



**Division of Development Administration and Review**

City of Pittsburgh, Department of City Planning

200 Ross Street, Third Floor

Pittsburgh, Pennsylvania 15219

**ZONING BOARD OF ADJUSTMENT**

**Date of Hearing:** November 10, 2016

**Date of Decision:** February 16, 2017

**Zone Case:** 302 of 2016

**Address:** 0 Grandview Ave (Parcel No. 6-H-46)

**Zoning District:** GPR-C

**Ward:** 19

**Neighborhood:** Duquesne Heights

**Protestant:** Lamar Advantage GP Company t/d/b/a Lamar Outdoor Advertising Company (successor to Martin Media)

**Request:** Protestant appeals the issuance of two June 13, 2016 Notices of Violation and Order of the Department of Permits, Licenses & Inspections (32'x 225' sign).

<b>Protest Appeal</b>	923.02.B.1 923.02.D	Appeal to the Zoning Board of Adjustment
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**Appearances:**

Protestant: Jon Kamin, David Del Greco, James Vlasach

Opposed: Corey Layman, Patricia McGrail, David Demko, Rachel O'Neill, Kevin Karman

**Findings of Fact:**

**Description Of The Subject Property and Structure At Issue**

1. The Subject Property is identified as Parcel No. 6-H-46, with the street address of 0 Grandview Avenue, and is located in the GPR-C (Grandview Public Realm, Subdistrict C) District.

2. The property is located at the top of the steep slope that is immediately below Grandview Avenue and is prominent and visible to many parts of the City, particularly on portions of the Allegheny, Monongahela and Ohio Rivers and in downtown areas of the GT (Golden Triangle) and DR (Downtown Riverfront) Districts. (Exs. 9 and A).

3. The owner of the Subject Property is Martin Media, whose successor in interest is Lamar Advantage GP Company, LLC t/d/b/a Lamar Outdoor Advertising Company, the protestant here ("Lamar").

4. Two structures are located on the Subject Property: a 12' by 25' billboard sign that faces Grandview Avenue; and a 32' by 225' (7,200 sf) flat-faced concrete structure that extends almost the entire length of the parcel, along a portion of the slope that faces the downtown area of the City. (Exs. 9 and A). The billboard sign is not at issue here.

5. Because of the slope of the site and the location of the 7,200 sf structure that extends the length of the site, no business or other use is located on the Subject Property.

6. This protest appeal involves the 7,200 sf structure on the site ("Sign Structure"), which since as early as 1933, has been exclusively used as the support structure for an electronic messaging sign (the "Sign"). (Ex. 8).

7. The electronic messaging Sign was comprised of two overlapping parts: a changeable message board and a logo. (Tr. 29, 65-66; Exs. 9, 11, 12 and A). The electronic messaging area on the larger support structure was comprised of 20 "sign message characters," each 20' in height, that extended along the length of the Sign Structure. The width of each sign message character was approximately 8.5'. Using these sign message characters, the area used for electronic messaging was approximately 20' by 225' or 4,500 sf. (Ex. 11, 12). The logo portion of the sign did not extend beyond the message board area. (Ex. 11).

8. A 1928 Zoning Board decision refers to a large advertising sign on the Subject Property. (Tr. 45; Ex. 7). A 1933 Zoning Board decision refers to an "electric advertising sign" on the Subject Property. (Tr. 47; Ex. 8).

9. A June 17, 1985 Occupancy Permit for the Subject Property permitted "Two ground signs. One at 12' x '25 [sic] and one at 32' x 225'. Issued on the basis of sign registration billing #5253 renewed annually prior to 1958. Original application destroyed." (Tr. 42; Ex. 6).

10. In the course of its history, the Sign was used for different corporate messaging, making use of the changeable message board and logo parts of the electronic messaging. The Sign was consistently used for the electronic advertisement of businesses, commodities, services or entertainments conducted, sold or offered on sites other than the Subject Property, as well as for community messaging and the time. (Tr. 69, 84).

11. The most recent corporate use of the Sign was for the logo of Bayer Corporation; community messages, including a science quiz; the time; and adverting content for Bayer. (Tr. 69, 76; Ex. 9). The electronic messaging on the Sign would cycle through this content, with approximately 10% of the time allotted for advertising messages. (Tr. 48-49, 60, 69). The Bayer signage made use of the approximately 20' by 225' or 4,500 sf area on the larger Sign Structure. (Tr. 69, Exs. 9, 11, 12 and A).

12. Bayer's use of the Sign ended early in 2014. (Tr. 37, 84).

13. After Bayer's use of the Sign ended, the Sign depicted only public service messaging on the electronic message board. The messaging did not extend to the full size of the structure, making use of the sign message characters in the 4,500 sf area. (Tr. 83-84; Exs. 9, 11).

14. The 7,200 sf Sign Structure has not been used for poster paper, panel copy panels, paint bulletin boards or other forms of static messaging and the electronic messaging area on it did not extend to the Sign Structure's full 32' height. (Tr. 64; Exs. 9, 11, 12 and A).

### **Lamar's Application For Renovation Of The Sign**

15. In June 2014, Lamar filed an application with the Department of City Planning, seeking approval to modernize the Sign by renovating the sign face, replacing the electronics and repairing the Sign Structure. (Tr. 50, 84; Ex. 9).

16. Lamar's application included renderings that depicted the Sign in its then current condition and the new sign that Lamar proposed. Both renderings depicted the 7,200 sf Sign Structure with a 20' by 225' (4,500 sf) area used for electronic sign message characters. (Tr. 64; Ex. 9). Both renderings labeled, but did not depict, a sponsor logo behind changeable text. (Tr. 65-66; Exs. 11, 12).

17. Although Lamar provided some additional information at the request of the Department of City Planning, the Department determined that Lamar's application was incomplete because Lamar had failed to provide additional information that the Department had requested, including the requisite elevations, architectural details and details as to the size of advertising proposed. (Tr. 50-54, 59, 70, 71-72). Because Lamar's application was not complete, the Department of City Planning did not act on the application. Lamar did not seek to appeal the City's determination that the application was not complete.

18. Lamar's June 2014 application is not at issue in this proceeding.

### **Lamar's Installation Of The Vinyl Sign And The City's Issuance Of The Notices Of Violation**

19. As of May 31, 2016, without filing an application or receiving any type of approval or permit, Lamar installed a static, vinyl sign over the entire 7,200 sf front of the Sign Structure (the "Vinyl Sign"). (Tr. 39, 58, 77-79). No alteration was made to the Sign Structure for the installation of the Vinyl Sign. (Tr. 41, 77).

20. The text of the Vinyl Sign was an advertisement for Sprint, a business that is not located on the Subject Property. (Tr. 33, 36, 68, 77-79).

21. Upon the installation of the Vinyl Sign, Erik Harless, the Assistant Director of the City's Department of Permits, Licenses and Inspection ("PLI"), directed Kevin Karman to inspect the installation. (Tr. 9). Mr. Karman is PLI's Senior Building Inspector for the 19<sup>th</sup> Ward, which includes Mount Washington and the Subject Property, and is responsible for inspections in that area. (Tr. 6-7).

22. Mr. Karman viewed the Vinyl Sign on the Subject Property from below the site, on West Carson Street. (Tr. 12, 29). The photographs he took that day were unavailable because his camera malfunctioned. (Tr. 30).

23. Although Mr. Karman acknowledged that he had not accessed the Subject Property or the Sign Structure itself, he indicated that the installation of the Vinyl Sign was apparent from West Carson Street. (Tr. 12, 29). From West Carson Street, Mr. Karman was able to discern that the sign face had been changed and that a new "canvas-type" sign had been installed on entirety of the 7,200 sf Sign Structure. (Tr. 25-26, 29). Mr. Karman observed that the Vinyl Sign covered the entire front of the Sign Structure; that the messaging on the sign was static and did not light up or move; and that the content of the Vinyl Sign was an advertisement for Sprint. (Tr. 29-30, 33).

24. Following his inspection, Mr. Karman discussed the installation of the Vinyl Sign with Mr. Harless and Corey Layman, the City's Zoning Administrator. Based on these discussions, these City officials determined that the Vinyl Sign violated the Zoning Code. (Tr. 9, 12, 32-33).

25. On June 13, 2016, PLI issued notice to Lamar of the violation of two specific Zoning Code provisions with regard to the Vinyl Sign. (Tr. 4; Ex. 1). The Notices of Violation informed Lamar that it

had violated Code Section 921.03.F.2 by enlarging and replacing a nonconforming sign without the required approval; and that it had also violated Code Section 919.01.J, which requires removal of advertising signage when a business has been terminated or relocated. (Tr. 11-12; Ex. 1).

26. Lamar filed a timely appeal protesting the June 13, 2016 notices of violation and the Board conducted a hearing on the appeal on November 10, 2016.

### **Testimony Before The Board**

27. Through examination by Lamar's counsel, Mr. Karman described his inspection following the installation of the Vinyl Sign. (Tr. 9-12, 24-25). He acknowledged that he had not accessed the Subject Property or the Sign Structure but had viewed the Vinyl Sign from West Carson Street and was able to determine from that vantage point that a "canvas type material" had been placed on the Sign Structure; that the material covered the entire face of the structure; and that the sign did not light up or move. (Tr. 25-26, 29-30). Mr. Karman agreed with Lamar's counsel that the installation of the Vinyl Sign had not changed the size of the Sign Structure. (Tr. 24).

28. Mr. Karman described his discussions with Mr. Harless and Mr. Layman as to the Code Sections to be included in the Notices of Violation, as issued by PLI. (Tr. 8-10, 23, 31; Ex. 1).

29. Mr. Karman also agreed, in response to Lamar's counsel, that building permits are not required for changing advertising copy on billboards. (Tr. 26-27).

30. Corey Layman, the Zoning Administrator, testified that the Bayer portion of the sign had ceased to operate in early 2014. (Tr. 37).

31. Mr. Layman identified the 1928 and 1933 Zoning Board decisions regarding the Subject Property and the 1985 Certificate of Occupancy for the site. (Tr. 43-48; Exs. 6, 7, 8).

32. Mr. Layman agreed that the size of the Sign Structure had not changed with the installation of the Vinyl Sign but noted that the Vinyl Sign increased the size of advertising content on the Sign Structure from the 20' by 225' (4,500 sf) area used for electronic messaging to the full 7,200 area of the Sign Structure. (Tr. 49, 56, 68; Exs. 9, 12). He explained that the structure that supports a sign is not considered to be part of the size of the sign face itself. (Tr. 73). He also noted that the Sign was electronic and that the Vinyl Sign was static and that the Sign Structure had not been used for poster panels or painted boards. He testified that, when used as the Bayer electronic sign, the illuminated content had cycled through the Bayer logo, advertising content and community messaging, with a limited time used for advertising content. (Tr. 64-69; Exs. 9, 11, 12 and A).

33. Mr. Layman confirmed, through examination by Lamar's counsel, that Lamar had filed an application regarding renovation of the Sign and had provided some supplemental information. (Tr. 50; Exs. 9, 11, 12). Mr. Layman explained that the application had not been processed because Lamar had failed to provide additional information that the Department had requested, including the requisite elevations, architectural details and details as to the size of advertising proposed. (Tr. 50-54, 59, 70, 71-72).

34. The Board found Mr. Layman's testimony to be credible.

35. James A. Vlasach, Lamar's real estate manager, also testified. He acknowledged that the 7,200 sf Vinyl Sign with the Sprint advertising copy had been installed without permit or approval and that the Vinyl Sign is an advertising sign. (Tr. 77-79, 81-82).

36. Mr. Vlasach seemed to assert that Lamar's installation of the Vinyl Sign on the Sign Structure was no different to the replacement of poster panels, painted boards or other forms of static

messaging on one of the approximately 900 billboards that Lamar owns in the City. He also claimed that the use of the entire 7,200 sf Sign Structure for the Vinyl Sign did not constitute an expansion or enlargement of the Sign. The Board did not find Mr. Vlasach's testimony on these issues to be credible.

37. Mr. Vlasach acknowledged that Lamar's contract with Bayer ended in early 2014 and that, after the contract ended, the Sign was used only for public service messaging. (Tr. 83-84).

38. Lamar did not present any evidence of any other sign in the City of the same size and construction as the Sign or the Vinyl Sign.

39. Lamar did not present any evidence that the Sign Structure had ever been used for any type of static messaging that could be changed by replacing for poster paper or panel copy panels or by painting the Sign Structure. It did not present any evidence that the Sign Structure had, at least since 1933, been used for any type of signage other than electronic messaging or that the entirety of the Sign Structure had ever been used for advertising until the installation of the Vinyl Sign.

40. Lamar did not attempt to assert that the installation of the Vinyl Sign constituted a repair to the Sign Structure.

41. David Demko, the assistant director of Scenic Pittsburgh, also appeared at the hearing. Scenic Pittsburgh is a nonprofit organization that advocates for the preservation of scenic resources and for the protection of the City from sign proliferation and billboards. (Tr. 88). Mr. Demko indicated Scenic Pittsburgh's support for the issuance of the citations.

42. Following the hearing, the City and Lamar submitted proposed findings of fact and conclusions of law.

## **Conclusions of Law:**

### **Relevant Provisions Of The Zoning Code And Pennsylvania Law**

1. An "advertising sign" is a sign that "directs attention to a business, commodity, service or entertainment, conducted, sold or offered: (a) Only elsewhere than upon the premises where the sign is displayed; or (b) As a minor and incidental activity upon the premises where the sign is displayed." Section 919.01.C.2.

2. Pursuant to Section 919.02, "advertising signs" are permitted only in the AS-O (Advertising Sign Overlay) District, which includes Subdistrict A, comprised of UI (Urban Industrial) and GI (General Industrial) Districts; and Subdistrict B, comprised of UNC (Urban Neighborhood Commercial) Districts. The maximum sign size permitted in Subdistrict A is 750 sf and the maximum size permitted in Subdistrict B is 378 sf.

3. An "electronic sign" is "any sign, video display, projected image, or similar device or portions thereof with text, images, or graphics generated by solid state electronic components. Electronic signs include, but are not limited to, signs that use light emitting diodes (LED), plasma displays, fiber optics, or other technology that results in bright, high-resolution text, images, and graphics." Section 919.01.C.4.

4. Pursuant to Sections 907.01.C and 919.02, electronic advertising signs are not permitted in the GPR-C District.

5. Pursuant to Section 919.01.C.16, the "area of sign" is the entire area within a single continuous perimeter enclosing the extreme limits of writing, representation, emblem or any figure or similar character together with any frame or other material or color forming an integral part of the display

or used to differentiate such sign from the background against which it is placed (excluding the necessary supports or uprights on which such sign is placed or apron designed to cover such uprights or work board installed to provide a safe area for servicing such sign).”

6. Section 919.01.C.19 defines “face of sign” as “the side or sides of a sign on which the lettered, pictorial or sculptured matter designed to convey information is to be placed.”

7. Section 919.01.C.15 defines “Nonconforming Sign” as “a sign, lawfully existing on the effective date specified by the provisions of Sec. 901 that does not completely conform to the sign regulations applicable in the district in which it is located. Nonconforming signs are regulated by Sec. 921.03.F.” See also Code Section 926.151.

8. Pursuant to Section 919.02.N, “nonconforming advertising signs” may be continued under certain circumstances, including for normal maintenance or alterations “which do not enlarge, extend, or intensify the nonconformity.” Subsection 919.02.N.4 allows for the replacement of poster paper and panel copy boards and the repainting of painted signs. Subsection 919.02.N.3 prohibits a change of location for a nonconforming sign.

9. Subsection 919.02.N. 2 prohibits the structural alternation, enlargement or extension of a nonconforming advertising sign, unless it is required by law or “**would eliminate the nonconforming condition.**” (emphasis supplied).

10. Subsection 919.02.N.6 specifically states that “[a]n electronic advertising sign shall not replace an advertising sign and **an advertising sign shall not replace an electronic advertising sign, unless the replacement sign meets all of the requirements of Sec. 919 for a new sign.**” (emphasis supplied).

11. Section 921.03.F provides that nonconforming signs shall be subject to the Code’s nonconforming structure regulations, as modified by the following:

1. Nonconforming signs may be repaired, provided that no structural alterations shall be made which increase the area of the advertising matter;
2. **Nonconforming signs may not be enlarged, added to or replaced by another nonconforming sign or by a nonconforming use or structure except that the substitution or interchange of poster panels and painted boards on nonconforming signs shall be permitted.**
3. Business signs or identification signs shall not be replaced with advertising signs.

(emphasis supplied).

12. Section 919.01.J, titled “Sign Removal,” provides:

All signs relating to a product no longer available for purchase and all signs relating to a business which is terminated or relocated shall be removed or the advertising copy shall be removed. Painted wall signs shall be painted over with a color that resembles or matches the remainder of the building. Should the owner of, or person responsible for the sign, or if the tenant terminating the business fails to remove or paint over the sign within thirty (30) days following the date of obsolescence, the owner of the premises then shall be held responsible for such removal within sixty (60) days following the date of obsolescence.

13. Pursuant to Section 921.02.B.2, a use is to be presumed abandoned when “a less intensive use has replaced the nonconforming use” or the owner “has physically changed the building or structure or its fixtures or equipment in such a way as to clearly indicate a change in use or activity to something other than the nonconforming use.”

14. Once abandoned, a nonconforming use cannot be reestablished or resumed and any subsequent use or occupancy of the property must conform to the Code’s requirements. Section 921.02.B.1.

**Lamar Installed The Vinyl Sign Without Any Permit Or Approval  
And In Violation Of The Zoning Code**

15. Since at least 1933, the Sign Structure was used as the support structure for an electronic advertising sign. This use was legally nonconforming in the GPR-C District.

16. No evidence was presented that the Sign Structure was ever used for any form of static advertising that involved replaceable poster paper or panel copy panels or painting or any other form of static messaging. Further, no evidence was presented that the full 7,200 sf area of the Sign Structure was used for advertising signage.

17. The Vinyl Sign covers the entirety of the 7,200 sf Sign Structure and does not make use of any electronic technology. It does not make use of poster paper or copy panels or painting. The text on the Vinyl Sign is an advertisement for Sprint, a business which is not located on the Subject Property. Under the Code’s definitions, it is a nonelectronic advertising sign, a type of sign that is not permitted in the GPR-C District.

18. Lamar’s installation of the 7,200 sf Vinyl Sign, a static advertising sign, as a replacement for the nonconforming, 4,500 sf electronic Sign, violated Code Section 921.03.F, which provides that nonconforming signs “may not be enlarged, added to or replaced by another nonconforming sign or by a nonconforming use or structure.”

19. The area used for the Vinyl Sign was the full 7,200 sf area of the Sign Structure, a significant enlargement from the 4,500 sf area used for the electronic sign message characters of the Sign. The fact that the installation of the Vinyl Sign did not alter the size of the Sign Structure is not relevant and does not alter the fact that the installation of the Vinyl Sign increased the area of Sign Structure used for signage. Because poster panels or painted boards were never used on the Sign Structure, the Vinyl Sign could not constitute a “substitution or interchange” for those types of materials. For these reasons, the Vinyl Sign violated Section 921.03.F.

20. The Board unequivocally rejects Lamar’s unsupported and unsupportable contentions that the installation of the 7,200 sf Vinyl Sign on the Sign Structure was no different than changing the advertising copy on any of its other 900 billboards in the City and that Lamar had “explicit rights” to install the Vinyl Sign.

21. Although not specifically noted in the Notice of Violation, the installation of the Vinyl Sign also violated Sections 919.02.N.2 and 919.02.N.6.

22. Section 919.02.N. 2 prohibits the “enlargement or extension of a nonconforming sign unless the alteration of the sign would “eliminate the nonconforming condition of a nonconforming sign.” The Vinyl Sign increased the area of the Sign Structure used for advertising signage. In no way did it eliminate any of the nonconforming conditions of the Sign.

23. Section 919.02.N. 6 prohibits the replacement of an electronic sign with an advertising sign “unless the replacement sign meets all of the requirements of Sec. 919 for a new sign.” Because “advertising signs” are permitted only in the AS-O District, and not the GPR-C District, and because the maximum sign size permitted in the AS-O District is 750 sf, the 7,200 sf Vinyl Sign, as a so-called “replacement sign,” does not comply with the requirements of Section 919.

24. The Board concludes that Lamar’s appeal of the Notice of Violation, with specific reference to Section 921.03 and also consistent with Section 919.02.N, must be denied.

### **Lamar Has Unlawfully Failed To Terminate The Sign**

25. Lamar’s business relationship with Bayer ended in early 2014 and, as of that time, Bayer’s business interest in the Subject Property and the Sign terminated.

26. As Mr. Layman testified and Mr. Vlasach confirmed, Bayer’s use of the sign had ended in January, 2014, well over 30 days before Lamar was cited in June, 2016.

27. As the owner of the Subject Property and the Sign, pursuant to Section 919.01.J, Lamar was responsible for the removal of the portion of the electronic sign relating to Bayer. Lamar failed to remove the Bayer signage as required by the Zoning Code. PLI properly issued the Notice of Violation to Lamar and the Board concludes that Lamar’s appeal must be denied.

### **The Nonconforming Sign Use Of The Sign Structure Has Been Abandoned**

28. To the extent that Lamar has relied on its claim that it was entitled to install the Vinyl Sign as a “continuation” of a nonconforming use, the Board rejects that argument and concludes that, through its unpermitted action of installing the Vinyl Sign, Lamar voluntarily abandoned any right to continue any legally nonconforming aspects of the use of the Sign Structure for an electronic advertising sign.

29. The most recent 1985 Certificate of Occupancy for the Subject Property identifies the 32’ by 225’ dimensions of the Sign Structure and permits its use as a “ground sign,” a term that is not defined in the current Code. The 1985 Certificate of Occupancy also notes that the original application for the signs was destroyed. (Ex. 6). Although additional details might have been provided in the original application, the 1985 Certificate of Occupancy does not specify the type of signage or the area of the structure permitted for the signage use.

30. Lamar did not present any evidence that the entirety of the Sign Structure had ever been used for any form of advertising. It did not present any evidence that the Sign Structure had ever been used for any type of static messaging, which provides 100%, unchanging advertising time. Thus, Lamar cannot claim a right to use the entire 7,200 sf Sign Structure for a static sign as a “nonconforming use.”

31. The exhibits and testimony make clear that, during the most recent use of the Sign Structure for electronic advertising, only a 4,500 sf area was used for electronic messaging. (Tr. 47-49, 64-68; Exs. 9, 11). Approximately 10% of the changing messaging time was used for advertising messages. (Tr. 49). The use of the Sign Structure for advertising signage was voluntarily abandoned when it was used only for nonadvertising, public service messaging. (Tr. 83-84).

32. Pursuant to Section 921.02.B.2, a use is to be presumed abandoned when “a less intensive use has replaced the nonconforming use” or the owner “has physically changed the building or structure or its fixtures or equipment in such a way as to clearly indicate a change in use or activity to something other than the nonconforming use.”

33. Even if the 1985 Certificate of Occupancy had anticipated either the use of the full Sign Structure for messaging or its use for static advertising – an alternative concept which no evidence

supports – the most recent use of the Sign reflected a voluntary change to a less intensive use, to a 4,500 sf messaging area and subsequently to nonadvertising signage only. Any other nonconforming aspects of the permitted use as described in the 1985 Certificate of Occupancy must be presumed to have been abandoned.

34. Further, when Lamar installed the Vinyl Sign, it made use of the Sign Structure in a manner that clearly indicated a change from the nonconforming electronic sign use to “something other than the nonconforming use.” With this action, pursuant to Section 921.02.B.2, it must be presumed that Lamar intentionally abandoned the nonconforming electronic sign use. Once abandoned, pursuant to Section 921.02.B.1, the nonconforming use of the Sign Structure cannot be reestablished or resumed and any subsequent use or occupancy of the property must conform to the Code’s requirements.

**Decision: For the reasons set forth in the Board’s Findings of Fact and Conclusions of Law, the Department of Permits, Licenses and Inspections correctly issued the June 13, 2016 Notices of Violation and determined that the Vinyl Sign on the Subject Property violates the Zoning Code. Lamar’s protest appeal is DENIED.**

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**Alice B. Mitinger, Chair**

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**LaShawn Burton-Faulk**

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**John J. Richardson**