



Meeting Date: April 5, 2012

Mission Statement

Provide quality services in a modern, courteous and cost-efficient manner.

VILLAGE BOARD OF APPEALS STAFF REPORT

REPORT TO: President Burt McIntyre & Village Board of Appeals

REPORT FROM: James Korotev, Director of Code Administration

AGENDA ITEM: 6:05 p.m. PUBLIC HEARING – The Village of Howard Board of Appeals will hold a public hearing on April 5, 2012 at 6:05 p.m. in the Board Room at Howard Village Hall, 2456 Glendale Avenue, to hear evidence and decide whether NextMedia Outdoor, Inc. shall be allowed to seek a variance from the Board as to the decision of the Director of Code Administration to deny a permit to erect a sign at 2244 Shawano Avenue, pursuant to the Village’s sign regulations.

RECOMMENDED ACTION BY THE BOARD OF APPEALS

It is recommended that the Chairman of the Board of Appeals open the public hearing and ask the petitioner to explain her appeal in detail. Subsequently, the Board of Appeals should invite comments from the public and then close the public hearing. After the public hearing is closed, the Board of Appeals should review the petitioner’s appeal and rule on the validity of the appeal. Section 50-208 of the Zoning Ordinance requires that *“The village board of appeals may reverse or affirm, in whole or in part, or may modify the order, requirement, decision, or determination appealed, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.”*

BACKGROUND – SHOULD THE APPELLANT BE PERMITTED TO APPLY FOR A VARIANCE?

On October 25th, 2011, the appellant submitted an application to the Department of Code Administration requesting a sign permit to allow an existing billboard sign located at 2044 Shawano Avenue, VH-709 to be realigned due to State highway expansion and DOT right-of-way acquisition. In her application, the applicant proposed to realign (move) the sign to another location on the same parcel of land upon which it was originally erected, and to raise the height of the sign to 45 feet.

Section 50-1296(2) of the Zoning Ordinance (Permitted Nonconforming Signs) requires that nonconforming signs shall be permitted as long as the following conditions are met:

“The sign is not structurally modified or altered, except as specifically permitted in subsection (3) below, and except where such work results in, or has the effect of, bringing such sign more incompliance with the provisions of this article. For the purposes of this article, normal maintenance or changing of copy shall not be considered a modification or alteration.”

Section 50-1296(3) of the Zoning Ordinance (Permitted Nonconforming Signs) requires the following:

“If a highway project of the Department of Transportation causes the realignment of a nonconforming sign per Section 84.30(5r) of the Wisconsin State Statutes, such sign may be relocated on the same site as long as no modifications or alterations are made to the sign other than those specifically necessary to move the structure. Such realignment or relocation of the sign shall not affect its nonconforming status under this ordinance.”

"Section 50-182 of the Zoning Ordinance (Authorized Variances) requires the following:

"The village board of appeals may only grant variances from dimensional standards incorporated in this chapter and in no other circumstances. For the purposes of this article, the term "dimensional standard" includes any regulation establishing a minimum or maximum width, depth, length, height, elevation, distance, dimension, area, size, number, sum, percentage, ratio, proportion, measurement, pitch, slope or comparable dimensional reference."

Upon reviewing the appellant's permit application and supporting documentation it became obvious that the work being proposed involved substantially more than the realignment of the existing sign. In fact, in her permit application, the appellant proposed completely replacing the existing sign with a new sign in a new location, at a height substantially higher than the existing sign. Since Section 50-1296(2) of the Zoning Ordinance requires that nonconforming signs cannot be "structurally modified or altered," and since Section 50-1296(3) of the Zoning Ordinance requires that nonconforming signs "may be relocated on the same site as long as no modifications or alterations are made to the sign other than those specifically necessary to move the structure," I denied the permit application based upon these two code sections.

Finally, since the new sign being proposed is not permitted by the Zoning Ordinance, and since Section 50-182 of the Zoning Ordinance (Authorized Variances) requires that *"The village board of appeals may only grant variances from dimensional standards incorporated in this chapter and in no other circumstances"* (i.e. the Village cannot accept or rule upon a variance application to allow something that is otherwise prohibited by the Zoning Ordinance), the appellant's request for any type of variance in this matter is invalid. Such request cannot be accepted by the Director of Code Administration and such ruling by the Director of Code Administration must be upheld by the Board of Appeals.

AGENDA ITEM: 6:10 p.m. PUBLIC HEARING – The Village of Howard Board of Appeals will hold a public hearing on April 5, 2012 at 6:10 p.m. in the Board Room at Howard Village Hall, 2456 Glendale Avenue, concerning an appeal (and possibly a variance request) by Renee M. St. Laurent, representing Next Media Outdoor, Inc., of the decision of the Director of Code Administration to deny a permit to erect a sign at 2244 Shawano Avenue, pursuant to the Village's sign regulations.

RECOMMENDED ACTION BY THE BOARD OF APPEALS

It is recommended that the Chairman of the Board of Appeals open the public hearing and ask the petitioner to explain her appeal in detail. Subsequently, the Board of Appeals should invite comments from the public and then close the public hearing. After the public hearing is closed, the Board of Appeals should review the petitioner's appeal and rule on the validity of the appeal. Section 50-208 of the Zoning Ordinance requires that "The village board of appeals may reverse or affirm, in whole or in part, or may modify the order, requirement, decision, or determination appealed, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken."

BACKGROUND INFORMATION – SHOULD THE BOARD OF APPEALS UPHOLD THE DECISION OF THE DIRECTOR OF CODE ADMINISTRATION TO DENY THE APPELLANT'S PERMIT APPLICATION?

NOTE: Please review the above arguments and recommendation that the appellant's request for any type of variance in this matter is invalid, and that such request cannot be accepted by the Director of Code Administration and such ruling by the Director of Code Administration must be upheld by the Board of Appeals.

On October 25th, 2011, the appellant submitted an application to the Department of Code Administration requesting a sign permit to allow an existing billboard sign located at 2044 Shawano Avenue, VH-709 to be realigned due to State highway expansion and DOT right-of-way acquisition. In her application, the applicant proposed to realign (move) the sign to another location on the same parcel of land upon which it was originally erected, and to raise the height of the sign to 45 feet.

As Director of Code Administration, I denied the permit application for the following reasons:

- (1) The applicant is proposing to raise the height of the sign to 45 feet. This does not comply with the requirement in Section 50-1296(3) that *“no modifications or alterations are made to the sign other than those specifically necessary to move the structure.”* What is being proposed is not *realignment*.
- (2) It appears from the drawings and engineering calculations submitted that the intent is to build a new sign in the new location with new materials. Again, this does not comply with the requirement in Section 50-1296(3) that *“no modifications or alterations are made to the sign other than those specifically necessary to move the structure.”* It is the intent of this section that the existing sign be removed at its base and re-erected at the new location in its entirety, using only those new materials specifically necessary to move the structure (new footings, etc.).
- (3) The applicant is proposing that one side of the sign be digital. This again is a modification beyond what is required to move or realign the sign. After completion of the project the sign should appear exactly as it did before the move (see attached photo taken on 11/16/11), only in a new location.

As Director of Code Administration I denied the requested permit for the above reasons. I submit that the Board of Appeals should uphold my decision based upon the above findings.

ATTACHMENTS

I-II	Petition for appeal
III	Aerial view of subject property
IV	Application for sign permit
V-VII	Applicant's Explanation of Permit Request
VIII	Site Plan/DOT Acquisition Plat
IX	Engineering Calculations for Proposed New Sign
X	Elevation View of Proposed New Sign
XI	Ordinance #2011-19
XII	Photo of Existing Sign Taken on 11/16/11 (Sign has Since Been Removed)
XIII	E-Mail to Permit Applicant Explaining Permit Denial
XIV-XV	Letter From Applicant Dated 11/23/11

ATTACHMENT I



2456 Glendale Ave
Green Bay, WI 54313

APPLICATION FOR
A ZONING VARIANCE & APPEAL

See Next Page
for Materials to be Submitted
with This Application

Application Fees: \$250 &
\$500 for Construction w/out
Permit

Date: _____
Initials: _____

Applicant

Name: NextMedia Outdoor, Inc. / Renee St. Laurent

Address: 1800 Scheuring Road, Suite C DePere, WI 54115
Phone: (920) - 347 - 1767 Email: rstlaurent@nextmediagroup.net

Business Name: Next Media Outdoor, Inc.
Conditional Use Site Address: 2244 Shawano Avenue
Landowner of Record: Stange Investments LLP
Address: 1261 Gerhardt Lane, Green Bay, WI 54313
Phone: () - - Email: _____

Consultant(s)

Architect

Electrician Name: Michael R. Eland / Eland Electric
Address: 3154 Holmgren Way, Green Bay, WI 54304
Phone: (920) - 338 - 6000 Email: _____

Contractor/Engineer

Name: Stephen J. Cegelski / NextMedia Outdoor, Inc.
Address: 1800 Scheuring Road, Suite C DePere, WI 54115
Phone: (920) - 347 - 2222 Email: _____

Parcel/Building Information

Lot Size: .967 Acres Current Zoning: B2 Street Frontage: 165 ft
Lot Dimensions: 165' x 264' x 165' x 264' Does Current Zoning Permit Intended Use: _____
Bldg. Sq. Footage: _____ Dimensions of Building: _____

Describe Specifically the Nature of the Request: Pursuant to Sections 50-177 and 50-206 of the Code of Ordinances of the Village of Howard, NextMedia Outdoor is seeking an appeal and/or variance regarding the decision of James Korotev, the Village's Director of Code Administration to deny NextMedia's request to realign its existing non-conforming sign at 2244 Shawano Avenue. NextMedia sought to realign this sign pursuant to Howard Ordinance No. 2011-19 and Section 50-129(3) which allows for the realignment of non-conforming signs that are impacted by a Department of Transportation Highway Project. Mr. Korotev denied the application on the basis that NextMedia's application included modifications or alterations to the sign other than those necessary to move the structure. NextMedia submits that Mr. Korotev's decision is contrary to the spirit and intent of the Ordinance. Seeking to relocate the sign at a new location and height visible to the new roadway is exactly what Ordinance No. 2011-19 was designed to allow. NextMedia hereby appeals Mr. Korotev's decision. NextMedia also expressly requests a variance. NextMedia seeks realignment only as a result of the Highway 41 expansion project, which created this hardship. The project has created a topographical condition that will limit the visibility of a sign at a height less than 45 feet in height. Granting the variance will not negatively affect the public interest. [Continued on attached page]

ATTACHMENT II

Please Note the Following:

- Incomplete applications will not be accepted and/or processed
- All applications shall be submitted three (3) weeks prior to the Board of Appeals meeting at which the applicant wishes to appear
- Processing an application may take up to sixty (60) days due to legal notices mandated by State law
- The Board of Appeals meets on the fourth Tuesday of the month when a variance is requested

Standards to be Met When Granting a Variance

Unnecessary Hardship

The applicant must show that the difficulty or hardship faced has been created by the zoning ordinance and is not self-imposed and that, in the absence of a variance, no feasible use of the property can be made. The hardship must be unique to the parcel in question and not one which affects all parcels in the area similarly. Potential loss of profit for financial gain is not, in and of itself, grounds for a variance.

Unique Property Limitation

The applicant must show that unique physical characteristics of the property itself prevent him from building or developing in compliance with the Village's Zoning Ordinances. These characteristics may include topographical conditions, parcel shape, physical surroundings, wetland areas or soil types which limit reasonable use of the property.

Protection of Public Interest

The applicant must show that the granting of a variance will not harm the public interest, including the interests of the public at large, not just those of nearby property owners. The granting of a variance must not result in an inadequate supply of light or air to adjacent property, a substantial increase in congestion of public streets, an increase in the danger of fire, endangerment of the public safety, or reduction or impairment of property values within the neighborhood. The lack of local opposition to a variance petition does not in itself mean that the variance will not harm the public interest.

REQUIRED (Provide All That Apply)

- ✓ A plat of survey or the equivalent thereof depicting the location, dimensions, boundaries, setbacks of buildings/structures and uses and size of the site.
- ✓ A site plan depicting existing and proposed structures relative to lot lines

Submit 15 copies of all color documents. Submit 3 copies of all documents not printed in color.


Applicant Signature

12-14-11
Date

Please direct all questions to Jim Korotev. Jim may be reached at 920-434-4640 or by email at jkorotev@villageofhoward.com

ATTACHMENT III



ATTACHMENT IV

DEPARTMENT OF CODE ADMINISTRATION
 2456 Glendale Avenue, Green Bay, WI 54313
 (Office) 920-434-4640 (FAX) 920-434-4643
 (Email) jkorotev@villageofhoward.com



PERMIT APPLICATION

PLEASE COMPLETE ALL APPLICABLE SECTIONS

INCOMPLETE APPLICATIONS CANNOT BE ACCEPTED

LOCATION	JOB SITE ADDRESS (Street Number and Name) 2244 Shawano Avenue		LOT # VH-709	SUBDIVISION Fort Howard Military Reserve		
PROPERTY OWNER	PROPERTY OWNER'S FULL NAME Stange Investment, LLP		DAYTIME PHONE # 920-362-8899			
	PROPERTY OWNER'S MAILING ADDRESS (include Zip Code) 1261 Gerhardt Lane, Green Bay WI 54313					
PERMIT APPLICANT	PERMIT APPLICANT'S COMPANY NAME NextMedia Outdoor, Inc.		PERMIT APPLICANT'S FULL NAME (First, Middle Initial, Last) Don L. Snyder		DAYTIME PHONE # 920-347-1771	
	PERMIT APPLICANT'S MAILING ADDRESS (include Zip Code) 1800 Scheuring Road, Suite C, De Pere WI 54115		FAX # 920-339-4612	ALTERNATE OR CELL PHONE # 920-347-3490		
BUILDING CONTRACTOR	BUILDING CONTRACTOR'S COMPANY NAME NextMedia Outdoor, Inc.		BUILDING CONTRACTOR'S FULL NAME (First, Middle Initial, Last) Steve Cegelski		DAYTIME PHONE # 920-347-1775	
	BUILDING CONTRACTOR'S MAILING ADDRESS (include Zip Code) 1800 Scheuring Road, Suite C, De Pere WI 54115		WI DWELLING CONTRACTOR QUALIFIER # N/A	WI DWELLING CONTRACTOR # N/A		
ELECTRICAL CONTRACTOR	ELECTRICAL CONTRACTOR'S COMPANY NAME Eland Electric		ELECTRICAL CONTRACTOR'S FULL NAME (First, Middle Initial, Last) Jim Eland		WI ELECTRICAL CREDENTIAL # 1095791	
	ELECTRICAL CONTRACTOR'S MAILING ADDRESS (include Zip Code) 3154 Holmgren Way, Green Bay WI 54304		DAYTIME PHONE # 920-338-6000			
PLUMBING CONTRACTOR	PLUMBING CONTRACTOR'S COMPANY NAME N/A		PLUMBING CONTRACTOR'S FULL NAME (First, Middle Initial, Last)		WI PLUMBING CREDENTIAL #	
	PLUMBING CONTRACTOR'S MAILING ADDRESS (include Zip Code)		DAYTIME PHONE #			
HVAC CONTRACTOR	HVAC CONTRACTOR'S COMPANY NAME N/A		HVAC CONTRACTOR'S FULL NAME (First, Middle Initial, Last)		WI HVAC CREDENTIAL #	
	HVAC CONTRACTOR'S MAILING ADDRESS (include Zip Code)		DAYTIME PHONE #			
SEWER CONTRACTOR	SEWER CONTRACTOR'S COMPANY NAME N/A		SEWER CONTRACTOR'S FULL NAME (First, Middle Initial, Last)		WI PLUMBING CREDENTIAL #	
	SEWER CONTRACTOR'S MAILING ADDRESS (include Zip Code)		DAYTIME PHONE #			
PROJECT (CHECK ONE)	<input type="checkbox"/> NEW BUILDING <input type="checkbox"/> ADDITION <input type="checkbox"/> ALTERATION/REMODELING <input type="checkbox"/> REPAIR <input type="checkbox"/> MOVING <input type="checkbox"/> DEMOLITION <input type="checkbox"/> OTHER <u>Realign existing off-premise sign.</u>					
BLDG TYPE (CHECK ONE)	<input type="checkbox"/> SINGLE FAMILY <input type="checkbox"/> DUPLEX <input type="checkbox"/> MULTI FAMILY <input type="checkbox"/> COMMERCIAL/INDUSTRIAL <input type="checkbox"/> GARAGE/STORAGE <input type="checkbox"/> AGRICULTURAL <input type="checkbox"/> OTHER <u>Off-premise sign.</u>					
WORK TYPE (CHECK ALL PROPOSED WORK)	<input type="checkbox"/> BUILDING CONSTRUCTION <input type="checkbox"/> ELECTRICAL <input type="checkbox"/> PLUMBING <input type="checkbox"/> HEATING/VENTILATING/AIR CONDITIONING <input type="checkbox"/> OTHER <u>Realign an existing off-premise sign.</u>					
EST COST (LABOR AND MATERIALS)	BUILDING CONSTRUCTION (\$) \$0	ELECTRICAL (\$) \$2,570	PLUMBING (\$) \$0	HVAC (\$) \$0	OTHER (\$) \$30,500.00	TOTAL ESTIMATED COST (\$) \$33,070
JOB DESCRIPTION (DESCRIBE ALL PROPOSED WORK)	The off-premise sign has existed on the site since 1984. NextMedia, with the support of the Property Owner, seeks a permit to realign the sign on the same parcel pursuant to Section 84.30 (5r), Wis. Stats. as result of an order to vacate due to State Hwy 41 improvement project. The sign will be realigned at the same height above road grade (HARG) as exists currently. Since the road grade will be elevated, the sign will be elevated similarly to maintain the same HARG.					
GO GREEN! (DESCRIBE ANY ENERGY OR RESOURCE-SAVING "GREEN" TECHNOLOGY, MATERIALS OR CONSTRUCTION TECHNIQUES PROPOSED FOR THIS PROJECT)	Sign will use the most advanced external lighting to substantially reduce electricity use.					
BUILDING FEATURES (COMPLETE THIS SECTION FOR NEW BUILDINGS AND ADDITIONS ONLY)	CONSTRUCTION TYPE (Site Constructed or Manufactured)	BASEMENT? (Yes or No)	# OF STORES (Above Basement)	FOUNDATION TYPE (Poured Concrete, Masonry Block, Treated Wood, Etc.)		
	ELECTRICAL SERVICE SIZE (Amperes)	ELECTRICAL SERVICE LOCATION (Overhead or Underground)		BUILDING USE (Permanent or Seasonal)		
	HVAC EQUIPMENT (Forced Air, Radiant, Heat Pump, Boiler, Etc.)	HVAC FUEL (Natural Gas, LP Gas, Fuel Oil, Electricity, Solid Fuel, Solar, Etc.)		WATER HEATING FUEL (Natural Gas, LP Gas, Fuel Oil, Electricity, Etc.)		
	CENTRAL AIR CONDITIONING? (Yes or No)	SEWER TYPE (Municipal or Private)		WATER SUPPLY (Municipal Utility or Private Well)		
SIGNATURE	ENTER YOUR INITIALS IN THIS BOX TO VERIFY THAT YOU HAVE READ AND AGREE TO THE TERMS AND CONDITIONS DETAILED BELOW (REQUIRED FOR APPLICATION TO BE PROCESSED)			APPLICATION DATE 10-25-11	CONSTRUCTION START DATE Upon Approval	
BY INITIATING THE BOX ABOVE, THE PERMIT APPLICANT DOES HEREBY CERTIFY THAT: (1) ALL INFORMATION PROVIDED ON THIS APPLICATION IS TRUE AND CORRECT. (2) THE PERMIT APPLICANT UNDERSTANDS THAT THE ISSUANCE OF A PERMIT CREATES NO LEGAL LIABILITY, EXPRESSED OR IMPLIED, ON THE VILLAGE OF HOWARD OR ON ANY OF ITS EMPLOYEES. (3) IN THE PERFORMANCE OF ALL WORK COVERED, THE PERMIT APPLICANT WILL BE BOUNDED BY AND SUBMIT TO ALL STATUTES OF THE STATE OF WISCONSIN, CONFORM TO ALL APPLICABLE CODES AND ORDINANCES OF THE VILLAGE OF HOWARD, AND ABIDE BY ALL RULES AND REGULATIONS PRESCRIBED BY THE DEPARTMENT OF CODE ADMINISTRATION.						

ATTACHMENT V**Application for A Zoning Variance & Appeal****Nature of the Request - Continued**

In addition, NextMedia seeks an appeal and/or variance because the Department of Transportation's allowance for the relocation of existing signs preempts the Village's newly adopted realignment statute, which is being enforced against NextMedia here. 2011 Assembly Bill 40 was passed by the legislature and signed by the Governor. Section 2233m amended the statutes regulating billboards and outdoor advertising to include a new section, W.S.A. 84.30 (5r), which states, in part:

- (a) In this subsection, "realignment" means relocation on the same site
- (b) If a highway project of the department causes the realignment of a sign that does not conform to a local ordinance, the realignment shall not affect the sign's nonconforming status under the ordinance.
- (c) If in connection with a highway project of the department the department proposes the realignment of a sign that does not conform to a local ordinance, the department shall notify the governing body of the municipality or county where the sign is located and which adopted the ordinance of the sign's proposed realignment. Upon receiving this notice, the governing body may petition the department to acquire the sign and any real property interest of the sign owner. If the department succeeds in condemning the sign, the governing body that made the petition to the department shall pay to the department an amount equal to the condemnation award, less relocation costs for the sign that would have been paid by the department if the sign had been realigned rather than condemned. Notwithstanding s. 86.30(2)(a)1. and (b) 1., 1g., and 1r., if the governing body fails to pay this amount, the department may reduce the municipality's or county's general transportation aid payment under s. 86.30 by an equal amount.
- (d) This subsection does not permit the alteration or movement of a sign that is nonconforming under this section.

The Village's refusal to allow realignment of NextMedia's existing sign is contrary to the State law and is therefore invalid. E.g., Anchor Sav. & Loan Ass'n v. Equal Opportunities Comm'n, 355 N.W.2d 234, 238 (Wis. 1984) (municipalities may not pass ordinances which infringe the spirit of state law or are repugnant to general policy of state); Welter v. City of Milwaukee, 571 N.W.2d 459, 463 (Wis. Ct. App. 1997) (holding that municipal ordinances are preempted by state statute if the ordinance defeats the purpose of state legislation, or violates spirit of state legislation); Lamar OCI South Corp. v. Stanly County Board of Zoning Adjustment, 650 S.E.2d 37, 41-43 (N.C. Ct. App. 2007) (local ordinance's prohibition on relocation of nonconforming signs was preempted by state law); Wisconsin Transportation

ATTACHMENT VI

Regulation 201.20(6) (requiring local government pay the full costs of removing any signs that acquire nonconforming status under state law).

The denial of NextMedia's application has resulted in an unconstitutional deprivation of the NextMedia's constitutional rights protected by the First and Fourteenth Amendments to the U.S. Constitution and similar provisions in Wisconsin's Constitution. NextMedia's sign will provide an important outlet for citizens, businesses, and organizations to express their ideas and beliefs. Allowing such an outlet for free speech strongly favors granting the requested appeal and/or variance. Several of the specific constitutional problems in the ordinances can be summarized as follows:

The Village sign ordinance violates the First Amendment. The Village allows signs of the size and height sought by NextMedia, but only for certain content. By allowing signs with "on-premise" messages, but not allowing signs with "off-premise" messages, the Village code impermissibly discriminates against noncommercial speech. *E.g., Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 513, 516 (1981); *Desert Outdoor Adver., Inc. v. City of Moreno Valley*, 103 F.3d 814, 819 (9th Cir. 1996), *cert. denied*, 522 U.S. 912 (1997) (invalidating sign regulation that "lacks any statement of purpose"); *National Adver. Co. v. Town of Babylon*, 900 F.2d 551, 555-56 (2d Cir.), *cert. denied*, 498 U.S. 852 (1990). Because NextMedia's applications would be allowed but for the content, a legal challenge is likely to succeed.

The Village ordinance fails to place any procedural safeguards on the decision-making process as to sign applications. The Supreme Court has held that municipal ordinances that condition the exercise of protected First Amendment activities on the approval of government officials must include the safeguards set forth in *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990). These procedural safeguards include: (1) specific time limits on the decision-making processes, and (2) provisions for "'prompt judicial determination' of the applicant's legal claim." *Littleton v. Z.J. Gifts*, 541 U.S. 774, 777 (2004) (quoting *FW/PBS*); *City News & Novelty, Inc. v. City of Waukesha*, 604 N.W.2d 870, 877 (Wis. Ct. App. 1999) ("a prior restraint that fails to place limits on the time within which the decisionmaker must issue the license is impermissible"). Without these limits, the Village's sign ordinance is void. *Solantic, LLC v. City of Neptune Beach*, 410 F.3d 1250, 1271-72 (11th Cir. 2005); *The Lamar Co. v. City of Marietta*, 538 F. Supp. 2d 1366, 1373 (N.D. Ga. 2008). The failure of the Village to include these safeguards in the appeals process is also unconstitutional.

ATTACHMENT VII

The Village ordinance violates free speech and equal protection by creating exemptions from the permitting requirement and zoning district regulations for government signs and signs displayed by other favored parties. The Village cannot favor itself or others over NextMedia. Nichols Media Group, LLC v. Town of Babylon, 365 F. Supp. 2d 295, 316 (E.D.N.Y. 2005) (“the broad exemption of governmental signs is unconstitutional”); Clear Channel Outdoor, Inc. v. Town of Windham, 352 F. Supp. 2d 297, 305 (N.D.N.Y. 2005); Advantage Media v. City of Hopkins, 379 F. Supp. 2d 1030, 1046-47 (D. Minn. 2005) (requiring “compelling state interest” to support favoritism).

The Village’s sign ordinance is also unconstitutional in several other respects, including its content-based framework, its presumption that signs are illegal until specifically approved, its favoritism for commercial over noncommercial speech, and the fact that it is vague and overbroad. The Sign Ordinance cannot survive the applicable level of constitutional scrutiny, whether the applicable test is deemed to be strict scrutiny or intermediate scrutiny. The Village’s sign permitting process also violates due process.

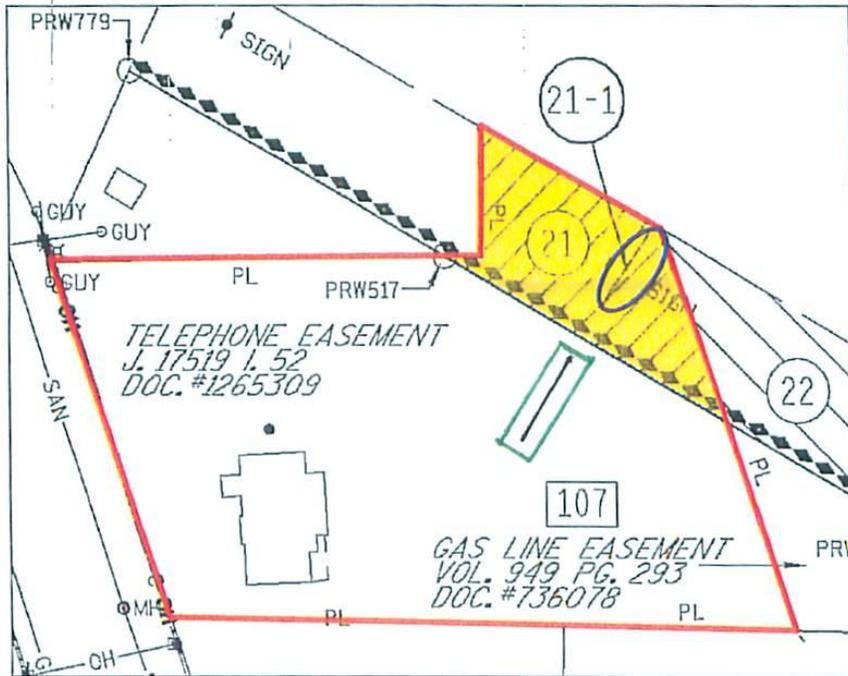
Given that NextMedia applied for the realignment of the sign prior to the adoption of Ordinance No. 2011-19 by the Village, to the extent that Mr. Korotev denied NextMedia’s application on the grounds that the ordinance prohibits the relocation of nonconforming signs, which would be the code in effect at the time of application, such a basis would be impermissible for the same reasons articulate above.

NextMedia expressly reserves the right to set forth additional evidence and/or arguments in support of its variance and/or appeal application at its hearing before the Zoning Board of Appeals.

ATTACHMENT VIII

"SITE PLAN"

ACQUISITION PLAT and AERIAL PHOTOGRAPH of FEE TAKING AREA



- Subject Property
- Fee Taking
- Off-Premise Billboard - Current location
- Off-Premise Billboard, Proposed location Parcel: 21

ATTACHMENT IX

NEXT MEDIA #1 WDB 10-22-11 SIGN - HOWARD

WIND - LOAD = 30 #/SF HORIZ MAX 19.22 W = 30(2.3) = 99-100 L = 9.3 M = 100(9.3^2)(1/2) = 1081 Y = 1081(12) = 0.5 24000

(2) 3" x 3" x 14" L's - O.K.

SIGN - AREA = 10.5(36) = 378 W = 378(30) = 11340 # 4 POST = 11340 / 4 = 2835 APRN = 45-5 = 40 FT

M = 2835(40) = 113400 Y/2 = 113400(12) = 57 24000

W 18 x 50 (4 REQ)



FOUNDATION 2012 # 302

NEXT MEDIA

TRY 10' EMBEDMENT

INFLUENT M = 2 1/2 (40) = 27'

S = 200(10) / 3 = 666

A = 2.34(2835 x 20) / 666(36) = 5.5

EMT = 5.5(1 + sqrt(1 + 4.76 x 27)) / 2 = 15.7

250# S = 833 724 42" A = 2.34(2835 x 20) / 833(42) = 3.8

EMR = 3.8(1 + sqrt(1 + 4.76 x 27)) / 2 = 12.2

48" phi CONC PILES - MIN 10' EMBEDMENT W/ 8 #5 VERT & #3 TIE @ 12" o/c VERT LOAD 4200 # TIE 3900 8100 / 4 = 2025

NEXT MEDIA

EA POST = 2025 STEEL AD(50) = 2000 CONC 2(3.14)(50)(10) = 18900 22,925 # 48" phi = 2^2(3.14) = 12.5 2000(12.5) = 25000 CAP. O.K.

NEXT MEDIA

EA POST = 2025 STEEL AD(50) = 2000 CONC 2(3.14)(50)(10) = 18900 22,925 # 48" phi = 2^2(3.14) = 12.5 2000(12.5) = 25000 CAP. O.K.

Table with columns: Size and Section, Area, Moment, Angle, etc. Title: ANGLES Equal legs and unequal legs Properties for designing.

Table with columns: Depth, Flange, Web, etc. Title: W SHAPES Properties.

Table with columns: Size and Section, Area, Moment, Angle, etc. Title: ANGLES Equal legs and unequal legs Properties for designing.

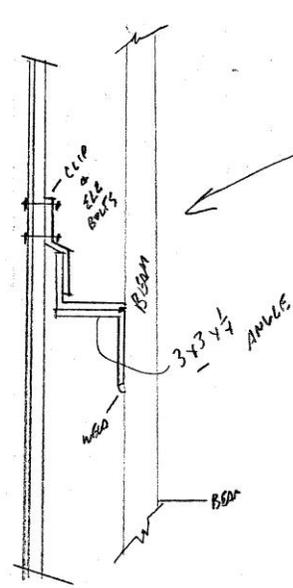
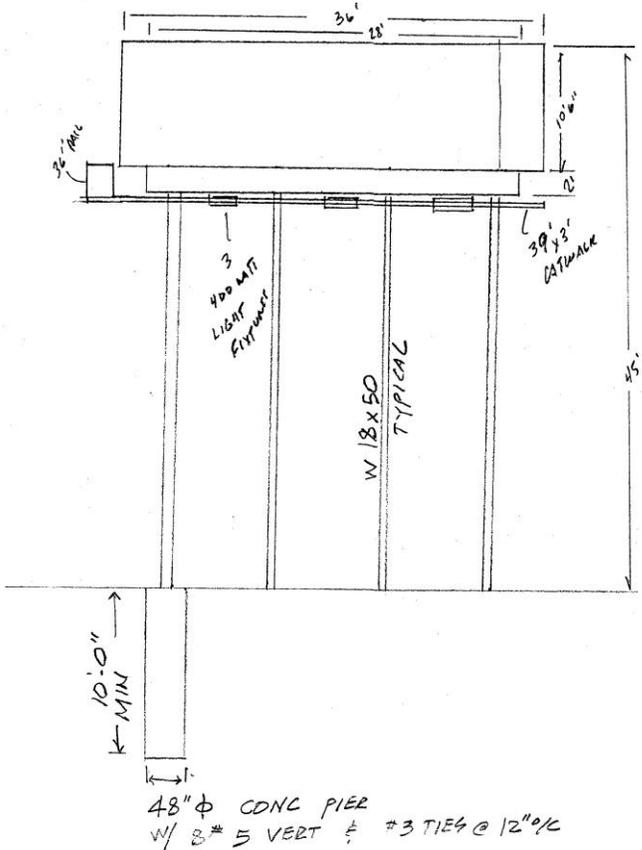
Table with columns: Depth, Flange, Web, etc. Title: W SHAPES Dimensions.

ASPI & STANDARD REINFORCING BAR SIZES, COMMON STOCK STYLES OF WELDED WIRE FABRIC, and various diagrams and tables for reinforcement design.

TEMPERATURE REINFORCEMENT FOR STRUCTURAL FLOOR AND ROOF SLABS, and various diagrams and tables for reinforcement design.

TEMPERATURE REINFORCEMENT FOR STRUCTURAL FLOOR AND ROOF SLABS (continued), and various diagrams and tables for reinforcement design.

ATTACHMENT X



1 SIDE AS OF HOW TAI VISION
1 SIDE STATIC WITH PAGES
TAI WILL BE SWITCHED TO DIGITAC
TM WEIGHS 4200 LBS
DIGITAC WEIGHS 2900 LBS

#1WOS

ATTACHMENT XI**ORDINANCE NO. 2011 - 19****AN ORDINANCE AMENDING SECTION 50-1296 OF THE ZONING ORDINANCE
PERTAINING TO THE REALIGNMENT OF NONCONFORMING SIGNS DUE TO STATE
HIGHWAY PROJECTS**

WHEREAS the Village Clerk published a notice of public hearing regarding such proposed amendment to the Zoning Ordinance and a public hearing was held at the Village Hall on October 24, 2011, at 6:40 P.M., whereupon the Plan Commission heard all interested persons and/or their agents and attorneys; and

WHEREAS the Village Board of the Village of Howard has received a written recommendation and findings of the Village Plan Commission regarding such proposed amendment to the Zoning Ordinance;

NOW THEREFORE the Village Board of the Village of Howard, Brown County, Wisconsin, does hereby ordain that the Zoning Ordinance be amended as follows:

SECTION 1 Section 50-1296 is hereby amended to read as follows (italicized wording added):

Sec. 50-1296. Permitted nonconforming signs.

All nonconforming signs existing on the effective date of the ordinance from which this article is derived are permitted, provided such signs complied with all applicable ordinances and regulations at the time of initial erection or subsequent alteration, and such signs were covered by sign permits, if required. Such nonconforming signs shall be permitted as long as the following conditions are met:

- (1) The sign is not structurally modified or altered, *except as specifically permitted in subsection (3) below, and* except where such work results in, or has the effect of, bringing such sign more in compliance with the provisions of this article. For the purposes of this article, normal maintenance or changing of copy shall not be considered a modification or alteration.
- (2) The sign is not relocated or replaced *except as specifically permitted in subsection (3) below.*
- (3) *If a highway project of the department of transportation causes the realignment of a nonconforming sign per Section 84.30(5r) of the Wisconsin State Statutes, such sign may be relocated on the same site as long as no modifications or alterations are made to the sign other than those specifically necessary to move the structure. Such realignment or relocation of the sign shall not affect its nonconforming status under this ordinance.*

SECTION 2 All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 3 This ordinance shall take effect upon its adoption and publication.

Approved and adopted this 14th day of November, 2011.

Burt McIntyre, Village President

ATTEST:

Paul F. Evert, Administrator/Clerk

DATE OF PUBLICATION: 11/18/2011

ATTACHMENT XII



ATTACHMENT XIII**Jim Korotev**

To: rstlaurent@nextmediagroup.net
Subject: Billboard Sign Realignment at 2244 Shawano Avenue
Attachments: 2011-19 Realignment of Billboard Signs.pdf; IMG_2852.pdf

Dear Ms. Laurent:

After reviewing your permit application and supporting documentation for the realignment of the above referenced sign, I have determined that the work proposed does not comply with Village of Howard Ordinance #2011-19 (attached) and the provisions of Section 50-1296(3) of the Village Zoning Ordinance. Consequently, I hereby deny your application submitted on October 25, 2011.

Ordinance #2011-19 adopted by the Village Board on 11/14/11 amends Section 50-1296 of the Zoning Ordinance by adding the following subsection (3) pursuant to Section 84.30(5r) of the Wisconsin State Statutes:

(3) If a highway project of the department of transportation causes the realignment of a nonconforming sign per Section 84.30(5r) of the Wisconsin State Statutes, such sign may be relocated on the same site as long as no modifications or alterations are made to the sign other than those specifically necessary to move the structure. Such realignment or relocation of the sign shall not affect its nonconforming status under this ordinance.

The reasons for permit denial include but are not limited to the following:

- (1) You are proposing to raise the height of the sign to 45 feet. This does not comply with the requirement in Section 50-1296(3) that *"no modifications or alterations are made to the sign other than those specifically necessary to move the structure."* What you are proposing is not a realignment.
- (2) It appears from the drawings and engineering calculations submitted that you intend to build a new sign in the new location with new materials. Again, this does not comply with the requirement in Section 50-1296(3) that *"no modifications or alterations are made to the sign other than those specifically necessary to move the structure."* It is the intent of this section that the existing sign be removed at its base and re-erected at the new location in its entirety using only those new materials specifically necessary to move the structure (new footings, etc.).
- (3) You are proposing that one side of the sign be digital. This again is a modification beyond what is required to move or realign the sign. After completion of the project the sign should appear exactly as it did before the move (see attached photo taken on 11/16/11) only in a new location.

If you care to resubmit a permit application for proposed work complying with Section 50-1296(3) of the Zoning Ordinance, I'll review your submittals and issue appropriate permits if I find that the proposed work complies with Village codes and ordinances.

Regards,

ATTACHMENT XIV

November 23, 2011

James Korotev
VILLAGE OF HOWARD
2456 Glendale Avenue
Green Bay, WI 54313

Re: NextMedia Application for 2244 Shawano Avenue

Dear Mr. Korotev:

Thank you for your detailed note regarding the application for 2244 Shawano Avenue. We have concerns as to your reasoning and wanted to raise them now in hopes of avoiding an appeal.

First, we are not proposing to increase the height of the sign. As you know, the Village of Howard's code dictates that the height of signs is measured using the grade of the street next to which the sign is located. Sec. 50-1220 (Definitions) of the code states that Grade "means the elevation or level of the street closest to a sign, measured at the street's centerline", and Height is defined as "the vertical distance, measured from the grade at the street right-of-way line where the sign is located, to the highest point of such sign." This is a standard manner in which to measure the height of signs, since topography should not dictate sign visibility to the roadway. Most state and local codes measure sign height in this way. The sign's height is currently 22 feet and the sign's height after realignment will be 22 feet (as defined by the Village's code). This is the case irrespective of the fact that Highway 29 will be raised by another 22 feet at that point.

Second, we do not agree that realigned signs must use all of the same structural elements. Other parts of the code mandate the use of materials and designs that meet the current building code. Please review these elements of the code. Surely, it is in the Village's best interest to have the safest and most attractive sign possible.

Third, we are not proposing to make the sign a digital sign. Our engineering plans were developed to allow for such an installation in the future (when and if the Village recognizes the value of LED displays). We do not propose to add the LED face until such time, however.

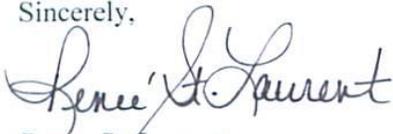
ATTACHMENT XV



Based on these concerns it is our hope that you will reconsider your denial and issue the requested permit. At the very least, your reasons for denial should be retracted and restated.

Thank you and please call me if I can assist.

Sincerely,



Renee St-Laurent
Real Estate Manager