Law Offices
NEILL, MARQUIS, OSKING & HALE, PLLC
311 South Second Street, Suite 200
Fort Pierce, Florida 34950

Richard V. Neill, Jr. +☆
Renée Marquis-Abrams*
Ian Eielson Osking☆
Brandon M. Hale
Matthew London

Mailing Address:
Post Office Box 1270
Fort Pierce, FL 34954-1270
Telephone: (772) 464-8200
Fax: (772)464-2566

***Board Certified Wills, Trusts, & Estates Lawyer**
☆Certified Circuit Civil/County Court Mediator
+ Board Certified Civil Trial Lawyer

July 28, 2026

CITY OF FORT PIERCE
c/o Linda Cox, City Clerk
100 N. U.S. Highway 1
Fort Pierce, FL 34950

RE: **OUTLINE OF ARGUMENT IN SUPPORT OF APPEAL** of Board of Adjustment Decision
Date of Decision: May 28, 2026
Property: 1710 N 25th Street, Fort Pierce, FL 34950
Project: PZVAR2026-00001

Good day,

As required by City ordinance and code, please find the below outline of the argument that will be presented to the City Commission on August 3, 2026, in support of this Applicants appeal of that decision by the Board of Adjustment and at which time the Applicant will be asking the City Commission to reverse the decision of the Board of Adjustment so as to grant the requested variance so this applicant may be permitted to increase the height of its board to the same degree as those other similarly situated members of our community have.

As evidence in this matter, the applicant will be presenting the applicant's Variance Application, files for Permit #22-4085 (both the original application and the second application to increase the height to 25' feet), City of Fort Pierce Land Development Code Chapter 117, transcript of Board of Adjustment hearing (pertinent portions), and a picture of that Like Property showing the billboard that was permitted.

At the hearing, it is anticipated that the following witnesses will be called: Scotty Shivar (c/o Ian E. Osking, Esq., 311 S. 2nd Street, Suite 200, Fort Pierce, FL 34950), Kevin Freeman (Director of Planning, City of Fort Pierce, c/o Sara Hedges, City Attorney, 100 N. U.S. Highway 1, Fort Pierce, FL 34950), Kerri Driver (Senior Planner, City of Fort Pierce c/o Sara Hedges, City Attorney, 100 N. U.S. Highway 1, Fort Pierce, FL 34950),

Additionally and specifically arguing the factors to consider in deciding whether to grant or deny a variance application it is clear that the Board should have granted the application:

There are special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district.

Here the (as the Applicant has already applied for a permit and been denied for the height of 25') the special circumstances are that this parcel or property is uniquely small in area and is located in close proximity to a traffic light. These issues result in this parcel being a poor candidate for development as there just is not room for traditional commercial development. Additionally, the City views this parcel as being to small in size to support the height requested by the Applicant. This is a unique circumstance that is peculiar to this parcel as it is not being applied in the same way to other parcels.

Those special conditions and circumstances do not result from actions of the applicant.

There is no dispute here. This applicant did not create these conditions and circumstances and there is no evidence to support otherwise.

The literal interpretation of the provisions of the zoning ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the ordinance and would result in unnecessary and undue hardship on the applicant.

This factor is the most serious and important for consideration. A literal reading of the Code would prohibit a 25' billboard sign from being located on this Parcel of property (or any other parcel that is of similar size). But, other similarly situated parcels within the City (being small parcels located within the same zoning district) have been permitted by the City to have 25' billboards erected and permitted to be placed upon them. This clearly results in an unnecessary and undue hardship on this applicant.

Further the plain language of the City sign ordinance would permit an oversized sign to be constructed at the height of 25' and the City by applying the height restrictions applicable to ground signs generally violates the well established rules of statutory interpretation under Florida law. Specifically, as applied, the City could never approve a sign that is in excess of 25', even though the Code permits off-premises signs (which is what a billboard is defined as, per Code) to be up to 25' in height. Accordingly the City's interpretation of the Code is being applied here due to the unique size and condition of this property .

The variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure.

The Granting of this variance is the minimum that will make the reasonable use of this parcel. Specifically, the City, by permitting other properties and landowners to develop 25' billboards, has already determined that such a use is the reasonable use for similarly situated parcels.

The granting of the variance will be in harmony with the general intent and purpose of the ordinance codified in this section and such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

Again, the City (by its permitting of other properties to have 25' billboards) has already determined that this variance is in harmony with the general intent and purpose of the Code and is not injurious to the area or determinantal to public welfare.

Further, both the Florida Constitution (at Art. I, §2, Fla. Const.) and the United States Constitution (at Amend. XIV, U.S. Const.) provide all equal protection of the law. Specifically, equal protection requires municipalities to treat all as equals and to refrain from selectively enforcing the laws against one vs another and to refrain from interpreting the laws differently and applying them differently as between person (or companies). In the instant matter, it is clear that the City has applied or interpreted the City Code differently as to this Applicant (in which the request has been denied) compared to other similarly situated applicants and requests. What was acceptable previously must be acceptable now.

Specifically, in 2022, the property located at 532 US Highway 1, Fort Pierce, FL 34950 was approved for construction of a billboard at 20' in height (Permit # 22-4085) (which is in excess of the height limitations being enforced upon this Applicant). Then in 2025 the City subsequently granted and approved that same property for billboard at an increased height of 25'(permit #: CBLDG-2024-00050) (again even further in excess). That subject property is of similar size, shape, configuration, and location as this Applicant's property. Further, that parcel enjoys the same zoning as this Subject Parcel. The City cannot treat that parcel better or different than this Applicant's parcel. All must be equal.

In this matter, it is clear that the City has singled out this project as a class of one and has treated it differently from other similarly situated properties with no rational basis. This is a clear violation of the equal protection rights afforded to this applicant per 42 U.S.C.S. §1983. City Nat'l Bank of Fla. V. City of Tampa, 67 So. 3d 293 (Fla. 2d DCA 2011) (therein a zoning administrator, for the first time ever, interpreted the ordinances differently and the Appellate Court held that such a change singled out that applicant and violated the equal protection clause under the United States Constitution); *see also* Bondar v. Town of Jupiter Inlet Colony, 321 So.3d 774 (Fla. 4th DCA 2021) (therein the Fourth District Court of Appeals maintained that a property owner can maintain an equal protection claim based upon land use regulations where the land owner is or has been treated differently from other similarly situated land owners and there is no rational basis for the difference in treatment).

Further the plain language of the City sign ordinance would permit an off premises sign to be constructed at the height of 25' and the City by applying the height restrictions applicable to ground signs generally violates the well-established rules of statutory interpretation under Florida law. Specifically when construing legislation effect must be given to every work phrase, sentence, and part of an ordinance and construction that renders a part of an ordinance meaningless or superfluous must avoided. Fla. Dep't of Revenue v. Fla. Mun. Power Agency, 789 So.2d 320 (Fla. 2001). Accordingly the City's interpretation of the Code prohibits the meaningful use of the Parcel and deprives it, as stated above, of those rights and privileges that are shared by similarly situated parcels of property and the owners thereof.

RELIEF SOUGHT

The Applicant is requesting the City Commission to reverse the decision of the Board of Adjustment and to grant this Applicant's variance request to permit this Applicant to construct an electronic billboard up to a maximum height of 25' on the subject parcel. OR the City Commission is requested to reverse the decision of the Board of Adjustment to grant the applicant's request for a variance with conditions (such as landscaping requirements or similar).

We greatly appreciate the time and consideration of the members of the Commission and all City Staff.

Very truly yours,

/s/ Ian E. Osking
Ian E. Osking, Esq.
IEO/
Enclosures