

Date: 10/02/2019

FRESNO PLANNING COMMISSION



Late Submission Information Packet

Agenda Related Item(s) – ID#19-11060 (VIII-E)

Item(s)

Consider the appeal of Development Permit Application No. P19-00359 and Variance Application No. P19-02282, located on the west side of North Howard Street between Herndon and Alluvial Avenues. (Council District 6) - Planning and Development Department.

1. ADOPT Environmental Assessment No. P19-00359 / P19-02282 dated August 7, 2019, a determination that the proposed project is exempt from the California Environmental Quality Act (CEQA) through a Class 3 Categorical Exemption; and,
2. DENY the applicant's appeal and UPHOLD the action of the Planning and Development Department Director to:
 - a. APPROVE Development Permit Application No. P19-00359, which proposed to develop a 14-foot high by 48-foot wide digital LED, double-sided billboard; and,
 - b. DENY Variance Application No. P19-02282, requesting to vary height standards to allow for an 86-foot tall, 14 -foot high by 48-foot wide double-sided digital LED billboard.

Contents:

1. Letter regarding Outfront Digital Billboard P19-00359, dated August 20, 2019.
2. Letter regarding Demand to reinstate hearing for appeal of planning department's denial of Variance Application No. P19-02282, relating to Outfront Media's request to construct an 86-foot-tall digital billboard on Highway 41, dated August 21, 2019.

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the Planning Commission after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in Planning and Development Dept. , 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the Planning Commission meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the Planning and Development Department's website.

Americans with Disabilities Act (ADA):

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call Planning and Development Department at 621-8277. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.



August 20, 2019

Outfront Media, LLC
Attn: Mark Duran
5678 E. Shields Avenue
Fresno, CA 93727

RE: OUTFRONT DIGITAL BILLBOARD P19-00359

Dear Mr. Duran

Pursuant to the Digital Billboard Master Lease executed between Outfront Media LLC (Outfront) and the City of Fresno (City), Outfront must work closely with the City to develop plans and specifications that are mutually acceptable (Section 6(b)). The plans currently submitted for project Development Permit Application No. P19-00359 DPU 41 Billboard are not acceptable as currently scoped. Per the authority granted in the Digital Billboard Master Lease, the City is rejecting the installation and operation of the digital billboard at this site at the 86' height. The City as the property owner did not consent to property owner authorization for the Variance, and therefore withdraws the appeal of the denial. The City previously conditionally approved Development Permit Application No. P19-00359 at a 60' height per the allowable development standards. The City is open to continuing discussions that are mutually acceptable to both parties.

If you have any questions, please contact me at Laura.Merrill@fresno.gov or 559-621-7773.

Sincerely,

Laura Merrill
Deputy City Manager

CC: Tim Orman, Chief of Staff to Mayor Lee Brand
Jennifer Clark, Director of Planning & Development

City of Fresno

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August 21, 2019

Laura Merrill
Deputy City Manager
City of Fresno
2600 Fresno St.
Fresno, CA 93721
Email: Laura.Merrill@fresno.gov

Re: Demand to reinstate hearing for appeal of planning department's denial of
Variance Application No. P19-02282, relating to Outfront Media's request to
construct an 86-foot-tall digital billboard on Highway 41

Dear Ms. Merrill:

Miller Starr Regalia represents Outfront Media LLC ("Outfront"), and hereby responds on its behalf to a letter you directed to Mark Duran on August 20, 2019. In that letter, you portended to withdraw Outfront's variance appeal, effectively cancelling an appeal hearing in which the Planning Commission was to consider the planning department's denial of Outfront's variance application.

This cancellation violates Outfront's constitutional due process rights, including its rights to equal protection. It also constitutes a breach of the August 25, 2016 Master Lease between Outfront, and this letter constitutes written notice of that breach. We therefore demand the City reinstate the Planning Commission hearing and schedule it within 30 days.

We also request, under the Public Records Act, any and all writings, including without limitations emails and text messages, between and among City staff and third parties regarding the City's withdrawal of the appeal and its cancellation of the Planning Commission hearing, to determine whether any members of City staff acted *ultra vires*. Consistent with state law, we expect a response within 10 days.

City staff's decision to cancel the hearing is troubling, to say the least, starting with the misguided reliance on Section 6(b) of the Master Lease. The Master Lease indeed does provide that, in developing plans and specifications for outdoor advertising displays, Outfront shall work with the City in its development of billboard plans that are "mutually acceptable." However, your letter omitted the fact that the Master Lease provides the City cannot "unreasonably withhold" approval, and must "diligently process [Outfront's] applications for all City Permits." (Master Lease, ¶¶ 6(b)&(c).) The City's attempt to withdraw the variance appeal

and cancel the hearing constitutes an unreasonable disapproval because (1) the City, with staff's recommendation, approved an 85-foot advertising display (the "Manchester Sign") a short distance south of Outfront's proposed sign without even requiring a variance; (2) the Council District 6 Project Review Committee recommended approval of the variance allowing an 86-foot display, signaling the City's consent to a taller sign; and (3) the City effectively granted its consent to Outfront's variance application when it began processing that application.¹

The timing of the City's withdrawal of consent, and its *de facto* cancellation of the appeal hearing, also merits attention. Planning staff knew of Outfront's designs, and acquiesced to the processing of the variance, as early as May 6, 2019 — i.e., almost four months ago. We understand that certain members of staff do not favor the 86-foot design, but at no time did staff object to Outfront's right to have its application heard before an administrative body.

Your letter, meanwhile, was sent only a couple weeks after Outfront submitted a supplemental appeal letter to the City, in which we flagged for members of the Planning Commission the fact that City staff recommended approval of the Manchester Sign, operated by another property owner, at 85 feet. Planning staff's recent withdrawal of consent, it seems, is retaliatory, and comes only after Outfront highlighted the disparate manner in which the planning department is treating different applicants.

Good government requires that all applicants be treated equally. Ultimately, Outfront is being treated differently than other sign owners. Outfront is also being denied its due process rights to be heard before a panel of City decisionmakers. Finally, the City's retaliatory withdrawal of consent constitutes an abuse of governmental discretion and a breach of contract. All these matters will see daylight, one way or another, as Outfront is committed to protecting its rights, as both an applicant and as the holder of a legally cognizable property interest in the proposed sign's location. To avoid needless proceedings, please reschedule the Planning Commission hearing to sometime before September 20, 2019.

Sincerely,

MILLER STARR REGALIA



Sean R. Marciniak

¹ The variance application, having been properly submitted by Outfront, belongs to Outfront. Therefore, only Outfront has standing to withdraw the appeal.

Laura Merrill
City of Fresno
August 21, 2019
Page 3

cc: Clients
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