sign structure, at twenty-seven (27) feet tall, would be a mere five (5) feet taller.

Applicable Provisions of the Borough Code

12. The Planning and Development Regulations of the Borough of Red Bank, Monmouth County, New Jersey (“Development Ordinance”) which regulates development, land use and zoning in the Borough pursuant to the MLUL.
13. Article 10 of the Development Ordinance entitled “Zoning” regulates uses and bulk standards for land in the Borough (“Zoning Section”). Noncompliance with a provision of the Zoning Section would require a bulk or use variance pursuant to either N.J.S.A.40:55D-70.c or d.
14. The Property is presently designated within the Borough’s BR-1 District (“BR-1 Zone”), pursuant to §490-146 of the Borough’s Zoning Ordinance (“Zoning Ordinance”) and the Borough’s Zoning Map adopted pursuant to §490-134 of the Zoning Ordinance (the “Zoning Map”).
15. Notably, signs are a permitted accessory use in the BR-1 Zone pursuant to §490-146.
16. Article 8 of the Development Ordinance entitled “Design Standards and Improvement Specifications” provides for performance standards regulating development (“Design Section”). Noncompliance with a provision in the Design Section would require a design waiver pursuant to N.J.S.A. 40:55d-51.

17. Within the Design Section, §490-104(c) provides:
Billboards, as defined in § 490-6 of this chapter, shall not be permitted within the Borough.
18. § 490-6 of the Development Ordinance defines “billboard” as:
A structure, including panels of poster paper attached to it, utilized for advertising an establishment, an activity, a product, a service or entertainment and which has an area equal to or greater than 200 square feet. [emphasis added].
19. The prohibition against billboards is not located in the Zoning Section of the Development Ordinance, but rather, within the Design Section.
20. Based on the Development Ordinance construction, constructing a billboard would require a design waiver.

The Property

21. The Property consists of approximately 13,000 square feet of improved land fronting upon N.J.S.H. 35 northbound.
22. The Property is located facing the northern terminus of the Cooper Bridge.
23. The Property is in the BR-1 Zone.
24. The Existing Ground Sign located on the Property is 22 feet in height, with a 12 foot by 40 foot (480 square foot) externally lit sign face that is operated continuously, 24 hours a day, 7 days a week.
25. The Existing Ground sign is supported by five (5) support poles.
26. The Property also contained a 25 foot tall roof sign with a 12 foot by 24 foot (288 square foot) sign face that was removed by the Outfront previously in order to obtain a New Jersey Department of Transportation (“NJDOT”) permit to upgrade the Existing Ground Sign from a static sign to a multi-message sign.

27. The Existing Ground Sign is a pre-existing non-conforming structure.
28. Because signs are a permitted accessory use in the Borough and the Existing Ground Sign is a principal use, in that it advertises for uses that don't also exist on the Property, the Existing Ground Sign is a pre-existing non-conforming use.

Zoning Determination Regarding the Modernized Sign

29. Outfront currently possesses a valid sign permit issued by the NJDOT to erect and install a multi-message outdoor advertising structure on the Property.
30. A multi-message sign changes copy digitally by way of internally housed light emitting diodes ("LEDs").
31. On July 11, 2022, Outfront submitted a request for a zoning determination with the Borough's zoning officer requesting that Outfront be permitted to upgrade the Existing Ground Sign by replacing it with the Modernized Sign, which was proposed to be a forty (40) foot tall multi-message sign, with a 11.55 foot by 39.37 foot (454.72 s.f.) internally lit sign face. Additionally, the Modernized Sign was proposed to be shifted slightly westward from the Existing Ground Sign towards Bridge Avenue.
32. By way of its addendum, Outfront maintained that the proposal should be approved, without the requirement of a use variance, because Outfront has the right to modernize a pre-existing non-conforming use or structure under the Modernization Doctrine. See Cox and Koenig, New Jersey Zoning and Land Use Administration, §33-1.1 (2022).
33. Pursuant to the modernization doctrine "it is the general rule that an owner can modernize facilities and employ improved instrumentalities in connection with a nonconforming building or use." McQuillin Mun. Corp. § 25:223 (3d ed.). *See also Lane v. Bigelow*, 135 N.J.L. 195 (E.&A. 1946) (modernization of an automobile repair garage to a full-service station); Moore v. Bridgewater Twp., 69 N.J. Super. 1, 23 (App. Div. 1961) (permitted

evolution of extraction equipment at a non-conforming quarry).

34. An LED multi-message sign is an “improved instrumentality” of a static message sign because it permits the changing of copy instantaneously without the need to remove and replace the copy manually.

35. On July 7, 2022 the Borough’s zoning officer issued a denial (the “Zoning Officer Denial”), which provided that:

“Your application for a zoning permit for the above property address is denied for the following reasons/s:

Bulk (c) variance relief is required from the Zoning Board of Adjustment. Possible variances from 490-54c(11) &(12) concerning glare and illumination at property lines. .
.”

36. Additionally, the Zoning Officer Denial did not direct that Outfront seek site plan approval.

Application to the Zoning Board of Adjustment

37. Consequently, and in conformity with the Zoning Officer Denial, Outfront filed an application on September 21, 2022 with the Defendant to solely obtain “c” bulk variance relief to *make the site more conforming* by permitting the placement of the Modernized Sign 0.5 foot from the side yard lot line where the Zoning Ordinance required a ten (10) foot setback and the Existing Ground Sign is set back 0.1 foot to the southern lot line.

38. Subsequently, and after a lengthy discussion with the Zoning Board’s counsel and Board Engineer with respect to what relief Defendant may require, Outfront expanded its requested relief by making a request for interpretation on various issues and, based on what the Board determined with the interpretations, also sought the right to request a d(1) or d(2) use variance.

39. Specifically, and by way of its public notice prior to its first hearing schedule on February 2, 2023 hearing, the Outfront requested the following interpretation pursuant to N.J.S.A. 40:55D-70(b):

- *Is a pre-existing, nonconforming billboard as defined by the Ordinance considered a principal structure/use or an accessory structure/use?*
- *Is a pre-existing, nonconforming billboard as defined by the Ordinance considered a nonpermitted use or nonpermitted structure?*
- *Is a pre-existing, nonconforming billboard as defined by Ordinance subject to bulk requirements applicable to permitted signs or to principal structures?*
- *If a pre-existing, nonconforming billboard as defined by the Ordinance is considered a nonpermitted principal use:*
- *Does the modernization to digital, including reconstruction and relocation of a pre-existing, nonconforming billboard require a use variance for a nonpermitted use?*
- *Does the relocation or an increase in the height of a pre-existing, nonconforming billboard require a use variance for the expansion of a nonconforming use, even if the sign message area is being decreased?*
- *Is site plan approval required pursuant to the Ordinance for the relocation and reconstruction of a pre-existing, nonconforming billboard that is increasing in height and being modernized from a static to digital face?*

The Testimony

40. On February 2, 2023; January 4, 2024; April 4, 2024; and November 21, 2024, the Zoning Board conducted public hearings with respect to the Application.
41. Outfront presented sworn testimony in support of the Application from:

(a) Jon Antal, General Manager for New Jersey at Outfront, who provided testimony on the Application, including the intended operation of the Modernized Sign, the suitability of the Property for the Modernized Sign, the minimal need for Outfront employees to access the Property, and Outfront's offer of emergency and non-emergency public service announcement advertising space on the Modernized Sign as a public service it offers to all towns in which it erects a multi-message LED sign;

(b) Tiago Duarte, P.E., Dynamic Engineering, who provided expert testimony in the field of engineering, specifically including detailed testimony that, the Modernized Sign would lessen the visual impact on the surrounding area than the Existing Ground Sign;

(c) Daniel J. Dougherty, P.E., Dynamic Engineering, who provided additional expert testimony in the field of engineering, testified as to the Outfront's amendments to its Application in response to Zoning Board comments, explaining that due to Outfront's decision to amend the application to use "narrow view" technology (which limits the Modernized Sign's viewshed a 50 degree cone of vision focused narrowly on the traveling public, as opposed to a 120 degree cone of vision with the Existing Ground Sign which focused on surrounding uses), the fact that the Modernized Sign would be more aesthetically pleasing because it would only have a monopole support (as supposed to five (5) poles that support the Existing Ground Sign), that (unlike the Existing Ground Sign) the Modernized Sign would be turned off from 11:00 p.m. to 7:00 a.m. every day, and that, as a condition of approval, Outfront would remove six (6) existing billboard faces from the Borough; that the Modernized Sign would, in fact, substantially lessen existing non-conformities in the Borough generally and reduce any perceived negative impact on surrounding properties created by the Existing Ground Sign;

(e) Christine Cofone, P.P., AICP, who provided expert testimony in the field of land planning, specifically concluding that the Modernized Sign which, at the close of hearing would have increased the height of the Existing Ground Sign by only five (5) feet, should only require a bulk variance for increasing a non-conforming structure and not a use variance because, use, i.e. a sign message that is not accessory to a use on the Property was actually being reduced. Moreover, no d(1) use variance is required in that the only way to modernize a static sign to a billboard sign is to replace it, so this is not the construction of a new billboard, that the prohibition of billboards based on the size of the structure only is a performance standard and not a use regulations, that no d(2) variance should be required because, rather than expand the messaging use, it actually lessened the current non-conformity by making the sign face smaller, more aesthetically pleasing with respect to the support pole removal, turning the sign off between 11:00 p.m. and 7:00 a.m., adopting narrow view technology so that the sign only had a 50 degree cone of vision (as opposed to a 120 degree cone of vision with the Existing Ground Sign) and the fact that Outfront proposed to remove six (6) nonconforming billboards in the Borough as a condition of approval. Ms. Cofone put on adequate proofs for a d(1) or d(2) use variance, should they be required. She likewise put on adequate proofs for a c(2) “flexible” variance to permit an expansion of the non-permitted structure and 0.5 foot side yard setback. As will be discussed below, such a c(2) variance is warranted when the “grant of approval [will] benefit the community in that it represents a better zoning alternative for the property.” Kauffman v. Warren Tp. Zoning Bd., 110 N.J. 551,563 (1988).

42. Each expert utilized evidence supported by the various exhibits submitted to the Zoning Board as well as his expertise in his chosen field to confirm his testimony, and all of Mr.

Duarte, Mr. Dougherty, and Ms. Cofone's testimony was uncontroverted by opposing expert testimony.

Factual Testimony

43. Mr. Antal testified that, as opposed to a static billboard like the Existing Ground Sign, which requires workers to physically remove and replace advertising, the Modernized Sign will use light emitting diode ("LED") technology to instantaneously change copy every eight (8) seconds.
44. Because of the structural requirements of the LED technology, Outfront must replace the Existing Ground Sign because its structure cannot support the modernized equipment.
45. The proposal represents a major aesthetic improvement by replacing the Existing Ground Sign, and its five (5) support poles, with the Modernized Sign's single monopole.
46. Mr. Antal testified that multi-message technology is the latest evolution of the outdoor advertising industry. He testified:

When you think about how long that billboard has been on site, a lot of things have changed not just in the Borough of Red Bank, but also in the industry in which that sign exists. There is a long history of signage and it becoming modernized over time. When billboards first started, there were hand-painted on pieces of wood that were then attached in some way, shape, or form to some kind of structure, whether it was a pole or to the side of a building or a barn. Then companies evolved. Technology became more prevalent. They began to print advertising on paper. And you would use that paper along with glue or paste to attach it to wood panels or to the structure itself and be able to change messages faster and to speed up the process that way. Then came another evolution of the printing of large vinyl products which could be a single sheet of vinyl, you know, 10, 20 feet in width and height. And it could be affixed to a wood or steel backing and attached to a structure with ratchets which is what you currently see at the location we're talking about tonight in its present state. For a short while, the industry thinking about multi-message and the ability to have different advertisers present on the face had a product called tri-vision, which is very similar to the blinds in this room where there are multiple messages that mechanically move on levers that turn periodically through a mechanism. That technology, thankfully, is no longer needed because we have what is before you tonight, which is a digital multi-message sign. And that is where the evolution of our business is headed. . . towards that electronic messaging and capabilities.

47. Mr. Antal testified that multi-message technology makes purchasing advertising more affordable for local small businesses because rather than having to buy the “whole pie,” multi-message technology allows a local business the opportunity to purchase an 8 second “slice” of time, which is far more affordable.
48. Mr. Antal testified that Outfront currently provides advertising for thirty-two (32) local businesses in the Borough.
49. While the Existing Ground Sign currently serves many local businesses in the Borough and the local surrounding area, the modernization will make it even more accessible, more economical and more beneficial, to local businesses.
50. As discussed by Mr. Antal, the Modernized Sign also would create direct public benefits to the Borough by way of the Borough’s free use of the sign for emergency use pursuant to a standard protocol submitted to Zoning Board. Outfront also offered the Borough use of the Modernized Sign on a non-emergent basis for two (2) full hours every day pursuant to a standard protocol. This means that the Borough would be entitled to use 12.5% of the Modernized Sign’s daily time for non-emergent messaging.
51. Mr. Antal testified that, because the Property is located facing the northern terminus of the Coopers Bridge, same acts as a “gateway” property into the Borough and is well situated for a sign to provide communications to the traveling public.
52. Indeed, as testified by Mr. Antal, the Borough presently uses the Property to provide temporary advertisements by way of a movable LED sign.

Engineering Testimony

53. As testified to by Mr. Duarte, the Modernized Sign is made up of different modules to which the LEDs are affixed. The modules, in turn, contain small louvers which direct the

light away from the sky and towards the ground and the traveling public.

54. Mr. Duarte testified the Modernized Sign would not impede circulation of the Property.
55. Furthermore, and as revised over the course of its hearings before Zoning Board, Outfront agreed to make use of “narrow view technology” for the Modernized Sign, which would reduce the sign’s visibility from a view shed of 120 degrees to a view shed of 50 degrees.
56. Put another way, where the Existing Ground Sign has a view shed of 120 degrees, the Modernized Sign would constrict the public’s view of billboard copy by an additional 70 degrees, such that only those standing within a 50 degree visibility cone in front of the Modernized Sign can view copy. For anyone standing outside of the 50 degree visibility cone, the Modernized Sign would look blank.
57. In sum, the LED technology makes the Modernized Sign far less visible than the Existing Ground Sign because LEDs allow for much more control over lighting.
58. The reduction of the viewshed from 120 degrees for the Existing Ground Sign, to 50 degree viewshed for the Modernized Sign, is a reduction in the advertising use.
59. Furthermore, and in an effort to limit any perceived negative impact of the Modernized Sign, Outfront agreed to turn off the sign between 11:00 p.m. and 7:00 a.m. on a daily basis.
60. The fact that the Modernized Sign will be turned off overnight between 11:00 p.m. and 7:00 a.m., where the Existing Ground Sign (that is externally lit) operates on a 24 hours a day, 7 days a week basis, demonstrates that Outfront proposed to substantially mitigate the advertising use by way of the Modernized Sign.
61. Furthermore, and as a condition of approval, Outfront agreed to remove six (6) existing non-conforming sign faces in the Borough.

62. Such a concession would substantially lessen existing non-conformities in the Borough.
63. Furthermore, shifting the Modernized Sign 0.5 foot from the nearest property line (where the Existing Ground Sign is 0.1 foot from the side yard property line) and the Zoning Ordinance requires a 10 foot setback, decreases that existing non-conformity.
64. Over the course of its hearings before Zoning Board, Outfront took great pains to revise its proposal for the Modernized Sign, such that same was as similar to the Existing Ground Sign as possible.
65. As initially proposed, the Modernized Sign would have been forty (40) feet tall (a *permitted* height in the zone), and thus made the Property more developable because more space would be available below the sign for the construction of a building.
66. However, based on negative feedback from The Zoning Board, Outfront lowered same to 27 feet, only 5 feet taller than the Existing Ground Sign.
67. At 27 feet, the Modernized Sign would be of similar height to the existing gas station sign on the Property, which Outfront stipulated to remove as a condition approval.
68. Based on comments from the Board Engineer that the relocation of the sign would more clearly require a d(1) use variance, Outfront shifted the sign away from Bridge Avenue, so that the base of the Modernized Sign overlayed the location of the Existing Ground Sign.
69. Mr. Dougherty testified that the Modernized Sign would match the Existing Ground Sign's 46 foot setback from Bridge Avenue.
70. With respect to the narrow view technology, Mr. Dougherty confirmed that, unlike the Existing Ground Sign that uses spotlights to make the copy visible, the Modernized Sign limits light spillage and there would be no "glowing" that would be visible from behind the sign.

71. Furthermore, Mr. Dougherty confirmed that any location outside the 50 degree cone of vision would not be able to view the Modernized Sign's messaging.
72. Mr. Dougherty also testified that by shifting the Modernized Sign to have a 46 foot setback from Bridge Avenue, the heads of the traffic lights would not align with the sign face, thus there would be no question that the Modernized Sign would have no impact on the driving public's view of the streetlight at the corner of Bridge Avenue and Riverside Avenue.
73. With respect to the side yard setback, Mr. Dougherty testified that, notwithstanding the increase in height, the Modernized Sign would actually be less visible to the uses directly south of the Property, including any residential use.
74. Currently, the back of the Existing Ground Sign faces the above referenced single family home.
75. In response to questioning on how the Modernized Sign would impact that single family home, Mr. Dougherty testified:

So right now there's structure, multiple I-beams and structure that are supporting the existing sign. That will be all removed, and there will be one monopole. So for the majority of the bottom of the sign it will just be that one pole. And, you know, this is just from this perspective, but you can see the left second floor window is blocked on the existing conditions photo and the right second floor window is not blocked by the existing sign. . . And then there's an attic window above that that is slightly visible in the existing condition. So, you know, out of those three not first floor windows, there's one and a half or one window blocked. And then in proposed conditions the sign is raised. And you can see from this perspective it blocks that attic window, but the two second floor windows are exposed. You can see them in the photo under proposed conditions in this exhibit.

76. No testimony was presented or evidence supplied indicating that the Modernized Sign would more greatly impact the light, air and space of that single family home than the Existing Ground Sign.
77. Indeed, Mr. Dougherty provided evidence directly to the contrary because, unlike the

Existing Ground Sign, the Modernized Sign would not create light spillage visible from the properties behind the sign.

Planning Testimony

78. With respect to planning testimony, Ms. Cofone testified that because the billboard was not subordinate to any other existing uses on the Property, the Modernized Sign would be a principal use and a principal structure.

79. Ms. Cofone further testified that unlike most municipalities, where a billboard is generally defined by way of the fact that it engages in off-site advertisement, the Borough's definition of "billboard" in §490-6 of the Design Section defines same simply by way its structure:

A structure, including panels of poster paper attached to it, utilized for advertising an establishment, an activity, a product, a service or entertainment and which has an area equal to or greater than 200 square feet. [emphasis added].

80. Ms. Cofone testified that the placement of billboard structure prohibition in the Design Section, instead of the Zoning Ordinance, is significant because only a design waiver could be required for such a non-compliance, not any type of variance.

81. The legislature has set forth the test necessary to obtain a design standard waiver, by providing:

The planning board when acting upon applications for preliminary site plan approval shall have the power to grant such exceptions from the requirements for site plan approval as may be reasonable and within the general purpose and intent of the provisions for site plan review and approval of an ordinance adopted pursuant to this article, if the literal enforcement of one or more provisions of the ordinance is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question. N.J.S.A. 40:55D-51(b).

82. In the alternative, Ms. Cofone further testified that because the term "billboard" was defined by way of its structural components, as opposed to its use, any expansion of such

a non-conforming structure only requires “c” bulk variance and not a “d” use variance.

83. Consequently, here, where the Modernized Sign exceeded 200 square feet, such a non-conformity only requires a “c” bulk variance with respect to increasing the height of the structure from 22 feet to 27 feet.
84. Ms. Cofone testified that, because signs are not permitted as a principal use, i.e. not accessory to the use on the Property, in the Borough, such a use is prohibited.
85. However, Ms. Cofone was careful to make clear that a physical expansion of a preexisting non-conforming structure (here, the sign structure), would only require a c “bulk” variance instead of a “d” use variance because the use is being lessened, not expanded.
86. Consequently, no use variance should be required.
87. Additionally, Ms. Cofone further testified that no d(1) use variance should be required because Outfront has no intent on abandoning the pre-existing non-conforming billboard use. In making that determination, Ms. Cofone focused on Mr. Antal’s testimony and the fact that the Outfront seeks to modernize the Existing Ground Sign and that it had obtained New Jersey Department of Transportation (“NJDOT”) approval to do so, as evidence demonstrating Outfront’s intent not to abandon same.
88. Ms. Cofone also discussed the Modernization Doctrine, which permits for non-conforming uses to be upgraded without the need for any use variance relief.
89. Here, the technological evolution, as discussed by Mr. Antal, from static signs like the Existing Ground Sign, to multi-message LED signs like the proposed Modernized Sign, clearly demonstrate that this matters falls well within the Modernization Doctrine.
90. Here, the Modernization Doctrine demonstrates that no use variance should be required for the upgrade from the Existing Ground Sign to the Modernized Sign.

91. Ms. Cofone further testified that no d(2) variance should be required because, rather than expanding the use, the proposed Modernized Sign would clearly lessen same in the Borough. Ms. Cofone based this opinion on the fact that:
 - a. The Modernized Sign would be 20% smaller than the Existing Ground Sign;
 - b. Outfront proposed to turn the Modernized Sign off overnight between 11:00 p.m. and 7:00 a.m. which would reduce the amount of time the sign would be operational by 30%;
 - c. Outfront proposed to, as a condition of approval, remove six (6) other on-conforming sign faces in the Borough.
 - d. Outfront also proposed to move the Modernized Sign away from the southern side yard lot line from 0.1 foot to 0.5 foot, where the Zoning Code requires a 10 foot setback. Such a change would make the site more conforming to the Zoning Ordinance. than the Existing Ground Sign (which is 0.1 foot from the side yard property line);
 - e. Outfront proposed to use narrow view technology for the Modernized Sign which would have further limited the ability of the public to view the sign face by reducing its cone of vision from 120 degrees to 50 degrees.
92. With respect to site plan approval, the Application falls within the definition of an “exempt development” under the Development Ordinance and, consequently, no site plan approval can be required.
93. §490-6 of the Development Regulations define “exempt development” as:

Site plan and/or subdivision approval shall not be required prior to the issuance of a development permit for the following:

...

C. Exterior alterations which are not otherwise restricted by this chapter and, in the opinion of the administrative officer:

- (1) Do not materially change the means of access;
- (2) Do not substantially change the architectural design or appearance of the structure; and
- (3) Do not substantially increase the apparent size, shape or mass of a structure.

94. Here, the Application did not propose exterior alterations prohibited by the Development Ordinance, nor would the Modernized Sign change the means of access or “substantially change the apparent size or mass of the billboard structure.

95. However, and as Ms Cofone acknowledged, even though site plan approval was not required, the plans prepared and presented to the Zoning Board met applicable site plan requirements.

96. Ms. Cofone also discussed the proofs necessary for a d(1) or d(2) variance and determined that the proposed Modernized Sign met these requirements.

97. If a d(1) use variance was required, with respect to her testimony related to the grant of the same,, Ms. Cofone reviewed the applicable standard set forth by the New Jersey Supreme Court in Medici v, BPR Co., 107 N.J. 1 (1987). She testified as follows:

- a. Regarding the “positive criteria,” the Property was particularly suitable for the Modernized sign because: 1) the Existing Ground Sign made the Property an existing location for a billboard: 2) citing to the most recent master plan, the site would be a busy location, with 1,000 cars per hour coming through the area; and 4) the fact that the Borough uses the Property for placement of movable signage. With respect to that last point. Ms. Cofone testified that she had visited the Property the morning of the

hearing and seen a movable sign communicating public messaging located thereon. Furthermore, and with respect to the advancing purposes of the MLUL, Ms. Cofone testified that the Modernized Sign would promote criteria (A) promoting the general welfare because of the Borough's ability to use the Modernized Sign for emergency messaging and for non-emergent use to the amount of 12.5 % of the sign's daily time. Ms. Cofone also testified that the Modernized Sign would promote criteria (G) of the MLUL which speaks to providing sufficient space in appropriate locations for a variety of uses. She testified that because the Property had functioned harmoniously for years with two (2) uses on the Property, and that the existing site and location would allow re-development, this criteria was met.

- b. With respect to the negative criteria, Ms. Cofone testified that the Modernized Sign would not be a substantial detriment to the public good and would not substantially impair the intent and purpose of the Borough Zoning Ordinance and master plan. In doing so, she focused on certain "betterments" related to the application, namely that the reduction in size from 480 square feet (the Existing Ground Sign) to 380 square feet (the Modernized Sign) and also the fact that the Modernized Sign, unlike the Existing Ground Sign (which is lit) would be turned off between 11:00 a.m. and 7:00 p.m. With respect to the zoning ordinance, Ms. Cofone focused on Section 490-104(c)(4) of the Design Section which provides that "[a]n illuminated sign located on a lot adjacent to or across the street from any residential district and visible from such residential district shall not be illuminated between the hours of 11:00 p.m. and 7:00 a.m. . . ." and the Modernized Sign would, unlike the Existing Ground Sign, comply with that requirement. Furthermore, by providing more affordable

advertising opportunities for the Borough's master plan statement to "support Red Bank's small and emerging businesses, to help them remain competitive in a challenging retail environment, and better serve the community." During her testimony, Ms. Cofone also referenced a statement in the master plan that speaks to investigating options to phase out nonconforming signs, a goal met by Outfront's offer to remove six (6) sign faces as a condition of approval. Ms. Cofone also referenced the master plan's reference to the Property doing a poor job of introducing visitors to Red Bank, something the Modernized Sign would correct by allowing the Borough to "welcome" visitors via its non-emergency use of the sign. Lastly, Ms. Cofone focused on the use of narrow view technology as further lessening the negative impact of the Modernized Sign because, unlike the Existing Ground Sign, many adjacent properties outside of the much smaller "cone of vision" will no longer be able to see the messaging, they would only continue to see the non-conforming structure. All of these "betterments," according to Ms. Cofone, greatly improve upon the Existing Ground Sign which would be closer to its neighbors, larger in sign face size, be lit all night, would be more visible, would create more light spillage, and have lower clearance heights than the Modernized Sign.

98. In sum, Outfront put on adequate proofs to entitle it to have received a d(1) use variance for the Modernized Sign.
99. With respect to her testimony related to the grant of a d(2) use variance for the expansion of a non-conforming use, Ms. Cofone reviewed the applicable standard set forth by the New Jersey Supreme Court in Burbridge v. Mine Hill Twp., 117 N.J. 376 (1990). She testified as follows:

- a. The crux of the Burbridge case is to try to impose conditions on an expansion of a pre-existing non-conforming use to make it more compatible to the surroundings and closer to conformity with the zone plan.
- b. With respect to the “positive criteria,” Ms. Cofone further testified:
 - i. That turning the Modernized Sign off between 11:00 p.m and 7:00 a.m., which is currently prohibited by Section 490-104(c)(4) of the Design Section, would make the sign more compatible with the Development Ordinance.
 - ii. Additionally, the removal of six (6) sign faces that currently exist in the Borough would, according to Ms. Cofone, further help eliminate existing non-conformities in the Borough.
 - iii. Additionally, the Modernized Sign would be 0.5 feet from the side yard property line, an increase of 0.4 feet, which would make the site more conforming to the Zoning Ordinance’s ten (10) foot setback requirement.
 - iv. Furthermore, Ms. Cofone referenced the offering to the Borough for use of the Modernized Sign for emergent and non-emergent uses as a further improvement to the existing non-conformity related to the Existing Ground Sign.
 - v. Ms. Cofone then testified that the Property remains a suitable location for the Modernized Sign and can accommodate same where what is being proposed is smaller, albeit slightly increased in height, and slightly further away from the nearest property line (0.1 foot to 0.5 foot) than the Existing Ground Sign.
 - vi. Lastly, Ms. Cofone re-iterated that the Modernized Sign would promote criteria “A” and criteria “G” of the MLUL, as referenced above.
- c. With respect to the negative criteria, Ms. Cofone reiterated her prior testimony

above that the Modernized Sign would not be a substantial detriment to the public good and would not substantially impair the intent and purpose of the Borough Zoning Ordinance and master plan because the changes to the sign with respect to lighting (being turned off overnight), the setback (making the structure more compliant), the use of narrow view technology that greatly limits the cone of vision, and the removal of six (6) sign faces in the Borough, all demonstrate that the Modernized Sign would not be a substantial detriment to the public good. Rather, it would be a benefit. Nor would the Modernized Sign substantially impair the zoning ordinance (because the Modernized Sign would be more compliant with the Borough Code and six (6) non-compliant sign faces would be removed) or the zone plan (because the Modernized Sign would help promote small businesses in Red Bank.

d. With respect to the increase in height from twenty-two (22) feet to twenty-seven (27) feet, Ms. Cofone testified that same would be considered an expansion of the “structure,” not of the use (which is being minimized in size by way of the decrease in the sign face and also use of narrow view technology). Consequently, to the extent same was not subsumed with respect to the grant of a use variance, same should be granted as a c variance.

100. In sum, Ms. Cofone presented adequate evidence to obtain a d(2) use variance from Zoning Board.
101. Ms. Cofone further testified that, should the Zoning Board determine that no d(1) or d(2) variances were required, then the facts clearly demonstrate that a c(2) use variance should be granted to permit the expansion of a non-conforming structure.
102. Per Ms. Cofone’s testimony, the expansion of the sign structure from twenty-two (22) feet

to twenty-seven (27) feet in height is a better planning alternative because the Modernized Sign face, by being smaller and turned off overnight from 11:00 p.m. to 7:00 a.m., and using narrow view technology that limits the viewshed, better complies with the Borough's Zoning Ordinance. Additionally, by being taller, the sign would allow for more development on the Property, as opposed to the Existing Ground Sign. Finally, with respect to the negative criteria, Ms. Cofone referenced her prior discussions, specifically that the Modernized Sign would not have a substantial negative impact on the public good or on the zone plan or ordinance.

103. Consequently, Outfront was entitled to obtain a c(1) bulk variance to permit the expansion of the non-permitted sign structure from twenty-two (22) feet to twenty-seven (27) feet.

104. Certain individuals objected to the sign.

a. Victor Rallo, a restaurateur who owns two adjacent parcels (lots 3 and 25.01) objected to the Modernized Sign as inhibiting development on the Property. In doing so, Mr. Rallo made unsubstantiated claims with respect to the value of the Modernized Sign vs the Existing Ground Sign. Mr. Rallo also made unsubstantiated claims with respect to the impact of the Modernized Sign on the value of his own properties. However, during the course of his testimony, Mr. Rallo admitted that a taller sign would permit more development on the Property.

b. Jay Herman, a resident of the Borough and owner of commercial property on Broad Street, opposed the Modernized Sign on the basis of unsubstantiated claims regarding the sign's impact on property values and offered other impermissible hearsay evidence related to traffic safety.

c. Thomas Willson, a Middletown resident, opposed the Modernized Sign and sought

to provide unsubstantiated traffic safety testimony.

- d. The River Center, a business improvement district (“BID”) created by the Borough of Red Bank opposed the modernization arguing that the Borough needed less, not more, billboards—despite the fact that Outfront proposed to remove six (6) billboards in the Borough.
105. Upon the conclusion of the November 21, 2024 hearing, The Zoning Board voted to deny Outfront’s request for a d(1) use variance, thus implicitly also rejecting Outfront’s argument that: 1) no d(1) use variance was necessary; 2) no d(2) use variance was necessary; and 3) that only a “c” bulk variance was required for the expansion of the existing non-conforming structure.
 106. At the November 21, 2024 hearing, the Zoning Board did not take a vote to, in the alternative, deny a d(2) use variance to permit the expansion of the existing non-conforming use or a c(2) variance to permit the expansion of the non-conforming structure presented by the Application.
 107. The resolution memorializing this denial was adopted on January 2, 2025 (the “Resolution”).

The Resolution

108. What the Resolution lacks in substance, at nearly eighty-three (83) pages, it makes up for in length.
109. The Resolution summarily dismisses the concessions offered by Outfront with respect to decreasing, rather than expanding, the advertising use on the Property.
110. The fact that the Resolution barely even mentions narrow view technology, which would make limit the Modernized Sign’s viewshed by 70%, absolutely demonstrates that the

Zoning Board failed to give Plaintiff a fair and even handed review of the Application.

111. The Resolution fails to adequately explain how the Modernization Doctrine, as applied to the Application, could require any type of use variance.
112. The Resolution failed to comport with existing law related to the abandonment of non-conforming uses by not recognizing Outfront’s clear intent to continue the pre-existing non-conforming advertising use.
113. Under New Jersey law, the “traditional test for abandonment requires the concurrence of two factors: 1) the intention to abandon; and 2) some overt act or failure to act which carries a sufficient implication that the owner neither claims or retains any interest in the subject matter of the abandonment.” S&S Auto Sales, Inc. v. Zoning Bd. of Adj. for the Borough of Stratford, 862 A.2d 1204, 1210 (App. Div. 2004). Here, Outfront clearly had no intent to abandon the use.
114. In response to the plethora of “betterments” that would lessen the impact of the advertising use on the Property and the surrounding area, the Resolution erroneously seeks to pin most of its argument on the fact that the Modernized Sign will be a mere five (5) feet taller than the Existing Ground Sign.
115. Such an argument rings hollow faced with the overwhelming amount of undisputed evidence presented by Outfront.
116. For these, and all the facts and reasons as herein set forth, the findings of fact recited in the Resolution presented to the Zoning Board for consideration include summary and factual findings not supported by the record.
117. The Zoning Board’s actions were arbitrary, capricious, and unreasonable, contrary to the evidence presented, and without any support in fact or law.

118. The Zoning Board wrongfully denied the Application contrary to all laws and other controlling authority.
119. The Zoning Board's actions have injured and harmed Outfront
120. The Resolution's notice of denial was published on January 18, 2025 and received by Outfront on January 21, 2025.
121. Pursuant to R. 4:69-6(b)(3), this Complaint, filed on this date, is timely.

FIRST COUNT
(The Resolution was Arbitrary, Capricious, and Unreasonable)

122. Outfront repeats each and every allegation contained in the Statement of the Matter as if the same were set forth herein at length.
123. It is not disputed that the prohibition against billboards is located in Design Section and not the Zoning Section of the Development Ordinance.
124. Consequently, only a design waiver should have been required in order to expand the billboard structure from twenty-two (22) feet to twenty-seven (27) feet in height.
125. Outfront has the right to modernize a pre-existing non-conforming use or structure under the Modernization Doctrine. *See Cox and Koenig, New Jersey Zoning and Land Use Administration*, §33-1.1 (2022).
126. Pursuant to the modernization doctrine "it is the general rule that an owner can modernize facilities and employ improved instrumentalities in connection with a nonconforming building or use." *McQuillin Mun. Corp.* § 25:223 (3d ed.). *See also Lane v. Bigelow*, 135 N.J.L. 195 (E.&A. 1946) (modernization of an automobile repair garage to a full-service station); *Moore v. Bridgewater Twp.*, 69 N.J. Super. 1, 23 (App. Div. 1961) (permitted evolution of extraction equipment at a non-conforming quarry).
127. Here, the Zoning Board abridged Outfront's right to modernize the Existing Ground Sign

in conformance with its applicable legal rights.

128. Furthermore, because Outfront demonstrated no intent to abandon the existing preexisting non-conforming advertising use, a d(1) use variance is not required.
129. Additionally, as demonstrated by the submitted proofs, the Modernized Sign would have substantially decreased any existing non-conformity and the fact that the Sign was increased by five (5) feet cannot, in any reasonable way, change that result.
130. In sum, the Board's decision to require a d(1) use variance was arbitrary, capricious and unreasonable.
131. Furthermore, to the extent that a d(1) use variance was required, Outfront put on adequate proofs to demonstrate same and the Zoning Board's denial of same was legal error.
132. With respect to the positive and negative criteria required for a d(1) use variance, Ms. Cofone more than adequately set forth adequate proofs demonstrating the positive and negative criteria necessary for same.
133. The Zoning Board, in response to this testimony and as the basis for its denial, nearly entirely focuses on two (2) items: 1) that the Modernized Sign will be five (5) feet taller than the Existing Ground Sign; and 2) that Outfront will not, in fact, be able to remove the six (6) sign faces that it stipulated to remove.
134. With respect to the five (5) feet of increased height, same speaks solely to an increase of an existing non-conforming structure and not an increase or intensity in the actual non-conforming advertising use. The actual advertising use, i.e. the hours the sign will be visible and the visibility of the advertisements, are all being substantially decreased.
135. The removal of six (6) sign faces was offered by Outfront as a condition of approval. So, it is axiomatic that Outfront would not be able to construct the Modernized Sign unless

Outfront were able to accomplish this condition. A denial based on the Zoning Board's unwillingness to accept that this *could* be done is simply not a valid basis for denial.

136. Furthermore, the apart from parroting that the concessions offered by Outfront would not ameliorate the perceived negative impact of the Modernized Sign, the denial does not actually explain, substantively, its rationale for determining same.
137. In sum, Outfront put on adequate proofs to entitle it to have received a d(1) use variance for the Modernized Sign and the arguments set forth by the Zoning Board in the Resolution are blatantly pretextual and an abuse of discretion.
138. Zoning Board also erred by determining, in the alternative, that Outfront had not put on adequate proofs for a d(2) use variance to permit an expansion of a non-conforming use.
139. This determination is shockingly out of line with the applicable case law.
140. In Grundlehner v. Dangler, the New Jersey Supreme Court ruled that the grant of a variance to permit the expansion of a non-conforming use was warranted where the ultimate effect of the proposed improvement (adding a garage onto a preexisting non-conforming funeral home use) actually lessened the impact of the use (i.e. shielding the public from viewing a casket being placed into a hearse). 29 N.J. 256, 270 (1959). Put another way, Grundlehner stands for the proposition that not all non-conforming structural expansions automatically equate to an expansion of a non-conforming use, particularly in cases where it is clear that the expanded structure helps lessen the intensity and impact of the use.
141. Like the applicant in Grundlehner who sought to build a garage to hide the site of caskets being placed within a hearse, Outfront proposes a myriad of ways to lessen any perceived negative impact of the message including: 1) making the sign face 100 s.f. smaller; 2)

turning the sign off between 11:00 a.m. and 7:00 p.m.; 3) the removal of six (6) sign faces in the Borough, four (4) of which face residences; and 4) the use of narrow view technology to make the site less visible by decreasing the cone of vision from 120 degrees to 50 degrees.

142. Apart from a cursory analysis, the Resolution does not rebut how each one of these concessions fails to meet the test set forth at Burbridge or Grundlehner, i.e. that the Modernized Sign, including the concessions, would fail to harmonize the non-conformity to the Property.
143. Tellingly, with respect to its denial of the d(2) variance, the Resolution does not even discuss Outfront's proposed narrow view technology.
144. Rather, the Resolution harps on the fact that, despite the fact that the advertising sign would be smaller, turned off at night, be less visible due to the narrow view technology, and that six (6) other sign faces would be removed in the Borough that, because the Modernized Sign would be a measly five (5) feet taller than the Existing Ground Sign, same does not warrant a d(2) variance.
145. Such a determination is patently incongruous with the testimony provided and the applicable law and is an abuse of discretion.
146. In sum, The Zoning Board unlawfully denied a d(2) variance to permit the Modernized Sign.
147. The Zoning Board also unlawfully denied a c(2) "flexible" variance to permit the expansion of the non-permitted billboard structure by five (5) feet and to approve a 0.5 foot setback from the nearest property line where 10' is required and the Existing Ground Sign has a 0.1 foot setback.

148. With respect to a c(2) variance, an applicant must show that the application: 1) relates to a specific piece of property; 2) that the purposes of the MLUL would be advanced by a deviation from the zoning requirement; 3) that the variance can be granted without substantial detriment to the public good; 4) that the benefits of the deviation would substantially outweigh any detriment; and 5) that the variance will not substantially impair the intent and purpose of the zone plan. See Jacoby v. Englewood Cliffs Zoning Bd. of Adj., 442 N.J. Super. 450, 471 (App. Div. 2015).
149. As testified to by Ms. Cofone, adequate proofs were provided to entitle Outfront to a c(2) variance for the expansion of the non-conforming billboard structure and the non-conforming setback.
150. Here, more than adequate proofs were made with respect to why a c(2) variance should be granted, as testified to by Ms. Cofone.
151. As testified to by Ms. Cofone, this Application pertains to a specific piece of property.
152. As testified to by Ms. Cone, the Application advances the following purposes of the MLUL: 1) criteria (A) (promoting the general welfare); and 2) criteria (G) (providing sufficient space in appropriate locations for a variety of uses).
153. Ms. Cofone, again, testified that the variance can be granted without substantial detriment to the public good and that the benefits of the deviation would substantially outweigh any detriment;
154. In doing so, Ms. Cofone referred to the various “betterments” offered by the Modernized Sign related to a smaller sign, being turned off overnight, the six (6) sign face removals and the use of narrow view technology.
155. Ms. Cofone also noted that the proposed 0.5 foot setback was an improvement upon the

Existing Ground Sign’s 0.1 foot setback, where the Zoning Ordinance required a ten (10) foot setback.

156. Ms. Cofone, again, testified that that such a variance would not substantially impair the intent and purpose of the zone plan.
157. In sum, Outfront’s proofs met all applicable requirements for a c(2) variance and Outfront was entitled to the requested relief.
158. Notwithstanding the evidence, and each and every one of the improvements to the Property that would lessen the impact of the advertising use in the surrounding area, and in the Borough, the Zoning Board denied the application.
159. The Resolution rationalizes its failure to grant the requested variance by arguing that the increased five (5) feet in height would “block views and compromise the privacy rights of other adjacent owners/residents,” something which was not presented to the Board by way of evidence.
160. With respect to Outfront’s need for a variance to make the sign more conforming, the Resolution provides that same “does not constitute good planning.”
161. It is palpably incorrect that an attempt to make a setback more conforming constitutes bad planning.
162. Inexplicably, the Resolution also bases its denial on its belief that a 0.5 foot setback, as opposed to an existing 0.1 foot setback, does not provide “sufficient light, air and space.”
163. Outfront notes that the adjacent lot to the south is empty but that there is a single family house on the lot next door and it is this home that the Zoning Board was concerned about impacting.
164. It is an elementary concept that moving the sign away from a property line is an

improvement related to providing sufficient light, air and space.

165. The Zoning Board turns this notion on its head by arguing that “sufficient light, air and space” is improved by keeping a sign closer to the property line.
166. Furthermore, there was no testimony supporting the notion that the Modernized Sign would negatively impact this home—just the opposite.
167. With respect to this question and the Modernized Sign’s impact on this house, Mr. Dougherty testified that the Modernized Sign would actually be an improvement to existing conditions.
168. Consequently, The Zoning Board’s rationale with respect to light and air is transparently manufactured and does not, in any way, support its denial of the requested c(2) variances.
169. Therefore, the Zoning Board unlawfully denied c(2) variances to permit the expansion of the billboard structure and the setback improvement proposed by Outfront.
170. In sum, the Resolution’s findings of fact and the determinations of law are arbitrary, capricious and unreasonable and an abuse of discretion and/or are otherwise contrary to law and should be set aside by this Court.

WHEREFORE, Outfront, Outfront Media LLC demands judgment against the Zoning Board of Adjustment of the Borough of Red Bank:

- a. Declaring that the Zoning Board’s decision to deny the Application was arbitrary, capricious, unreasonable, and contrary to the Municipal Land Use Law, the Ordinances of the Borough of Red Bank, all applicable and the lawful rights of Outfront;
- b. Reversing the Denial of the Application;

c. Granting approval of the Application, determining that all necessary relief for the plans and application before the Zoning Board as of January 2, 2025 are approved, and ordering the issuance of a building permit for construction pursuant to same; and

d. Awarding such other and further relief as the Court may deem equitable and just in the circumstance including attorney's fees and costs of suit.

SECOND COUNT
(Abuse of Discretion)

171. Outfront repeats each and every allegation contained in the Statement of the Matter and the First Count of this Complaint as if the same were set forth herein at length.

172. The individual actions as well as the totality of the actions of the Zoning Board were arbitrary, capricious, unreasonable and otherwise without basis in law or fact, contrary to the Zoning Board's statutory obligations and the lawful rights of Outfront

173. The Zoning Board abused its discretion in failing to grant all requested relief for the proposed development of the Modernized Sign in light of the overwhelming and credible testimony and evidence presented in support of same.

174. Outfront's interests have been adversely affected by the Zoning Board's arbitrary and irrational application of its planning, zoning and land use powers which have been exercised by indirection and in violation of statute.

175. The Zoning Board's actions relative to the Application are contrary to the fundamental principles of sound planning and violate the spirit and intent of the Bell v. Stafford, E&J Equities v. Frankling Twp Bd. of Adj., and City of Austin v. Reagan National Advertising, and other State and federal provisions and governing case law.

WHEREFORE, Outfront, Outfront Media LLC demands judgment against the

Zoning Board of Adjustment of the Borough of Red Bank as follows:

- a. Declaring that the Zoning Board's denial of the Application was an abuse of discretion and contrary to the Municipal Land Use Law, the Ordinances of the Village of Ridgewood, and the lawful rights of Outfront;
- b. Reversing the January 2, 2025 denial of the Application;
- c. Granting approval of the Application, determining that all necessary relief for the plans and application before the Zoning Board as of November 21, 2024 are approved, and ordering the issuance of a building permit for construction pursuant to same; and
- d. Awarding such other and further relief as the Court may deem equitable and just in the circumstance including attorney's fees and costs of suit.

THIRD COUNT
(Unsupported Resolution)

- 176. Outfront repeats each and every allegation of the Statement of the Matter, First, and Second Counts of this Complaint as if the same were set forth herein at length.
- 177. A Zoning Board's decision must reflect the actual deliberations and specific findings of fact made by Zoning Board members in order to sustain the Zoning Board's conclusion that the statutory burden of proof for relief has not been achieved.
- 178. The Resolution memorializing the Zoning Board's decision to deny the Application is defective.
- 179. The reasons set forth in the Resolution for the denial of the Application:
 - a. are wholly unsupported by the facts presented and the record below;
 - b. are contrary to law;
 - c. are erroneous; and

d. confirm the arbitrary and capricious conduct exhibited by the Board in its review of the Application.

180. The Zoning Board, in its Resolution, made findings of fact and conclusions of law directly contrary to its findings on the record during its deliberation and vote on January 2, 2025.
181. The Zoning Board failed to make proper findings of fact and conclusions of law in accordance with the MLUL and existing case law. The findings, which were made and placed upon the record, support grant of the Application and ignorance of these findings and conditions and omission of same from the Resolution is wholly misrepresentative of what occurred below.
182. The Zoning Board's action in adoption of the Resolution was arbitrary, capricious and unreasonable and otherwise without basis in law or fact contrary to the Zoning Board's statutory obligations and the lawful rights of Outfront.
183. The Zoning Board's actions relative to the Application are contrary to the fundamental principles of sound planning and violate the spirit and intent of the MLUL, Bell v. Stafford, E&J Equities v. Frankling Twp Bd. of Adj., and City of Austin v. Reagan National Advertising, and other State and federal provisions and governing case law.

WHEREFORE, Outfront, Outfront Media LLC demands judgment against the Zoning Board of Adjustment of the Borough of Red Bank as follows:

a. Declaring that the Zoning Board's denial of the Application was not supported by the Resolution and contrary to the Municipal Land Use Law, the Ordinances of the Borough of Red Bank, and the lawful rights of Outfront;

b. Reversing the January 2, 2025 denial of the Application;

c. Granting approval of the Application, determining that all necessary relief for the plans and application before the Zoning Board as of November 21, 2025 are approved, and ordering the issuance of a building permit for construction pursuant to same; and

d. Awarding such other and further relief as the Court may deem equitable and just in the circumstance including attorney's fees and costs of suit.

FOURTH COUNT
(Duty to "Turn Square Corners")

184. Outfront repeats the allegations of the Statement of the Matter, First, Second, and Third Counts of this Complaint, and incorporates the same as if set forth at length herein.

185. A municipality, its agencies and representatives owe a duty to Outfront and the members of the public to "turn square corners" as articulated by the Supreme Court in F.M.C. Stores Co. v. Borough of Morris Plains, 100 N.J. 418 (1985).

186. The Zoning Board has breached this duty to Outfront in all respects via its improper actions relative to the adoption of the Resolution, as well as via its actions in denying the Application.

187. The Zoning Board has improperly and unlawfully acted to prevent the development of the Modernized Sign in direct violation of law and without consideration of the rights and interests of Outfront and the public.

188. The Zoning Board failed to properly positively weigh Outfront's site design, site access, and compliance with comments and objections from members of the Zoning Board and the public through amendments to the Application.

189. As a result of the aforementioned defects and other improper conduct by the Zoning Board, Outfront has been and continues to be injured and deprived of its rights.

WHEREFORE, Outfront, Outfront Media LLC demands judgment against the Zoning

Board of Adjustment of the Borough of Red Bank as follows:

- a. Declaring that the Zoning Board’s denial of the Application in this instance was a failure to “turn square corners” in its dealings with the Outfront contrary to the Municipal Land Use Law, the Ordinances of the Borough of Red Bank, and the lawful rights of Outfront;
- b. Reversing the January 2, 2025 denial of the Application;
- c. Granting approval of the Application, determining that all necessary relief for the plans and application before the Zoning as of November 21, 2024 are approved, and ordering the issuance of a building permit for construction pursuant to same; and
- d. Awarding such other and further relief as the Court may deem equitable and just in the circumstance including attorney’s fees and costs of suit.

FIFTH COUNT
(Cumulative Error)

- 190. Outfront repeats each and every allegation of the Statement of the Matter, First, Second, Third, and Fourth Counts of the Complaint as if the same were set forth at length herein.
- 191. To the extent that the errors, problems, deficiencies, unlawful acts, errors and/or arbitrary decisions or actions, as identified in the above enumerated Counts and Statement of the Case do not individually cause the actions of the Zoning Board to be arbitrary, capricious or unreasonable, or invalid or unlawful, when viewed together in their totality, constitute a cumulative error that taints and invalidates the proceedings, denial of the Application, and adoption of the Resolution.
- 192. The Cumulative Error Doctrine renders the decisions of the Zoning Board arbitrary, capricious, and unreasonable.

WHEREFORE, Outfront, Outfront Media LLC demands judgment against the Zonin

Board of Adjustment of the Borough of Red Bank as follows:

- a. Declaring that the Zoning Board's denial of the Application resulted from cumulative error that tainted and invalidated the proceedings, contrary to the Municipal Land Use Law, the Ordinances of the Borough of Red Bank, and the lawful rights of Outfront;
- b. Reversing the January 2, 2025 denial of the Application;
- c. Granting approval of the Application, determining that all necessary relief for the plans and application before the Zoning as of November 21, 2024 are approved, and ordering the issuance of a building permit for construction pursuant to same; and
- d. Awarding such other and further relief as the Court may deem equitable and just in the circumstance including attorney's fees and costs of suit.

PRICE, MEESE, SHULMAN & D'ARMINIO, P.C.
Attorneys for Outfront,
Outfront Media LLC

Dated: March 4, 2025

By: /s/ Louis D'Arminio
Louis L. D'Arminio (022611977)

PRICE, MEESE, SHULMAN & D'ARMINIO, P.C.
Attorneys for Outfront,
Outfront Media LLC

Dated: March 4, 2025

By: /s/ Edward Purcell
Edward W. Purcell (036632012)

CERTIFICATION

The undersigned hereby certifies that the matter in controversy herein is not the subject of any other action pending in this Court. The undersigned certifies that there are no other parties which need be joined.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the statements made by me are willfully false, I am subject to punishment.

Dated: March 4, 2025 */s/ Louis D'Arminio*
Louis L. D'Arminio (022611977)

Dated: March 4, 2025 */s/ Edward Purcell*
Edward W. Purcell (036632012)

CERTIFICATION PURSUANT TO RULE 4:69-5

The undersigned hereby certifies that all necessary transcripts of local agency proceedings in the cause have been ordered or already received.

I hereby certify that the foregoing statement made by me is true. I am aware that if the foregoing statement made by me is willfully false, I am subject to punishment.

PRICE, MEESE, SHULMAN & D'ARMINIO, P.C.
Attorneys for Outfront,
Outfront Media LLC

Dated: March 4, 2025 By: */s/ Edward Purcell*
Edward W. Purcell (036632012)

PRICE, MEESE, SHULMAN & D'ARMINIO, P.C.
Attorneys for Outfront,
Outfront Media LLC

Dated: March 4, 2025 By: */s/ Edward Purcell*
Edward W. Purcell (036632012)

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:5-1, Edward W. Purcell, Esq. is hereby designated as trial counsel.

PRICE, MEESE, SHULMAN & D'ARMINIO, P.C.
Attorneys for Outfront,
Outfront Media LLC

Dated: March 4, 2025

By: */s/ Edward Purcell*
Edward W. Purcell (036632012)

Civil Case Information Statement

Case Details: MONMOUTH | Civil Part Docket# L-000877-25

Case Caption: OUTFRONT MEDIA LLC VS ZONING
BOARD BORO OF RED
Case Initiation Date: 03/04/2025
Attorney Name: EDWARD WILLIAM PURCELL
Firm Name: PRICE MEESE SHULMAN & D'ARMINIO PC
Address: 50 TICE BLVD, STE 380
WOODCLIFF LAKE NJ 07677
Phone: 2013913737
Name of Party: PLAINTIFF : Outfront Media LLC
Name of Defendant's Primary Insurance Company
(if known): Unknown

Case Type: ACTIONS IN LIEU OF PREROGATIVE WRITS
Document Type: Complaint
Jury Demand: NONE
Is this a professional malpractice case? NO
Related cases pending: NO
If yes, list docket numbers:
Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO
Does this case involve claims related to COVID-19? NO
Are sexual abuse claims alleged by: Outfront Media LLC? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO Title 59? NO Consumer Fraud? NO
Medical Debt Claim? NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*

03/04/2025
Dated

/s/ EDWARD WILLIAM PURCELL
Signed

