Memorandum to Providence Zoning Board of Review
November 16, 2020

Re: Pettis Properties LLC and Capital Associates, Inc. application for Use and Dimensional Variances for Billboard on Printery Street

The Applicants are barred by the doctrine of ***administrative finality*** from trying for the **third** time to obtain the zoning variances needed to allow a giant electrified billboard at 58 Printery Street, because the decision of Judge Lanphear in

Charles Orms Associates vs Providence Zoning Board et als. PC 2016-4007

held that the Applicants had failed in their second appeal to the Zoning Board to present any evidence that the granting of variances for the proposed size and electrification of the billboard "was the least relief necessary to alleviate the Applicant's hardship." Indeed, the Court noted "There was no showing that any alternatives were considered." *Idem*

As the Court noted in refusing to remand the case to the Zoning Board for another evidentiary hearing:

> It is widely settled in the State of Rhode Island that the authority to remand a case should not be exercised in circumstances which would allow a party another opportunity to present a case when the evidence presented initially is inadequate. *Idem*

Perforce if an applicant is not entitled to a remand to the Zoning Board for a new evidentiary hearing, an applicant is not entitled to apply anew to the Zoning Board for the same use and structure. Rather the applicant is barred by the doctrine of administrative finality in the absence of a material change in circumstances.

LEGAL PRINCIPLE OF ADMINISTRATIVE FINALITY

Johnston Ambulatory Surgical Associates Ltd vs Nolan, 755 A.2d 799 (RI 2000) at 811provides:

> [T]he doctrine of administrative finality requires that when an administrative agency receives an application and denies it, the same subsequent application may not be granted absent a showing of a material or substantial change in circumstances in the time intervening between the two applications. *Audette,* 539 A.2d at 521-22. This rule places a burden on the applicant to identify the substantial changes since the prior application. What constitutes a material change will depend on the context of the particular administrative scheme and the relief sought by the applicant and should be determined with reference to the statutes, regulations, and case law that govern the specific field. The changed circumstances could be internal to the application, as when an applicant seeks the same relief but **makes important changes in the application to address the concerns expressed in the denial of its earlier application.** (emphasis added) Or,

external circumstances could have changed, as when an applicant for a zoning exception demonstrates that the essential nature of land use in the immediate vicinity has changed since the previous application.

The Applicants speciously assert that the current (i.e., the third) application to the Zoning Board for almost the exact same sign involved in the ***Charles Orms*** decision represents a material change in circumstances because (a) the current Zoning Ordinance is different than the Zoning Ordinance that governed the previous application in that (1) the current Zoning Ordinance classifies 58 Printery Street as C3 whereas the prior ordinance classified 58 Printery as C4; (2) the current Ordinance might permit an electrified sign; (b) the current sign would not be "moving"; and (c) the Applicants now have the expert testimony to establish that the requested relief is the least necessary. The attachment to the current application prepared by the Applicants' legal counsel, references the court decisions involving the first and second applications to the Zoning Board, but notably does not describe the holding in the second (***Charles Orms)*** decision that barred a rehearing to receive the missing expert testimony.

At the time of the second application, as noted on the first page of the ***Charles Orm*** decision, the site was in a C3 zone (not C4 as incorrectly asserted by Applicants.) The differences between the previous and current Zoning Ordinance are legally non existent. Neither Ordinance permitted a billboard on the premises at 58 Printery Street, albeit that the current Ordinance does it more emphatically by barring billboards in all districts. More importantly, as noted above, Judge Lanphear ruled that the Applicants were barred from a rehearing to present the missing expert testimony.

Thus it is superfluous to note that
(a) there is paving on the site that allows several cars to be parked thereon, notwithstanding the Applicants' assertion that the site cannot be used for parking (see aerial photo submitted by Jonathan Stevens);
(b) the diagram presented by Jonathan Stevens for this hearing shows that a small building could be constructed on the site;
(c) neither the Application nor the Applicants' experts state that the site is suitable only for a billboard. The experts acknowledge that the site is suitable for some other uses: the "property is unfit for most" (but not all)…" uses permitted in the C. 3 zone";
(d) the Application and the Applicants' experts falsely assert that the sign would not impact (i) North Main Street when in fact the 112 ft high sign (equivalent to an eleven story building) would rise well above the adjoining one story Dean Autobody building on North Main Street or (ii) or any residential property when in fact the electrified billboard would be very visible from the nearby Charlesgate nursing home whose windows would directly face the billboard and from houses and apartments, such as University Heights, in the Lippitt Hill and Summit neighborhoods; and
(e) the Application misleadingly asserts (without any supporting topographic plan or data) the "parcel is nearly 40 feet below the grade of I-95" when in fact the parcel's paved edge along Printery Street where the base of the billboard would be located is perhaps forty feet above this low point.

Accordingly, the Application should be summarily rejected by the Zoning Board.