

AUG 18 2020

CITY OF PROVIDENCE
ZONING BOARD OF REVIEW

APPLICATION FOR VARIANCE OR SPECIAL USE PERMIT

Check Each Type Zoning Relief Sought: _____ Variance – Use *
_____ Variance – Dimensional*
_____ Special Use Permit **

* Attach Appendix A to apply for a Use or Dimensional Variances
** Attach Appendix B to apply for a Special Use Permit

Applicant: Pettis Properties, LLC Address 999 Westminster Street, Providence
Zip Code 02903
E-mail nhemond@darroweverett.com
Phone 401-453-1200
Home/Office Mobile (Cell)

Owner: Pettis Properties, LLC Address Same
Zip Code _____
E-mail Same
Phone Same
Home/Office Mobile (Cell)

Lessee: Capital Associates, Inc. Address PO Box 590556, Newton Center, MA
Zip Code 02459
E-mail eosullivan@capitalassociates-inc.com
Phone: 617-797-4235
Home/Office Mobile (Cell)

Does the proposal require review by any of the following (check each):

- _____ Downtown Design Review Committee
- _____ I-195 Redevelopment District Commission
- _____ Capital Center Commission
- _____ Historic District Commission

1. **Location of Property:** 58 Printery Street, Providence, RI
Street Address

2. **Zoning District(s):** C3
Special purpose or overlay district(s): _____

- 3a. **Date owner purchased the Property:** May 11, 2011

- 3b. **Month/year of lessee’s occupancy:** Upon approval and completion of permitting process 2020

3. Dimensions of each lot:

Lot # 477 Frontage 100' depth 27 acres Total area 11,598 sq. ft.
Lot # _____ Frontage _____ depth _____ Total area _____ sq. ft.
Lot # _____ Frontage _____ depth _____ Total area _____ sq. ft.

4. Size of each structure located on the Property:

Principal Structure: Total gross square footage _____
Footprint _____ Height _____ Floors _____

Accessory Structure: Total gross square footage _____
Footprint _____ Height _____ Floors _____

5. Size of proposed structure(s): Total gross square footage: _____ Billboard will be 48' X 14'
Footprint _____ Height 112' Floors _____

6a. Existing Lot coverage: (include all buildings, decks, etc.) Vacant

6b. Proposed Lot coverage: (include new construction) See plan - construction of monopole

7a. Present Use of Property (each lot/structure):
Vacant

7b. Legal Use of Property (each lot/structure) as recorded in Dept. of Inspection & Standards:

8. Proposed Use of Property (each lot/structure):
Two face free standing billboard with each face measuring 48' X 14'

9. Number of Current Parking Spaces: n/a

10. Describe the proposed construction or alterations (each lot/structure):
Two face free standing electronic billboard face measuring 48' X 14'

11. Are there outstanding violations concerning the Property under any of the following:

No Zoning Ordinance
No RI State Building Code
No Providence Housing Code

12. List all Sections of the Zoning Ordinance from which relief is sought and description of each section:

1200(f) Prohibits Billboard in all zones
1605(f) Prohibits Billboards in all zones
1607(E) Table 16-1 - Also, see Addendum for further Sections implicated by this app.

13. Explain the changes proposed for the Property.

This property has been vacant since 1972. This Board has twice approved a use variance and height variance for this property to construct a billboard. The matter was appealed and remanded to the zoning board for further consideration for further expert testimony related to "least relief necessary" for the issue of a use variance for an electronic billboard. The applicant still seeks a use variance for a billboard and a height variance to make the billboard high enough above interstate 95 because of the fact that the property is significantly below grade of 95. However, electronic message signs are permitted in C3 zone. Therefore, if the Board approves the use variance to have a billboard with offsite advertising on the property, the Owner/Applicant would be able to have an electronic sign by right under section 1607(d) as the prohibition against offsite advertising and billboards would be removed through the approval of the use variance.

The undersigned acknowledge(s) and agree(s) that members of the Zoning Board of Review and its staff may enter upon the exterior of the Property in order to view the Property prior to any hearing on the application.

The undersigned further acknowledge(s) that the statements herein and in any attachments or appendices are true and accurate, and that providing a false statement in this application may be subject to criminal and/or civil penalties as provided by law, including prosecution under the State and Municipal False Claims Acts. Owner(s)/Applicant(s) are jointly responsible with their attorneys for any false statements.

Owner(s):

Pettis Properties, LLC

Type Name

Ann & Brady Member
Signature

Type Name

Signature

Applicant(s):

Pettis Properties, LLC

Type Name

Ann & Brady Member
Signature

Type Name

Signature

All requirements listed and described in the Instruction Sheet must be met or this application will not be considered complete.

APPENDIX A

APPLICATION FOR VARIANCE(S)

Rhode Island General Laws § 45-24-41(c) requires that the Applicant for a variance demonstrate:

- (1) That the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area; and is not due to a physical or economic disability of the applicant, excepting those physical disabilities addressed in § 45-24-30(16);
- (2) That the hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain;
- (3) That the granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of the zoning ordinance or the comprehensive plan upon which the ordinance is based;
- (4) That the relief to be granted is the least relief necessary; and
- (5) (a) For a **use variance**: That the land or structure cannot yield any beneficial use if it is required to conform to the provisions of the zoning ordinance;
- (b) For a **dimensional variance**, that the hardship suffered by the owner of the subject property if the dimensional variance is not granted amounts to more than a mere inconvenience.

Please provide the following information:

1. **What is the specific hardship from which the applicant seeks relief?**

See Attached Memorandum

2. **Specify any and all unique characteristics of the land or structure that cause the hardship?**

See Attached Memorandum

3. (a) **Is the hardship caused by an economic disability?** Yes _____ No X _____
(b) **Is the hardship caused by a physical disability?** Yes _____ No X _____
(c) **If the response to subsection (b) is "yes," is the physical disability covered by the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 et seq.?**
Yes _____ No _____
4. **Did the owner/applicant take any prior action with respect to the Property that resulted in the need for the variance requested? (Examples include, but are not limited to, any changes the owner/applicant made to the structure(s), lot lines, or land, or changes in use of the Property)?**
Yes _____ No X _____

If "yes," describe any and all such prior action(s), and state the month/year taken.

5. **State any and all facts to support your position that the applicant is not seeking the variance(s) primarily in order to obtain greater financial gain.**

See attached Memorandum

6. **State any and all facts that support your position that you are seeking the least relief necessary to lessen or eliminate the hardship (for example, why there are no viable alternatives to your proposed plan).**

See attached memorandum

7. **If you are seeking a USE VARIANCE, set forth all facts that demonstrate that the Property cannot have any beneficial use if you are required to use it in a manner allowed in the zoning district.**

See attached memorandum

8. **If you are seeking a DIMENSIONAL VARIANCE, set forth all facts that indicate that if the variance is not granted, the hardship the owner/applicant will suffer is more than a mere inconvenience.**

See attached memorandum

APPENDIX B

APPLICATION(S) FOR SPECIAL USE PERMIT

1. Identify the section(s) of the Ordinance that provides for the special use permit.
NA

2. State all facts that demonstrate that the proposed special use will not substantially injure the use and enjoyment of neighboring property.
NA

3. State all facts that demonstrate that the proposed special use will not significantly devalue neighboring property.
NA

NA

4. State all facts that demonstrate that the proposed special use will not be detrimental or injurious to the health or welfare of the community.
NA

**IF THE APPLICANT IS AN EDUCATIONAL OR HEALTH CARE INSTITUTION,
COMPLETE PAGE 10 BELOW**

Memorandum

To: Zoning Board of Review

From: Nicholas Hemond, Esq.

Date: August 12, 2020

Re: Application of Pettis Properties, LLC – 58 Printery Street, Providence, RI

Introduction

The application filed by Pettis Properties, LLC (“Applicant”) seeks approval by this Board of a request for a use variance and dimensional variance to allow the Applicant to construct a 112 foot tall two face freestanding electronic message billboard on real property located at 58 Printery Street (Plat 2, Lot 477) (the “Property”). The Property is located in a C3 Heavy Commercial zone. It is abutted by commercial and industrial uses, including a large auto body repair facility and I-95. The Property is isolated by a substantial buffer of mature trees of approximately 100 feet in all directions. There is no residential neighborhoods within the vicinity of the proposed billboard. The billboard use is well suited for the area in which the proposed sign would be located. There are consistent uses all along the 95 corridor in the area and this Board has previously granted variance applications for the construction of billboards. This proposed billboard will have no visual impact on North Main Street or the residential neighborhood in the Mt. Hope area.

The Applicant seeks a use variance to allow for the construction of the billboard which is a prohibited use in all zones in the City. A dimensional variance is needed because the property is located significantly below grade relative to Interstate 95. As billboards are not allowed as a use anywhere in the City, the Ordinance does not offer dimension regulations that are specific to

billboards for any zone in the City. As a result, the Applicant must seek relief from the dimensions from a normal freestanding sign which are obviously considerably smaller than a traditional billboard. Pursuant to Section 1607(E) Table 16-1, the maximum height allowed in the C3 zone for a free standing sign is 20 feet and the allowed square footage of the face of the sign is 60 square feet. A billboard of that height is not sufficiently high enough above the highway to be seen, let alone high enough to comply with state and federal regulations. Additionally, the dimensions for the sign area of the face are not intended to apply to a billboard and are well below the industry standard for sign area and well below the sign area utilized by any other billboard along Route 95. As such, the Applicant seeks a dimensional variance of 92 feet in height and 672 square feet in sign area so that the billboard is safely and effectively visible above the highway and in conformance with industry standards as to the size of the sign face.

This Property has twice received the approval of this Board for use and dimensional variances related to the construction of an electronic billboard. The Board first approved a similar application, including finding loss of all beneficial use, on September 20, 2011. **Exhibit A.** The matter was appealed and remanded back to the Board for further hearing on March 21, 2014. After the remand, the Board again approved the application on July 13, 2016. **Exhibit B.** Once again, the matter was appealed and was overturned by the Superior Court for lack of expert testimony on the limited issue of lack of expert testimony related to least relief necessary on issue that is different than this application. This application, while very similar, is different due to changes in the Zoning Ordinance which have ensued since this matter was last heard by the Board. Further, even if the Applicant was required to prove that an electronic billboard was the least relief necessary, the Applicant now has the expert testimony and information that was

previously found to be lacking by the Court to present to the Board if it was required constituting a change in circumstances. At the time of the prior approval, the Property was located in a C4 zone. The previous applicant sought an additional variance to have a “moving sign.” Presently, electronic message signs are allowed in a C3. If this Board approves the use variance for billboard thereby permitting off site advertising, the billboard may be electronic by right pursuant to Section 1607(d) which permits electronic message signs in C3 zones.

Variance Requests

The Property is currently owned by Pettis Properties, LLC. The sole member of Pettis Properties is Thomas Badway, Esq. Mr. Badway and his family have owned this particular Property since 1972. During that 48 year span, the Property has remained vacant. There have been no offers to purchase the Property. There have been no proposed tenants for the Property other than Capital Associates, Inc. Even other billboard companies have turned down Mr. Badway’s efforts to develop this parcel. Mr. Badway cannot even safely park vehicles from his other auto body business which abuts the Property on the parcel because of the wetlands, buffer and flood plain.

Billboard are not a permitted use in any zone in the city. Thus, this Applicant must satisfy the requirements for a use variance. This Property is unfit for most, if not all, beneficial uses permitted in the C3 zone. A billboard is likely the only beneficial use which this Property can yield. The hardship suffered by the Property is the result of the unique characteristics of the Property itself. This Board has found that to be the case on two occasions and has been previously affirmed in that decision by the Superior Court. If anything, as time as passed since the last approval, the facts have only grown more dire for this Property as it continues to remain vacant and undevelopable for any other use.

The Property sits between heavy commercial and industrial uses along Printery Street, including a large auto body facility, and I-95. The parcel is nearly 40 feet below grade of I-95 necessitating the dimensional variance of 92 feet. In order for the billboard to be sufficiently and safely above the highway, additional height is needed due to the fact that the base of the monopole sign is so far below the surface of 95. Additionally, the sign area dimensions do not contemplate the usual industry standards for the dimensions of a billboard because the Ordinance lacks any regulations specific to billboards. As such, the dimensions proposed in the Ordinance for the area of a free standing sign are not crafted with the use of a billboard in mind. The dimensions for a typical billboard are much larger than those for a sign which is simply used for onsite advertising of a business. If held to the maximum sign area requirements for freestanding signs in the C3 zone, the Applicant cannot attract a tenant to operate a billboard on the site. A sixty foot billboard is simply not sufficient for offsite advertising and well below the customary size of a billboard and much smaller than any other billboard along Route 95 in the City of Providence or State of Rhode Island. Without dimensional relief, there will be no billboard which is a hardship well beyond a mere inconvenience. Additionally, the amount of relief requested is only the amount necessary to build a suitable billboard in this location. The Property is an undersized pie shaped lot with no productive use. The lot is divided in segments by the Moshassuck River and sits in a flood plain. The topography of the lot slopes towards the river. The Property is also significantly hampered by wetland buffers which further render the Property unfit for other allowed uses in the C3 zone.

The hardship is not the result of an economic or physical disability of the Applicant. The Applicant did not take any action on its part to create the hardship, rather it is the result of the challenging character of the lot itself. While there is an element of financial gain in all proposed

development projects, realizing greater financial gain is the not the primary motivation for the requested variance. Rather, the Applicant is merely trying to yield SOME benefit from a Property which has been vacant for at least the past 48 years. The Applicant cannot even use it to safely park cars because of the flooding on the Property. This proposal is simply the only way that the Applicant can yield any benefit from the Property. Strict application of the Zoning Ordinance requirements for the allowed uses in the C3 zone results in a constructive taking of the Property.

The relief requested is the least relief necessary. Without a use variance, a billboard is not allowed. The Applicant seeks to be able to have offsite advertising on the Property and a use variance is the only mechanism to achieve it. The C3 zone allows the applicant to have an electronic message sign, but not for purposes of offsite advertising. This variance allows the Applicant to have its proposed electronic billboard. In terms of the height variance, the Applicant is only seeking sufficient height so that the billboard can be visible and safely located above the highway. Because the Property is almost 40 feet below grade of I-95, a 50 foot billboard is approximately 20 feet above the highway. A 112 foot tall sign is required in order to meet the requirements that the billboard be properly elevated above traffic on 95.

Use Variance – Loss of All Beneficial Use

In the 48 years that the Badway family has owned this parcel, it has never yielded a beneficial use. As detailed above, and as will be further explained through expert testimony at the hearing, this Property cannot yield a beneficial use other than the one proposed in this Application. This is a very unique parcel with numerous development constraints. The Property is severely limited by the wetlands and the resultant DEM regulations for development. The Property is in a flood plain and a river runs right through the center of the lot. The lot slopes

down to the river. The lot is sandwiched between Printery Street and I-95 and is significantly below grade of the highway. As this Board has found as a matter of fact on two prior occasions, a finding that the Superior Court did not overturn on appeal, this Property cannot yield any beneficial use other than that which is proposed in this Application. Literal enforcement of the Zoning Ordinance would continue to leave this challenged parcel vacant for an indefinite period of time. If the Board grants the relief from Section 1200(f) and 1605(f), then off premises advertising is allowed on the premises. At that point, it's the Applicant's position that because off premises advertising is now allowed, the Applicant is allowed use of an electronic sign by right pursuant to 1607(d) as the prohibition of electronic offsite advertising contained in Section 1607(d)(5) is negated by approval of the variances granting relief from 1200(f) and 1605(f).¹

Dimensional Variance – More Than A Mere Inconvenience

If held to the literal dimensional requirements of the Zoning Ordinance as it relates to a 20 foot height restriction, the billboard cannot safely be built on the parcel. The Property is significantly below I-95 and a 20 foot sign is not visible from and too close to the traffic on the highway. The Department of Transportation requires that billboards do not obstruct or interfere with the flow of traffic. A billboard must be adequately visible to traffic on the highway in order to be useful in its intended purpose of offsite advertising. In order to meet state and federal regulations, the billboard must be built 112 feet above the parcel surface. The height of the billboard will not have a negative impact on the surrounding area, including the view from the Charlesgate housing complex which is on the other side of the buffer. Charlesgate had been previously supportive of the prior applications which were filed featuring identical height and

¹ To the extent the Board finds otherwise, a variance is also requested from Section 1607(d)(5) such that the Applicant can enjoy its rights granted under its other variances in full.

sign dimensions. Without dimensional relief from the 60 square foot requirement, the Applicant will lose its tenant as the tenant has no interest in a 60 square foot billboard as it cannot be marketed for use above a major highway like Route 95 at that miniscule size. The sign regulations for a freestanding sign do not, and are not intended, to contemplate the sign as a billboard because billboard are not allowed by right or by special permit in the City of Providence and thus the Ordinance does not contain dimensional specifications for billboard that are suitable or applicable to the proposed sign.

Additionally, the Applicant is proposing a billboard in which over 70 percent of the sign area is proposed to be an electronic messaging sign. This billboard is inline with the industry standard for electronic billboards. It is impractical to have a billboard that is partially electronic and partially canvass, as it would negate the safety and efficiency of an electronic billboard. The proposed sign therefore requires dimensional relief from 1607(d)(4). The total area of the sign is the least relief necessary to effectuate the construction of the sign and to deny the variance would result in the Applicant having suffered a hardship more than a mere inconvenience.

Exhibit A

Myrth York
Chair



Angel Taveras
Mayor

No: 00020852
Page: 145

Zoning Board of Review
RESOLUTION NO. 9635

September 20, 2011

Pettis Properties, LLC
Attn: Mr. Thomas Badway
999 Westminster Street
Providence, RI 02903

Capital Advertising, LLC
c/o Law Offices of Michael A. Kelly, PC
Attn: John O. Mancini, Esq.
128 Dorrance Street, Suite 300
Providence, RI 02903

Gentlemen:

At the meeting of the Zoning Board of Review (Board) held on July 27, 2011, the following Resolution was adopted:

WHEREAS, Capital Advertising, LLC (Applicant), and Pettis Properties, LLC, the owner of real property identified as Lot 447 on the Tax Assessor's Plat 2, also known as 58 Printery Street (Property) and located in a Heavy Commercial C-4 Zone, in the City of Providence, Rhode Island, filed an application seeking relief from Sections 303-use code 68, 305, 603.2, 603.3 and 607.4 of the Zoning Ordinance (Ordinance) in the proposed construction of a new "V" shaped billboard 112 feet in height, consisting of two sign panels each face measuring 48' x 14' attached to a monopole, one sign panel facing in a generally northerly direction and one sign panel facing in a generally southerly direction. The Applicant requested use and dimensional variances seeking relief from regulations governing freestanding signs, maximum sign area, height, signs that move and billboards. The lot in question contains approximately 11,598 square feet of land area; and

WHEREAS, on Wednesday, July 27, 2011, the members of the Board made a site inspection of the Property and also of the surrounding properties in the neighborhood and further took notice of the recommendation submitted by the Department of Planning and Development (DPD) dated July 27, 2011, the DPD recommending that the requested relief be denied; and

WHEREAS, the Board held a public hearing on this application as set forth by the Ordinance on Wednesday, July 27, 2011, and Attorney John O. Mancini represented the Applicant and presented the matter to the Board; and

WHEREAS, testimony in favor of the application was given in the form of the Affidavit of Edward Pimental, with an attached Land Use Report that he prepared in his capacity as an urban planning and land use consultant; on previous occasions, Mr. Pimental has been recognized by the Board as an expert witness; Thomas O. Sweeney, a real estate broker and appraiser, was recognized as an expert witness by the Board and he provided testimony regarding a Real Estate Analysis he prepared with respect to the application; the Applicant also presented a preliminary traffic regulatory evaluation, which was prepared by Paul J. Bannon, President of RAB Professional Engineers, Inc; on previous occasions Mr. Bannon has been recognized by the Board as an expert witness; and, the Applicant presented information provided by Russ Yanco, who on previous occasions has been recognized as an expert witness in his capacity as a representative of Datronics, a company that makes billboards of the style that the Applicant proposes; and

WHEREAS, testimony was given in opposition to the application by Grant Dulgarian of 20 Exeter Street, Providence, and by Choyon Manjrekar, of the DPD; and

WHEREAS, Mr. Mancini explained that the application was for the purpose of constructing a monopole LED billboard on the Property and that the request for a use variance is because the Ordinance does not allow for construction of new billboards, by right, in any zoning district and the dimensional variance is needed for relief from the permitted height for a C-4 district and for the display, which is proposed to be a digital display with changing messages; and

EX A

WHEREAS, Mr. Mancini explained that the Land Use Report, prepared by Mr. Pimental, states that the Property is very unique in that it has several constraints including being located next to the interstate highway and having a river that runs through the middle of the Property, which severely restricts development of the Property; Mr. Pimental further concluded that the Property is currently not being used in any fashion nor is there any other viable use for the Property; and

WHEREAS, Mr. Mancini also indicated that Mr. Pimental's Land Use Report explained that, based on his analysis of the neighborhood through visual perspectives, the proposed billboard would have no visual impact on the neighborhood nor on the surrounding character of the area from a land use perspective; and that the relief from the height limitation would be the least relief necessary; the Report also details that in Mr. Pimental's expert opinion the Applicant satisfied all of the requirements for the approval of the requested use and dimensional relief; and

WHEREAS, Mr. Mancini also spoke about the preliminary traffic regulatory evaluation, which was prepared by Mr. Bannon, specifically, that the evaluation concluded that the proposed billboard is in conformance with the Rhode Island Department of Transportation (RIDOT) regulations; that the proposed billboard would not interfere or obscure any traffic or pose a traffic hazard or imitate or resemble any official traffic sign, signal or device and meets the RIDOT and Federal distance and size requirements; and

WHEREAS, Mr. Mancini detailed how the information supplied by Mr. Yanco, of Datronics, reveals how the proposed billboard will be programmed in such a fashion that it will not show animation or movement, that it will automatically adjust to the brightness and will not be more bright than necessary, and that it will be available to advertise public emergencies, such as "Amber Alerts" and other community uses; and

WHEREAS, Mr. Sweeney testified that due to the Moshassuck River running through the Property, use of the Property is significantly limited by wetland buffers; that the Property is located in a flood plain in a heavy commercial area with auto body uses in the immediate proximity, and in the proximity of high-rise mixed use and residential apartment buildings; and

WHEREAS, Mr. Sweeney further testified that the proposed use of the Property as the location for a billboard is consistent with other similar uses along the Interstate Route 95 corridor and an appropriate use, and it is probably one of the few uses for this Property; he further opined that the proposed use would not alter the general characteristics of the surrounding area or adversely impact property values in the surrounding area; and

WHEREAS, Mr. Dulgarian testified that he is opposed to any more billboards, that the East Side Renewal Project, in the 1960's did not include billboards and that the Zoning Ordinance passed in the 1990's prohibited billboards; and

WHEREAS, Mr. Manjrekar, of the DPD, reiterated the opinion of the DPD, in that the requested relief to construct a billboard on the Property should be denied and that the Ordinance prohibits all new billboards; and he further explained how the Comprehensive Plan talks about preserving view corridors and this proposal would interfere with that objective;

NOW, THEREFORE, after consideration of the application, the testimony of witnesses and of the entire record presented to the Board, including the site inspection of the Property, the supporting documentation, and after carefully considering such information, on a motion made by Mr. Egan, seconded by Mr. Wolf, the Board voted 4-1 to approve the request for a use variance for the construction of the proposed billboard, with Members York, Varin, Strother and Martinez participating in such discussion and deliberation, and on a motion made by Mr. Egan, seconded by Mr. Wolf, the Board voted 4-1 to approve the dimensional variances, with Members York, Varin, Strother and Martinez participating in such discussion and deliberation; and

The Board hereby makes the following findings of fact and conclusions of law:

1. The Board has the authority to grant variances from the rules and regulations of the Ordinance even in an instance, as here, where a proposal is otherwise completely prohibited by the Ordinance; thus, if all the requirements for a use variance are met by the Applicant, the Board must grant the variance; further, the

- Board finds and concludes that it is the responsibility of the Board to address the elements relating to the grant or denial of an exception to the Ordinance but it is outside the purview of the Board to decide the applicability of RIDOT rules and regulations or Federal law;
2. The Applicant has clearly shown that the hardships from which the variances are sought are due to the unique characteristics of the Property because, as credibly discussed by Mr. Pimental in his written report and as testified to by Mr. Sweeney, the Property is located in an isolated location in a heavy commercial area next to Interstate Route 95, in a flood plain, with the Moshassuck River running through approximately the middle of the Property, thus severely restricting the development and use of the Property. In addition, the Board, on its inspection of the Property noted this uniqueness of the Property;
 3. With respect to the requested dimensional variances relating to height, freestanding signs and maximum sign area, these variances are also sought due to the unique characteristics of the subject land. Specifically, the relief is necessary because of the topography of the Property and, as noted by Mr. Sweeney, the site is 30 to 40 feet below the grade of Interstate 95 and the proposed height and size of the sign are necessary in order for the sign to be seen;
 4. The Board further finds that the hardships from which the Applicant seeks its use and dimensional relief are not due to a physical or economic disability of the Applicant, as the Applicant asserted none;
 5. The Applicant has clearly shown that the hardships are not the result of any prior action of the Applicant or owner and do not result primarily from the desire of the Applicant to realize greater financial gain because, as explained by Mr. Mancini, the Applicant is merely trying to find a viable use for its Property;
 6. The Board finds that the granting of the requested variances will not alter the general character of the surrounding area nor impair the intent and purpose of the Ordinance or the Comprehensive Plan as the Property is located in a heavy commercial area containing auto body shops;
 7. The Board further finds, based upon the above findings, that the relief requested is the least relief necessary to allow a viable use of the Property as the billboard will not exceed beyond the height necessary to be visible from the highway;
 8. The Board also finds that denial of the requested use and dimensional variances would lead to a loss of all beneficial use of the Property and would be more than a mere inconvenience since the Property has a river running through it and due to its severe topography it would be very difficult to find any other viable use;

It is therefore,

RESOLVED: Based upon the aforementioned findings of fact and conclusions of law, the Zoning Board of Review does hereby APPROVE the application of Pettis Properties, LLC and Capital Advertising, LLC, granting relief from Sections 303-use code 68, 305, 603.2, 603.3 and 607.4 of the Zoning Ordinance permitting the construction of a new "V" shaped billboard 112 feet in height, consisting of two sign panels each face measuring 48' x 14' attached to a monopole, one sign panel would face in a generally northerly direction and one sign panel facing in a generally southerly direction as per the specifications and plans presented by the Applicant.

This approval must be realized in accordance with the specifications and plans presented by the Applicant and made a part of the record. A copy of said specifications and plans are hereby made a part of this Resolution and must be filed with the Department of Inspection and Standards by the owner or its representative.

By Order of the Zoning Board of Review.


MYRTH YORK
CHAIR

RESOLUTION NO. 9635

- 4 -

September 20, 2011

ATTENTION: SECTION 906 UNDER THE ZONING ORDINANCE REQUIRES THAT ANY VARIANCE OR SPECIAL USE PERMIT GRANTED BY THE BOARD SHALL EXPIRE SIX MONTHS AFTER THE DATE OF THE FILING OF THE RESOLUTION IN THE OFFICE OF THE BOARD UNLESS THE APPLICANT SHALL, WITHIN THE SIX MONTHS, OBTAIN A LEGAL BUILDING PERMIT AND PROCEED WITH CONSTRUCTION; OR OBTAIN A LEGAL BUILDING PERMIT AND A CERTIFICATE OF OCCUPANCY WHEN NO CONSTRUCTION IS REQUIRED.

NOTE: THE ORIGINAL RESOLUTION IS ON FILE IN THE OFFICE OF THE ZONING BOARD OF REVIEW AND MUST BE OBTAINED BY THE OWNER OR HIS/HER/ITS REPRESENTATIVE AND RECORDED IN THE LAND EVIDENCE RECORDS OF THE CITY OF PROVIDENCE BEFORE THE ISSUANCE OF A BUILDING PERMIT. A COPY OF THE RECEIPT ACKNOWLEDGING THAT THE RESOLUTION HAS BEEN RECORDED MUST BE SUBMITTED TO THE OFFICE OF THE ZONING BOARD OF REVIEW AND TO THE DEPARTMENT OF INSPECTION AND STANDARDS BEFORE THE ISSUANCE OF A BUILDING PERMIT.

MOTION TO APPROVE THE USE VARIANCE MADE BY: EGAN

SECONDED BY: WOLF

MEMBERS VOTING IN FAVOR OF THE MOTION: YORK, EGAN, WOLF AND STROTHER

MEMBER VOTING AGAINST THE MOTION: VARIN

MOTION TO APPROVE THE DIMENSIONAL VARIANCE MADE BY: EGAN

SECONDED BY: WOLF

MEMBERS VOTING IN FAVOR OF THE MOTION: YORK, EGAN, WOLF AND STROTHER

MEMBER VOTING AGAINST THE MOTION: VARIN

RECEIVED:

Providence
Received for Record
Oct 11, 2011 at 03:17:34P
Document Num: 00020852
John A. Burdick
Recorder of Deeds

Exhibit B

Jorge O. Elorza
Mayor



Marc Greenfield
Chair

Zoning Board of Review

RESOLUTION NO. 2016-25

August 3, 2016

RE: **Application for Use and Dimensional Variance**
(Electronic Billboard)

PROPERTY: 58 Printery Street
Assessor's Plat 2, Lot 447

APPLICANT: Capital Advertising, LLC
44 School Street, Suite 250
Boston, MA 02108

OWNER: Pettis Properties, LLC
c/o Thomas Badway
1052 North Main Street
Providence, RI 02904

COUNSEL: John O. Mancini, Esq.
Kelly & Mancini
128 Dorrance Street, Suite 300
Providence, RI 02903

FILED
2016 AUG -5 A 9:56
DEPT. OF CITY CLERK
PROVIDENCE, R.I.

This matter came before the Zoning Board of Review (the "Board") at a duly noticed public hearing on July 13, 2016, with members Greenfield, Strother, Wolf, Martinez, and Capellan present throughout.¹

WHEREAS, in 2011, the Owner and Applicant (collectively the "Applicants") filed an application for a use and dimensional variance to allow for the erection on the

¹ Alternate Member Crane was not present.

Property of a two-face, freestanding billboard sign with an electronic message, pursuant to the Zoning Ordinance of June 23, 1994 as amended; and

WHEREAS, on July 27, 2011, the Board held a hearing on the Application, and on September 20, 2011, issued resolution No. 9635 granting the application for both a use variance and a dimensional variance; and

WHEREAS, the Board's decision was timely appealed to the Rhode Island Superior Court by Charles Orms Associates, in Civil Action No. PC 2011-5879; and

WHEREAS, on March 21, 2014, the Superior Court (Lanphear, J.) issued a Decision upholding the decision in substantial part, but remanding the matter to the Board for further findings of fact and conclusions of law "solely on the issue of whether the requested relief from Art. VI, § 603.2 of the [then applicable] Ordinance was the least relief necessary to alleviate the Applicant's hardship;" and

WHEREAS, in April 2014, the Board requested that counsel for the Applicants and the Appellant Charles Orms Associates, contact the Board's Secretary to schedule a *de novo* hearing on remand of the application;² and

WHEREAS, the Applicants chose not to schedule such a hearing on remand at that time; and

WHEREAS, in March, the Applicants resubmitted an application for a *de novo* hearing on the issue on remand;³ and

WHEREAS, prior to the hearing, the Board members individually conducted site visits of the Property and the surrounding area; and

WHEREAS, as of July 13, 2016, the Board had before it the March 2016 Application, the complete file and record concerning the application filed in 2011, including the hearing transcript and the Board's Resolution, as well as the Court's March 21, 2014 Decision in C.A. No. PC 2011-5879; and

WHEREAS, on July 13, 2016, Attorney John Mancini presented the application to the Board on behalf of the Applicants on the sole issue subject to the Court's remand, including the testimony of Thomas Badway, a principal member of the Owner of the

² A *de novo* hearing on the issue was required because the members of the Board in 2014 were not the same as the members at the time of the hearing on the 2011 application.

³ The General Assembly had enacted the so-called "tolling statute," R.I. Gen. Laws § 45-23-63.1, which the Applicants invoked with respect to the granting of the variance. The Board did not address the merits of the legal applicability of the tolling statute, and sets no precedent herein with respect to its findings regarding same.

Property; and of Ms. Mary Burns and of Mr. Edward O'Sullivan, both of Capital Advertising, LLC; and

WHEREAS, the Board received letters and/or testimony in opposition to the Application for a billboard from the Providence Preservation Society, and from Sharon Steele; and

WHEREAS, the Board received and the Chair read into the record the recommendation of the Department of Planning and Development.

WHEREFORE, after careful consideration of all of the above, the Board voted unanimously (5-0) to find that the proposed electronic billboard is the least relief necessary to relieve the hardship posed by the Property, and to condition the grant of the application on the DPD's approval of the Applicants' plan for its customary provision of public service advertising, as described in their presentation.

The Board makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The findings contained in the above "wherefore" clauses are incorporated herein.

2. As referenced above, the Superior Court remanded the Application for the Board's findings on one specific criteria – whether the requested relief from Art. VI, § 603.2 of the [then applicable] Ordinance was the least relief necessary to alleviate the Applicant's hardship in support of their conclusion. The Superior Court has already upheld the Board's finding that absent the use variance, the Property lacks all beneficial use, and that the proposed dimensions of the sign are appropriate. Rather, the Board is considering only whether an electronic sign, and one that changes messages every 10 seconds, is the least relief necessary.

3. The Applicant sought relief from Article VI, § 603.2 of the Providence Zoning Ordinance of 1994 as amended, which provided as follows:

603.2 - Signs that Move: Signs which move by mechanical means or by ambient wind currents, flashing signs, or animated signs in which an image changes at a frequency of faster than every 30 minutes (not including flags, banners and barber shop poles).⁴

More specifically, the Applicants seek an electronic billboard which provides six messages per minute on each of two sides. While the messages change, they are not

⁴ The Board notes that the current Ordinance, effective December 24, 2014, contains the same provisions as the previous ordinance and prohibits billboards (Sections 1200(F)(2)(a) and 1605 =(F), and moving signs (Section 1605(E)).

animated. The 10-second interval is consistent with the Federal Highway Administration's regulations concerning billboards viewable from highways. The Applicant supplies one 10-second interval per minute for community or public service announcements, and on occasion provides more.

4. The Board accepts the following testimony of the witnesses, which it finds credible and persuasive, and finds as fact in support of their decision that the proposed relief is the least relief necessary:

a. A non-electronic (vinyl) billboard must be changed manually, which is more dangerous and more costly, and makes a vinyl billboard unfeasible for future use. Electronic billboards are digital and can be changed with an electronic device such as a computer or even a cellphone.

b. Vinyl billboards are older billboards and there is no significant current market for non-electronic billboards. The applicant has not installed any new non-electronic signs in the last couple of years; the vinyl billboards it now owns have been purchased from others, and are not newly constructed.

c. It is highly unlikely that an entity seeking to construct a new billboard now would be able to get financing for a non-digital billboard because vinyl billboards are not economically viable for future use. The cost components which are considered by banks include engineering fees, installation fees, parts, and land leases. The Applicant Capital Advertising cannot feasibly construct a non-electronic billboard, or market less than 10 second intervals, and would not do so on the Property.

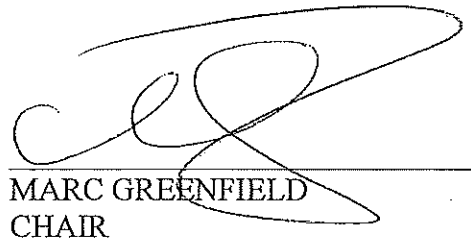
d. Electronic billboards are highly regulated by both state and federal law. Specifically, flashing and animation are prohibited.

e. Since 2011, the Owner of the Property has not found any billboard company interested in having a non-electronic billboard on the Property. Unless an electronic billboard is allowed, the Property will again lack all beneficial use. The Property has been vacant since 1973.

NOW, THEREFORE, upon motion by Mr. Wolf, seconded by Mr. Strother, the Board unanimously votes (5-0) to find that the relief sought by the Applicants is the least relief necessary to relieve the hardship posed by the restrictions of the Ordinance. The Board therefore GRANTS the application for a variance, subject to review by the Department of Planning and Development of the Applicant's plan for public service messages.

This approval must be realized in accordance with the specifications and plans presented by the Applicant and made a part of this record. A copy of said specifications and plans are hereby made a part of this Resolution must be filed with the Department of Inspection and Standards by the owner or its representative.

By Order of the Zoning Board of Review.



MARC GREENFIELD
CHAIR

ATTENTION: SECTION 1902 OF THE ORDINANCE REQUIRES THAT ANY VARIANCE OR SPECIAL USE PERMIT GRANTED BY THE BOARD SHALL EXPIRE SIX MONTHS AFTER THE DATE OF THE FILING OF THE RESOLUTION IN THE OFFICE OF THE BOARD UNLESS THE APPLICANT SHALL, WITHIN THE SIX MONTHS, OBTAIN A LEGAL BUILDING PERMIT AND PROCEED WITH CONSTRUCTION; OR OBTAIN A LEGAL BUILDING PERMIT AND A CERTIFICATE OF OCCUPANCY WHEN NO CONSTRUCTION IS REQUIRED.

NOTE: THE ORIGINAL RESOLUTION IS ON FILE IN THE OFFICE OF THE ZONING BOARD OF REVIEW AND MUST BE OBTAINED BY THE OWNER OR HIS/HER/ITS REPRESENTATIVE AND RECORDED IN THE LAND EVIDENCE RECORDS OF THE CITY OF PROVIDENCE BEFORE THE ISSUANCE OF A BUILDING PERMIT. A COPY OF THE RECEIPT ACKNOWLEDGING THAT THE RESOLUTION HAS BEEN RECORDED MUST BE SUBMITTED TO THE OFFICE OF THE ZONING BOARD OF REVIEW AND TO THE DEPARTMENT OF INSPECTION AND STANDARDS BEFORE THE ISSUANCE OF A BUILDING PERMIT.

MOTION TO FIND THAT THE RELIEF SOUGHT (ELECTRONIC BILLBOARD WITH MESSAGES CHANGING EVERY 10 SECONDS) IS THE LEAST RELIEF NECESSARY:

MADE BY: Wolf

SECONDED BY: Strother

MEMBERS VOTING IN FAVOR OF THE MOTION:

Greenfield, Wolf, Strother, Martinez and Capellan

MEMBERS VOTING AGAINST THE MOTION: None

MOTION TO APPROVE SUBJECT TO REVIEW BY DPD OF PLAN FOR PUBLIC SERVICE MESSAGES:

MADE BY: Wolf

SECONDED BY: Strother

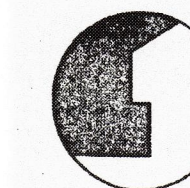
MEMBERS VOTING IN FAVOR OF THE MOTION:

Greenfield, Wolf, Strother, Martinez and Capellan

MEMBERS VOTING AGAINST THE MOTION: None

ZONING DISTRICT C-3

MINIMUM LOT AREA NONE
 MINIMUM LOT FRONTAGE NONE
 MINIMUM SETBACKS: FRONT NONE, UNLESS MULTI-TENANT RETAIL CENTER, THEN 503.8
 SIDE NONE, UNLESS ABUTTING RESIDENTIAL DISTRICT, THEN 10'
 CORNER SIDE NONE
 REAR NONE, UNLESS ABUTTING RESIDENTIAL DISTRICT, THEN 20'
 MAXIMUM BUILDING & IMPERVIOUS SURFACE COVERAGE: NONE
 MAXIMUM BUILDING HEIGHT: 50' NOT TO EXCEED 4 STORIES.
 MINIMUM FIRST STORY HEIGHT 9' RES. 11' NON-RES USE
 MINIMUM BUILDING HEIGHT NONE



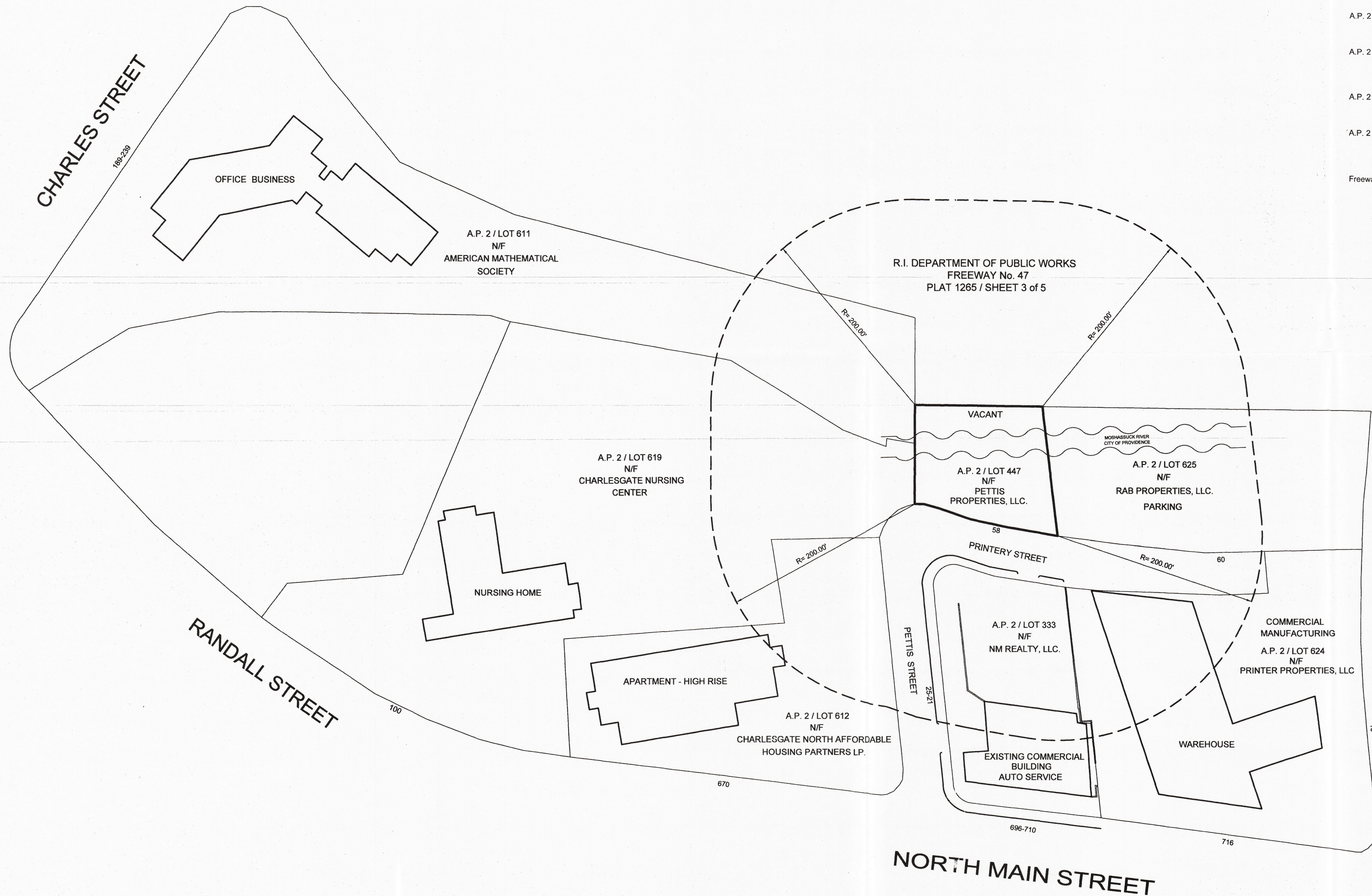
OCEAN STATE PLANNERS INC.

SURVEYORS • DESIGNERS
 1255 Oaklawn Avenue • Cranston, Rhode Island 02920
 Telephone (401) 463-9696

Locus - Printery Street Providence, RI

List of Owners within a 200' Radius of Lot 447
 as Shown on Assessors Map 2
 Date: July 1, 2020

A.P. 2	Lots 333	N M Realty LLC 1052 North Main St. Providence, RI 02904
A.P. 2	Lot 619	Charlesgate Nursing Center 100 Randall Street Providence, RI 02904
A.P. 2	Lot 611	American Mathematical Society 201 Charles Street Providence, RI 02904
A.P. 2	Lot 612	Charlesgate North Apartments Limited Partnership 670 North Main St. Providence, RI 02904
A.P. 2	Lot 625	RAB Properties LLC 1052 North Main St. Providence, RI 02904
A.P. 2	Lot 624	Printery Properties, LLC 1052 North Main St. Providence, RI 02904
Freeway I - 95		State of Rhode Island Department of Public Works 1 Capitol Hill Providence, RI 02908



200' RADIUS PLAN

A.P. 2 / LOT 447
 58 PRINTER STREET
 PROVIDENCE, R.I.

SCALE: 1"=50' DATE: JULY 8, 2020

PREPARED FOR:

PETTIS PROPERTIES, LLC

PO BOX 6426
 PROVIDENCE, RI 02940

PREPARED BY:

OCEAN STATE PLANNERS, INC.
 1255 OAKLAWN AVENUE, CRANSTON, RI 02920
 PHONE: (401) 463-9696 FAX: (401) 463-9039

JOB NO. 7582-A / DWG. NO. 7582-A - (JNP)

