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VIA EMAIL AND FEDERAL EXPRESS

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Re: Request for Modification of Development Permit Application No. P19-00359 to Authorize Height Variance for Digital Outdoor Advertising Display
7221 North Howard Street (APN: 303-201-33)

Dear Ms. Dodds and Ms. Clark:

As you know, Miller Starr Regalia represents OUTFRONT Media LLC (“Outfront”) and has been assisting Outfront in obtaining land use entitlements to construct and operate three digital billboards on City-owned property in conjunction with a master lease between Outfront and the City, dated August 25, 2016 (“Master Lease”). The Master Lease provides for removal of ten existing, static billboards in exchange for the permitting of three new digital billboards on City-owned property with advertising for City programs, in an effort to beautify the City’s thoroughfares.

On December 5, 2019, the City approved Outfront’s Development Permit Application No. P19-00359, subject to conditions of approval (“Approved Permit”), for a back-to-back LED display digital billboard with 14-foot by 48-foot face on 1.39 acres of City-owned property located at 7221 North Howard Street, adjacent to State Route (“SR”) 41 (“Property”). The Approved Permit limits the sign height to 60 feet, the maximum height provided in the Fresno Municipal Code (“Code” or “FMC”).¹ The City Council denied Outfront’s Variance Application No. P19-02282, which had requested a height of 86 feet.

Pursuant to Code section 15-5015, Outfront is seeking a modification of the Approved Permit by requesting a variance to increase the sign height to 80 feet, a lesser height than what was previously requested, to ensure that the sign substantially clears nearby visual obstructions that reduce the sign’s marketability. No other modifications to the approved Permit are being requested. This letter outlines the justification for the modification and facts supporting the required variance findings.²

¹ FMC, § 15-303, Table 15-1303-2.

² FMC, § 15-5506.

APPL. NO. P20-02831 EXHIBIT O DATE 09/16/2020
PLANNING REVIEW BY _____ DATE _____
TRAFFIC ENG. _____ DATE _____
APPROVED BY _____ DATE _____

CITY OF FRESNO DARM DEPT

I. Location, Zoning, and Surrounding Uses of Approved Sign

The Property (APN No. 303-201-33), is located between North Howard Street and SR 41, and is zoned for commercial office use. Similar office uses lie to the east, whereas the properties to the west are zoned for commercial regional uses. (See **Figure 1**.) The sign is located on the southwest portion of the Property. The base of the sign will be approximately 345 above sea level, and its two displays, measuring 14-feet by 48-feet, will face northbound and southbound traffic on SR 41. The elevation of SR 41 is approximately 366 to 371 feet above sea level (21-26 feet higher than the Property's elevation). **Figure 2**, below, consists of satellite imagery showing the location of the sign and its surrounding land uses, and **Figure 3** depicts the sign's elevation in graphic form with an approved modification in height.

Figure 1. Zoning of Property and Surrounding Parcels



Figure 2. Aerial View of Property and Surrounding Parcels

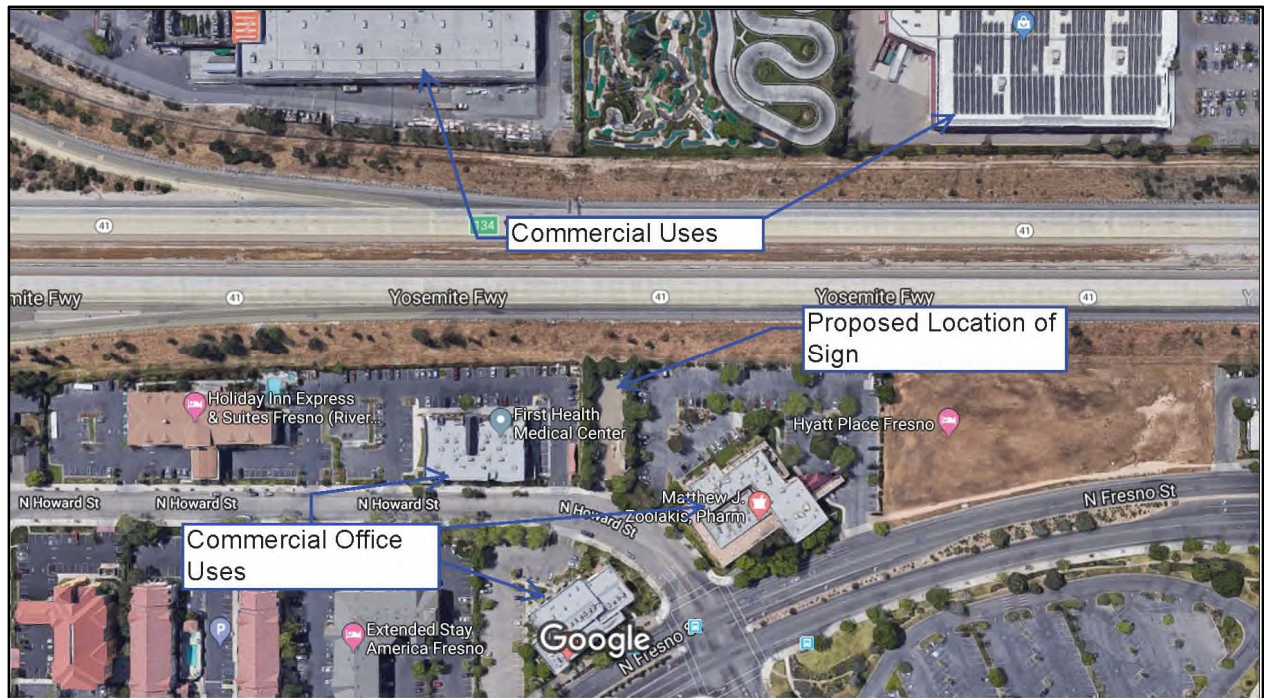
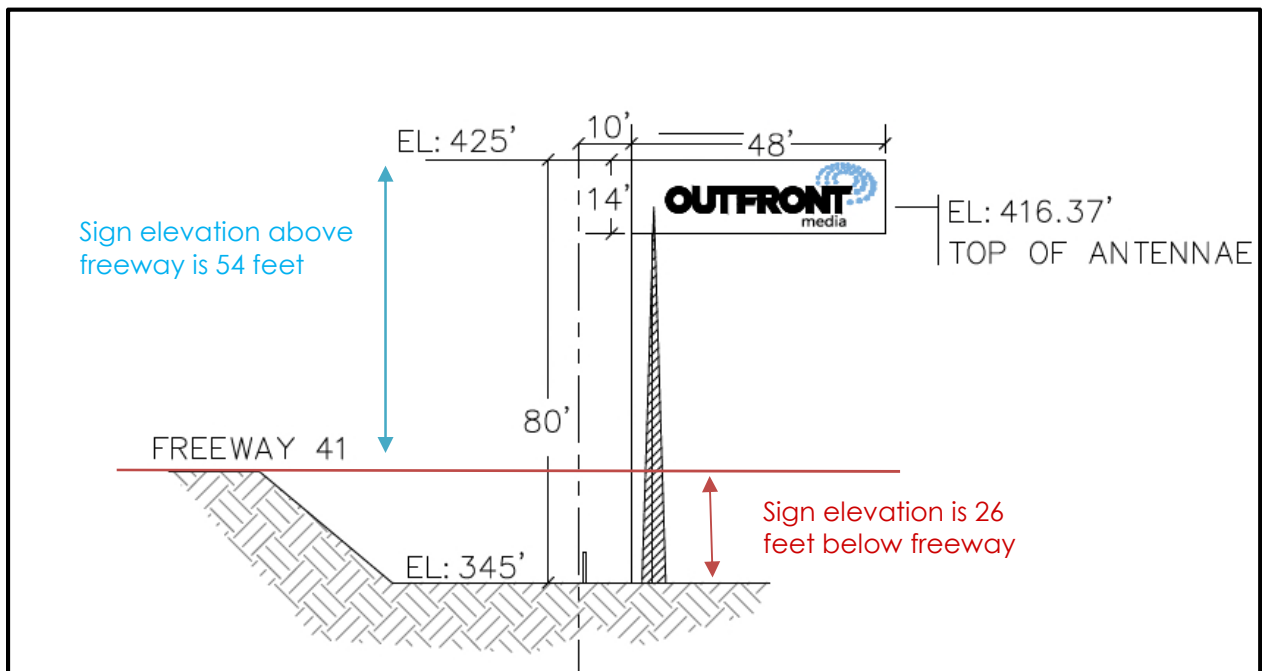


Figure 3. Sign Elevations at 80 feet.



II. City Height Standards

The City applied the height standards in Table 15-1303-2 to the Approved Permit, regulations that pertain to intensity and massing development standards and that limit buildings and other structures to 60 feet in the Office, Business Park, Regional Business Park, Light Industrial, and Heavy Industrial zoning districts. A review of other sections of the Code authorizing greater heights provides context and comparison for Outfront's request for a sign height of 80 feet. For example, Article 26 of the Code allows for increases in maximum height where a sign is next to a freeway or expressway. (See e.g. FMC, § 15-2610(B)(5) [pole sign height limits, permitting up to 90 feet for some signs].) The Code also permits other types of structures up to 100 feet, such as silos, cooling towers, and similar structures in Light Industrial (IL) and Heavy Industrial (IH) Districts, and if a Conditional Use Permit is obtained a height of more than 100 feet is allowed.³ City regulations governing cell towers permit a height of up to 110 feet, and when certain conditions are met, even greater heights.⁴

While the Code does not provide an automatic increase in maximum height for billboard signs adjacent to freeways, it does allow for variances authorizing modifications to dimensional standards such as height limits. The variance procedure is “a mechanism for relief from the strict application” of the Code where it would “deprive the property owner of privileges enjoyed by similar properties because of the subject property's unique and special conditions.”⁵ The City previously approved a variance for an electronic sign at 2055 E. Shields Avenue (“Manchester Center Sign”), allowing an 85-foot sign next to SR 41.⁶ Yet, the Manchester Center Sign does not suffer from either nearby competing structures or a significant elevation difference when compared to SR 41.

As provided in Section III below, substantial evidence supports the required variance findings for City approval of Outfront's request for a modification of the Approved Permit.⁷

III. Substantial Evidence Supports Modification of Approved Permit to Allow Height Variance

A. *Finding 1: Exceptional Circumstances Justify Issuance of a Variance*

The first variance criterion requires a finding that “[t]here are exceptional or extraordinary circumstances or conditions applicable to the property involved that do not apply generally to property in the vicinity and identical zoning classification, and that the granting of a Variance will not constitute a granting of a special privilege inconsistent with the limitations on the property in the vicinity and identical zone classifications.”⁸

There are several exceptional circumstances applicable to the Property, namely the Property's location next to SR 41, its elevation of 21 to 26 feet below the grade of SR 41, the presence of a significantly taller structure on the Property (112-foot-tall telecommunications tower), and visual obstruction of the sign by an on-site 72-foot-tall telecommunications tower as well as off-site trees located within the

³ FMC, § 15-1304(C).

⁴ <https://www.fresno.gov/darm/wp-content/uploads/sites/10/2016/10/CellTowerDesign.pdf>

⁵ FMC, §§ 15-5501, 15-5502.

⁶ The City approved the application of Omninet Properties Manchester Center LLC in February 2016. The Manchester Center sign is located at the northeast corner of North Blackstone and East Shields Avenues along State Route 41. The site is approximately 20 feet below the highway elevation.

⁷ FMC, §§ 15-5505, 15-5506.

⁸ FMC, § 15-5506(A).

California Department of Transportation (“CalTrans”) right-of-way to the south of the Property. (See **Figures 4-A, 4-B, and 4-C.**) The Property was selected so that advertising can be seen from those traveling along SR 41, yet a billboard sign at the permitted height of 60 feet would stand only 34 to 40 feet above the highway elevation, significantly reducing visibility due to highway grade, vegetation, and other obstacles. As to the tree obstruction, an 80-foot-tall sign would require tree trimming, but *would not* require “tree topping,” which is prohibited by CalTrans. A 60-foot-tall sign (or 66-foot sign)⁹ on the other hand would only be sufficiently visible if the trees were “topped.” Additional height is necessary so that the sign is noticeable and readable to motorists of normal visual acuity. Outfront is requesting a modification of the Approved Permit to allow for a sign height of 80 feet, which allows the sign to clear a majority of the obstructions as depicted in the simulations below. This allows the sign to remain marketable, as the display’s copy acceptably clears most of the cell tower.

Figure 4-A. Ground-Level View of Property.



⁹ If Outfront were to seek a minor deviation under FMC section 15-5601 et seq., it could increase the height by ten percent of the maximum height of 60 feet, resulting in a 66-foot tall sign. (FMC, § 15-5606.) As described in this letter, that height is insufficient.

Figure 4-B : Unacceptable Obstruction By On-Site Cell Tower With 66-Foot-Tall Sign



Figure 4-C. Enlarged View of Obstruction with 66-Foot-Tall Sign



Visual simulations comparing sign heights at 60 feet, 66 feet, and 80 feet are provided below, as well as explanatory descriptions. These heights were selected so the City could compare the heights of the sign at the maximum permitted level (60 feet), under a minor deviation of ten percent of the height limit (66 feet), and at the requested height requiring a variance (80 feet). Also included below are figures depicting views of the Property from SR 41, both the northbound and southbound directions.

- **Figure 5.** Existing view of the Property.
- **Simulations 1-3, Southbound Views.** Based on the southbound-view simulations alone, an 80-foot sign is the only remaining viable alternative given the City's rejection of the 86-foot tall sign. A 66-foot and a 60-foot sign would have a telecommunications tower bisecting the digital copy on the signs' facings. From a marketability standpoint, operation of such a sign is infeasible, as Outfront could not sell advertising space on such a sign. This determination is based on decades of experience the company has, marketing space on outdoor advertising displays across the nation. The 80-foot alternative, meanwhile, would be marketable.
- **Simulations 4-6, Northbound Views.** These simulations show the 80-foot sign clearing the top of the tallest tree in the area, whereas the 60-foot and 66-foot signs are blocked by this vegetation.
- **Simulations 7-8, Wire Frame Comparisons.** These "wire-frame" simulations show, from other vantage points, the vertical footprint of an 80-foot sign and 60-foot sign. As seen in the images, an 80-foot sign would escape obstruction by vegetation with some amount of tree trimming, whereas a shorter sign is obstructed.
- **Simulations 9-12, Additional Wire Frame Views – Height Only.** Additional wire frame simulations of the sign from the northbound and southbound directions of SR 41 showing relative size and height of an 80-foot-tall sign to other nearby structures and vegetation. **Note:** These simulations place the wire frame of the sign on top of known obstructions, and thus these images *do not reflect interference* by vegetation or other structures which is instead reflected in Simulations 1-6.

Figure 5. Existing View of Property From Hwy 41 Southbound Lane

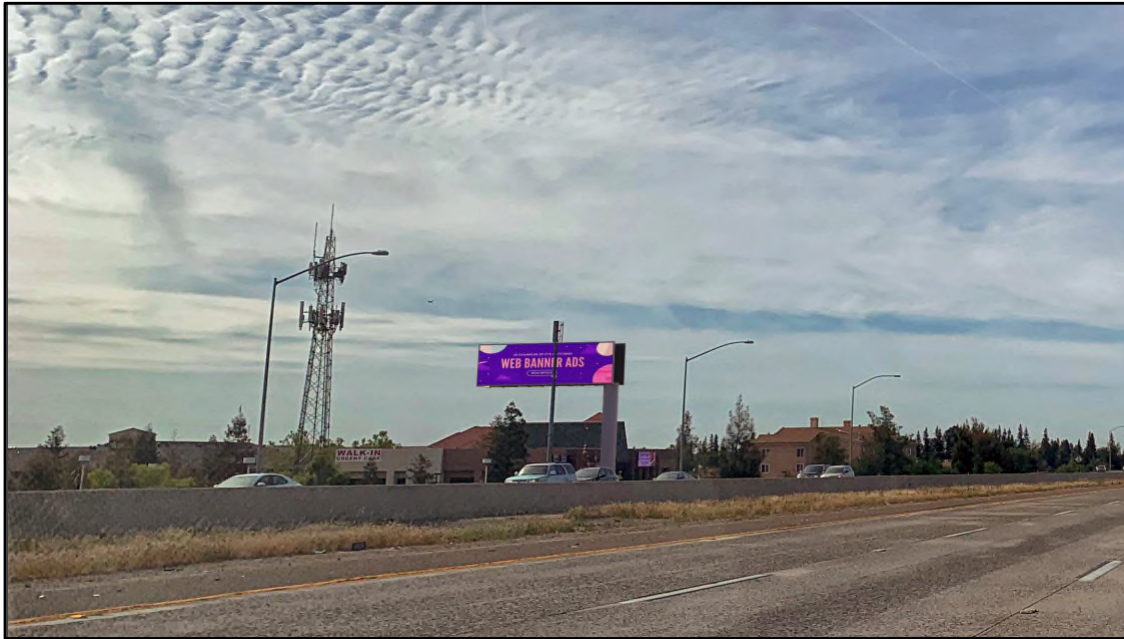


Simulations: Southbound Views

Simulation 1. View of Property From SR 41 Southbound Lane, 60-Foot-Tall Sign



Simulation 2. View of Property From SR 41 Southbound Lane, 66-Foot-Tall Sign



Simulation 3. View of Property From SR 41 Southbound Lane, 80-Foot-Tall Sign



Simulations: Northbound Views

Simulation 4. View of Property From SR 41 Northbound Lane, 60-Foot-Tall Sign



Simulation 5. View of Property From SR 41 Northbound Lane, 66-Foot-Tall Sign



Simulation 6. View of Property From SR 41 Northbound Lane, 80-Foot-Tall Sign



Simulations: Wire Frame Comparisons

Simulation 7. View of Property from SR 41 Northbound Lane, Comparison of 80-Foot and 60-Foot Signs



Simulation 8. View of Property from SR 41 Northbound Lane, Alternate Comparison of 80-Foot and 60-Foot Signs



Simulations: Additional Wire Frame Views (Not Showing Obstructions)

Simulation 9. View of Property From Southbound SR 41 With 80-Foot-Tall Sign



Simulation 10. View of Property From Northbound On-Ramp to SR 41 With 80-Foot-Tall Sign



Simulation 11. View of Property from Northbound SR 41



Simulation 12. View of Property from Southbound SR 41



The height of an outdoor advertising display is a key factor in valuing its effectiveness. As one industry publication notes:

Since people need the opportunity to see the message for it to be effective, a very important factor in billboard value is ***approach visibility***. ... The approach should have as few visual obstructions “moving through” the read. ... Obstructions to a clear view frustrate billboard owners. If a sign cannot be seen easily in a sustained clear view, advertisers will have less interest in that billboard. ... [B]ackground landscape can affect the attention that is paid to a billboard. If a sign is located low and along distance from the roadway on the left hand side ... motorists may not be paying much attention to the billboard. ... Possibly ***the most critical feature of the approach to a sign is the amount of time motorists have to read the message***. ... [T]he best billboards are those where the viewer has nothing else to notice. The less competition for attention the better. Competition for attention can come in many forms including buildings, business signs, other billboards, stadiums, scenic views, roadway information signs, merging lanes of traffic and many others. ... The ideal sign stands alone, while the least desirable location is in a jungle of signs and distractions. ... In order for an advertisement to be effective, it must be seen clearly.¹⁰

¹⁰ *Billboard Appraisal: The valuation of Off-Premise Advertising Signs*, American Society of Appraisers, Paul Wright and Jeffrey Wright, at 150-51,157 (emphasis added).

Again, at a lower height, the sign would become lost in a “jungle” of infrastructure. At a taller height, it would be easier for motorists to see the sign because they would not need to search it out among lights, trees, and telecommunication towers that they otherwise would ignore. Indeed, with a taller sign that stands at 80 feet, motorists would continue to ignore the more low-lying trees, lights, and other obstacles and, accordingly, a taller sign would in fact be the safer alternative.

Finally, there are other properties located in similar zones that have the same elevation as SR 41 (or even more favorable topography), and are not crowded by taller structures. For instance, the 6100 block of North Thesta Avenue (north of East Bullard Avenue, adjacent to SR 41), which consists of properties zoned for commercial office uses, sits at an elevation *above* SR 41 by as much as 20 or 30 feet, and therefore any proposed sign at these properties would be extremely visible to passing motorists. There are also other existing signs in nearby commercial business zones that do not suffer from the same exceptional circumstances and conditions that affect the Property. For instance, the approved Manchester Center Sign mentioned above is a short distance south of the Property along SR 41, displays on- and off-premise advertising copy, and operates at a significant height (85 feet)—without any nearby competing structures nor any significant elevation change when compared to SR 41. The Manchester Center Sign is shown in **Figures 6-7**. Elsewhere, the City’s highways are replete with tall on- and off-premise signage at or near 60 feet tall, with relatively empty skylines and on properties with elevations near that of the adjacent highway segments. *See Figures 8-9* [showing signs at 2701 E. Byrd Avenue and 2712 S. 4th Street].)

In summary, substantial evidence supports a finding that Outfront’s request for a modification of its Approved Permit to allow for a height variance meets the requirements of Code section 15-5506(A).

Figure 6. Manchester Center Sign



Figure 7. Manchester Center Sign From Northbound Lanes of Hwy 41



Figure 8. Tall On-Premise Advertising Sign at 2701 E. Byrd Ave., by Hwy 99

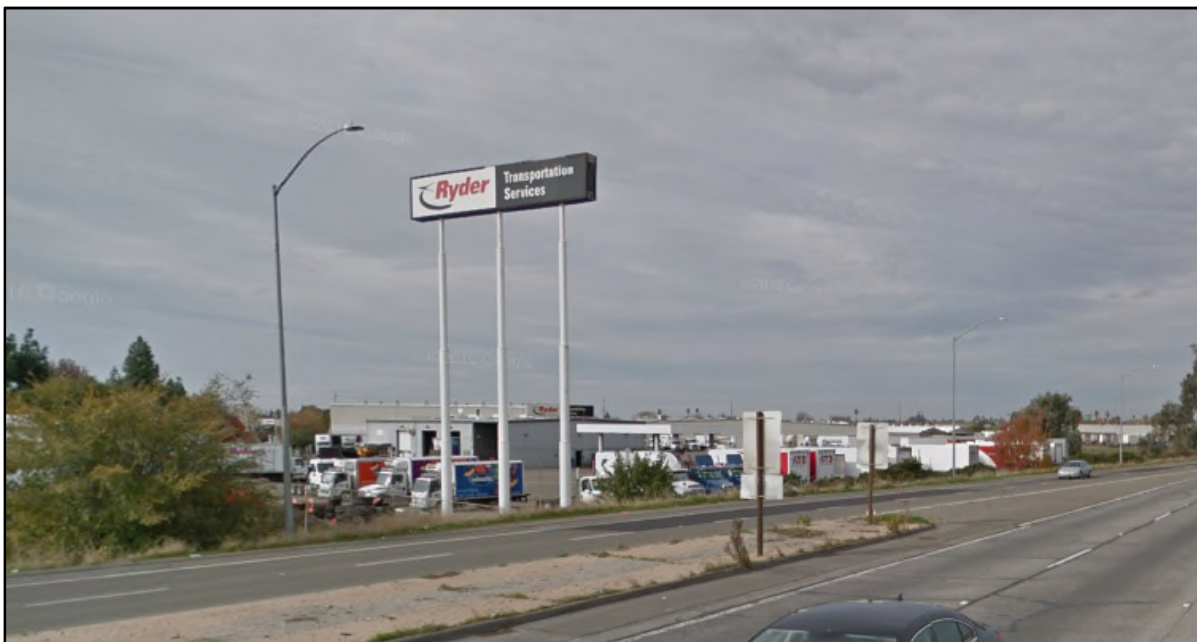


Figure 9. Tall On-Premise Advertising Sign at 2712 Fourth St., by Hwy 99



B. *Finding 2: The Granting of the Variance Application is Necessary to Prevent a Physical Hardship that is not the Result of Outfront’s Actions or its Predecessor in Interest.*

The second finding required to grant a variance is a showing that the variance “is necessary to prevent a physical hardship which is not of the applicant's own actions or the actions of a predecessor in interest.”¹¹ As illustrated above, if a variance is not granted, and Outfront is required to construct the sign at a height below 80 feet, the sign will be substantially obstructed by highway-grade objects and nearby towers. This will cause a physical hardship that directly interferes with Outfront’s property interests¹² and ability to generate revenue from the sign. This hardship would be significant, and would make the project financially infeasible.

Key to operating a profitable sign is that it be plainly visible to a motorist or passenger of normal visible acuity, and the circumstances here that limit the visibility of shorter signs is not attributable to Outfront. Outfront did not, for instance, construct SR 41 at its present, elevated grade, nor plant or construct the

¹¹ FMC, § 15-5506(B).

¹² The operation of an advertising sign is a substantial property right, and courts have held that billboards and billboard permits constitute protectable property interests under the federal Constitution. (*Traverso v. People ex rel. Dept. of Transp.* (1993) 6 Cal.4th 1152.) In determining that billboards qualify as a protectable interest, the California Supreme Court held the value of displays “derives primarily from their use as an advertising medium,” and it was “un-contradicted that a single billboard can generate several thousands of dollars per month in advertising revenues.” (*Id.*)

various objects that would obstruct a 60-foot sign on the Property. Thus, substantial evidence supports a finding under Code section 15-5506(B).

C. *Finding 3: The granting of a variance will not be detrimental to property or public health or welfare in the vicinity.*

The third required finding to grant a variance is a showing that “the granting of the application will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience, nor the preservation and conservation of open space lands.”¹³ Given the parameters under which Outfront will operate the sign as provided in the Approved Permit, the increase in the sign height to 80 feet will not be detrimental to property or improvements in the vicinity, and would not be detrimental to the public health, safety, general welfare, or convenience, nor the preservation and conservation of open space lands. The sign is located in an area that is not particularly sensitive, is immediately adjacent to utility structures, including two already existing telecommunication towers that are similar or greater in height, and uses adjacent to the Property include large scale commercial office facilities to the east, SR 41 to the west, and large-scale commercial uses located west of SR 41. Overall, the Property sits within a fully urbanized area that is visually dominated by commercial land uses and surface-street features.

D. *Finding 4: The granting of the variance will be consistent with the general purposes and objectives of this Code, any applicable operative plan, and of the General Plan.*

The fourth and final required finding, is that the granting of the variance “be consistent with the general purposes and objectives of [the City Code], any applicable, operative plan, . . . and the City’s General Plan.”¹⁴ Without the modification of the Approved Permit to allow for an increase in height to 80 feet, construction of the sign is not feasible based on Outfront’s inability to properly market the sign given the visual obstructions and other site constraints discussed in the previous sections. Modification of the Approved Permit to authorize the height variance will not conflict with the Code or the General Plan.

The Approved Permit is authorized pursuant to provisions of the Code that permit the City to enter into “agreements to relocate presently existing, legal billboards, pursuant to Business and Professions Code Section 5412.”¹⁵ In such an agreement, “[t]he new billboards which replace existing billboards may be located on City-owned property and may feature electronic copy, at the discretion of the City Manager” and that “[r]eplacement billboards shall comply with all applicable federal, State, and local regulations.”¹⁶ As the City knows, the digital signs that are contemplated in the Master Lease, including the sign, are not only subject to removal under the Master Lease (which was approved and executed by the City Manager), but are also subject to a state eminent domain action. This action has sought the removal of existing Outfront signs to make way for the state’s High Speed Rail Project, and thus the instant relocation agreement allows the state to avoid the payment of just compensation to Outfront, in compliance with section 5412 of the Outdoor Advertising Act. It also allows the City, under section 5412, to ensure removal of this sign inventory for its own roadway beautification purposes without having to pay Outfront just compensation.

¹³ FMC, § 15-5506(C).

¹⁴ FMC, § 15-5506(D).

¹⁵ FMC, § 15-2605.

¹⁶ *Id.*

The City set forth the specifications for the sign in its Request for Proposals and the Master Lease, requiring the displays be limited to 14-feet by 48-feet, and that any digital displays be spaced no closer than 1,000 feet to another such display.¹⁷ The Code also provides specific brightness parameters for electronic signs.¹⁸ The Approved Permit complies with these requirements and the requested modification and variance will not change these specifications.

The City's General Plan does not contain any express provisions regarding billboards or commercial signs, and the City's Comprehensive General Plan Land Use and Circulation Map and zoning code do not prohibit outdoor advertising displays relocated pursuant to the Outdoor Advertising Act. The sign complies with all applicable federal, state, and local regulations, and the request for a modification of the Approved Permit to increase the height will not change this conclusion. For the foregoing reasons, the granting of the variance will be consistent with the general purposes and objectives of the City's zoning ordinance, applicable land use plans, and the General Plan.

IV. Environmental Review.

The City found the Approved Permit exempt from review under the California Environmental Quality Act ("CEQA") based on qualification as under the Class 3 exemption for the "construction and location of limited numbers of new, small facilities or structures . . ." (14 Cal. Code Regs. § 15303.) The modification in the height of the billboard does not alter the application of this exemption to the structure, nor does the increase in height trigger any of exceptions to the exemption. (14 Cal. Code Regs., § 15300.2.)

V. Conclusion

For the foregoing reasons, Outfront respectfully requests that the City approve its request for a modification of its Approved Permit, authorizing a variance to allow the sign to be constructed at a height of 80 feet. Please do not hesitate to contact our office if you have any questions or comments regarding the above.

Sincerely,

MILLER STARR REGALIA



Arielle Harris

Attachments

cc: Clients

Anthony Leones, Miller Starr Regalia

Wilma Quan, City Manager, City of Fresno, Wilma.Quan@fresno.gov

Brandon Collet, Senior Deputy City Attorney, City of Fresno, Brandon.Collet@fresno.gov

¹⁷ City RFP No. 9352; Master Lease § 1(k), 5(c).

¹⁸ FMC, § 15-2614.