

Zoning Board of Adjustment

City of Millville

November 2, 2023

4th Floor Commission Chamber

6:00 PM

1. Open Public Meetings Act Statement Of Conformance:

"This meeting is being conducted in accordance with the Open Public Meetings Act of 1975, was advertised, posted, and made available to the public as required by Statute. The secretary is directed to include this statement in the minutes of this meeting."

2. ROLL CALL

Kevin Smaniotto, Chairman	(12/19/25)
William B Smith, Vice Chairman	(12/31/26)
John Worthington	(12/31/23)
Paul Williams	(12/31/24)
Timothy Carty	(02/07/25)
William Beck	(12/31/26)
Ricardo Lim	(12/31/26)
Vacant, Alt. 1	(12/07/23)
Angeline Broomhall, Alt. 2	(02/01/24)
Vacant, Alt. 3	(12/21/23)
Vacant, Alt. 4	(06/08/24)

3. MINUTES OF THE PREVIOUS MEETING

3.1. October 5, 2023 Minutes

Documents:

[ZB MINUTES OCTOBER 5, 2023.PDF](#)

4. RESOLUTIONS

4.1. Resolution #18-2023 - Levoy Theater Reservation Society, Inc.

Levoy Theater Reservation Society, Inc., 126-130 High Street, Block 416, Lot 3, Downtown Commercial Zone, Requesting D Variance to install upgraded signage with LED panels, Approval.

Documents:

[18-2023ZB LEVOY THEATER RESOLUTION.PDF](#)

5. CORRESPONDENCE

6. **APPLICATIONS**
7. **OTHER BUSINESS**
8. **ADJOURNMENT**

**Millville Zoning Board Meeting
Held October 5, 2023
Minutes**

PUBLIC MEETING

Members of the Millville Zoning Board met on the above date for their regularly scheduled monthly meeting in the Richard C McCarthy Chamber, 4th floor of City Hall. Vice Chairman Smith called the meeting to order at 6:00 PM and announced that this meeting was being conducted in accordance with the Open Public Meetings Act of 1975, was advertised, posted, and made available to the public as required by Statute.

The Secretary called roll and found those in attendance were Mr. Worthington, Mr. Williams, Mr. Beck, Mr. Lim, Mr. Carty, and Chairman Smaniotto. Also, present were Ms. Beth White, Zoning Board Solicitor, Mr. Wayne Caregnato, City Zoning Officer, Ms. Michelle Nothaft, City Asst. Engineer, Ms. Barbara Fegley, City Planner, and Itzel Torres Secretary.

MINUTES OF THE PREVIOUS MEETING

Mr. Williams made a motion to approve the September 7, 2023, regular board meeting minutes; Mr. Beck seconded the motion. No Roll Call was taken.

RESOLUTIONS –

Resolution #16-2023ZB – Daniel & Allison Flanigan, 9 Bethel Rd., Block 21, Lot 48, AC Agricultural Conservation, C Variance to construct a single-family residence. Mr. Beck made a motion to approve, seconded by Mr. Williams. In favor – Mr. Lim, Mr. Beck, Mr. Williams, and Chairman Smaniotto. Abstain – Mr. Carty and Mr. Worthington

Resolution #17-2023ZB – Joseph Chiarello, 374 Esibill Ave, Block 67, Lot 3, R-15 Residential, C Variance to replace current shed for larger shed. Mr. Beck made a motion to approve, seconded by Mr. Williams. In favor – Mr. Williams, Mr. Beck, Mr. Lim, and Chairman Smaniotto. Abstain - Mr. Carty and Mr. Worthington.

CORRESPONDENCE –

APPLICATIONS-

App. #17-2023 – Levoy Theater Reservation Society, Inc., 126-130 High Street, Block 416, Lot 3, Downtown Commercial Zone, Requesting D Variance to install upgraded signage with LED panels. Nathan Van Emden on behalf of the applicant. Mr. Van Emden stated that the applicant is taking advantage of funding that will allow the applicant to change the sign and use LED panels. This will allow the applicant to change the message on the board without having to put a ladder up. Without the risk of people getting hurt. With time it will also help save money. Each time there is a new show that is advertised, the printing of a physical panel is needed. Phillip Van Emden is sworn in by Ms. White. Mr. Phillips Van Emden stated that the types of messages they are proposing would be primarily photos, posters, and names of the acts appearing at the theater. They would also like to display upcoming events in text format. The messages that are displayed would be related to the theater's operations. Mr. Phillip Van Emden stated that the Marquee now has fixed portions, backlit portions, and lights. They would like to change the panels that have the backlighting on them. These panels require Lucite and other plastic materials to be printed which are brought out in sheet forms. Mr. Phillip Van Emden stated that they use lifts and ladders to insert them. The duration of the messages would be 8 seconds to 30 minutes. If there is a need to change the message every 8 seconds, it would be just one picture at a time. Pictures could stay up longer; it could be an hour or 20 minutes. Right now, signs are usually up 24 hours at a time, or they would be up for a better part of the month before they get changed out. For the transition time, it is estimated to be between 1 to 3 seconds. Mr. Phillip Van Emden stated that he spoke with Urban Sighs, the contractor for the project. The panels will have automatic sensing devices to monitor the ambient light. The sign will be available 24 hours. The panels will be

turned off late at night and overnight. The expected time is between 6:00 a.m. to midnight but not always. The Marquee has 1,000 or 1,100 small lights, that part won't change the technology behind the display of the pictures in the 4 boxes. The brightness of the LED lights will be the same as the lighting of the backlight lights. Mr. Phillip Van Emden stated that they do not have the intent to have flashing lights. If variance is approved, the ability to advertise or promote substantially more events. They have approximately 110 events a year and always have 20 or 30 coming up. The current limitation of an ad display is 4 to 6 ads displayed a month or in 6 weeks. They are missing out 40% to 60% on the potential to advertise. The variance would also improve the ability to change out the events on demand. This will eliminate the unsafe use of a manlift on a high street. Theaters usually rely on advertisements to prosper and support surrounding merchants. Mr. Phillips Van Emden stated that approval is needed otherwise the funds will be lost. Mr. Beck asked about the weight of the panels. Mr. Phillip Van Emden stated that the company that built the Marquee is the same one that will be doing the retrofit of the LEDs and that no issues have been brought to his attention. Mr. Worthington asked if they were considering animation. Mr. Phillip Van Emden stated that they are not. Mr. Worthington asked if the panels would create a bigger inconvenience to the residence due to the change of the pictures in play. Mr. Phillip Van ZEMden stated that the LED lights will not be lit all night just from dawn to midnight. Mr. Worthington asked Mr. Caregnato if there was a rule regarding flashing lights. Mr. Caregnato stated that it cannot be a pop, he stated that it must be at least 8 seconds by state law. Mr. Williams asked if this would change the actual physical aspect of the Marquee that's there now. Mr. Phillip Van Emden stated that people would not notice the difference endless it was turned off. Chairman Smaniotto asked about the negative impacts on the apartment's renters across the street. Mr. Phillips Van Emden stated that they are not planning on making it into a spectacle. Exhibits presented were color pictures of the Levoy Theater. Chairman Smaniotto asked if all 4 screens were going to show the same message or if would rotate. Mr. Phillip Van Emden states that it would be confusing for drivers to display different images at once. Chairman Smaniotto asked about the amount of time that would take to install and will the sidewalk be blocked. Mr. Phillip Van Emden stated installation will be no more than a day or two. The modules are pre-built by the company to fit into the boxes. So, taking the boxes down will be an hour for each piece, and then putting in the new ones will be about the same. They already have wires and cabling; the control will be wireless. Mr. Worthington states that he sees the potential to draw more business by advertising more shows and creating more interest. Mr. Beck stated that as a resident of the downtown district, his first interaction with the Levoy Theater is as a pedestrian. He thinks that is going to be a major net improvement to Downtown and Millville's culture. No Public Comments. Motion to approve the application as summited with all the conditions that were mentioned about the duration of the signed and the transition, Mr. Worthington, seconded by Mr. Williams. In favor – Mr. Worthington, Mr. Carty, Mr. Williams, Mr. Beck, Mr. Lim, and Chairman Smaniotto

OTHER BUSINESS-

ADJOURNMENT-

Mr. Williams made a motion to adjourn, seconded by Mr. Beck. Meeting adjourned atm 6:48 pm.

Respectfully Submitted by:

Itzel Torres, Board Secretary

**Resolution
of the
City of Millville
Zoning Board of Adjustment
Cumberland County
New Jersey**

RESOLUTION NO. 18-2023ZB

WHEREAS, Levoy Theatre Preservation Society, Inc., with mailing address P.O. Box 678, Millville, NJ, has made application to the Millville Zoning Board of Adjustment seeking a Use Variance for Signage that includes LED Panels on the façade of the building at a property located at 126-130 High Street and known on the Official Tax Maps of the City of Millville as Block 416, Lot 3, Tax Map Sheet 46 and located in the DC-Downtown Commercial Zoning District; and

WHEREAS, upon a finding that the applicant had provided proper mailed and published notices and that jurisdiction was proper in the Board this application was heard by the City of Millville Zoning Board at its regular meeting of October 5, 2023; and

WHEREAS, the applicant was represented by Nathan Van Embden, Esq. Mr. Van Embden provided a presentation; and

WHEREAS, the applicant's representative, Philip Van Embden, was sworn, and offered his testimony in support of the application; and

WHEREAS, the Board has made the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The applicant is the owner of the subject property, and therefore has standing to bring this matter before the Board.

2. The applicant has provided proper mailed and published notices of hearing, and jurisdiction is proper in the Board.

3. Application has been made for a Use Variance for Signage that includes LED Panels which is an upgrade to the current signage on the façade of the building at a property located at 126-130 High Street and known on the Official Tax Maps of the City of Millville as Block 416, Lot 3, Tax Map Sheet 46 and located in the DC-Downtown Commercial Zoning District.

4. The applicant has submitted the following documents in support of its application:

- A. City of Millville Zoning Board of Adjustment Application Form, dated 09/06/2023
- B. Disclosure Statement, dated 09/06/2023.
- C. Narrative to Variance Application.
- D. Optec Displays, Inc. Infinity-SMD Outdoor LED Display Technology, 3 Information Sheets .
- E. Shell & Structure Elevations and Details, Levoy Theatre Rehabilitation Plans prepared by David J. Rudzenski, AIA of R2Architects, LLC including the following Sheets:
 - i. A-2.3 Enlarged Front Elevation & Marquee dated 04/01/11 with revisions.
 - ii. A-2.4 Marquee Detail RCP & Elevations dated 04/01/11 with revisions
 - iii. Enlarged Front Elevation & Marquee dated 04/30/23
- F. Photos of Levoy Theatre Front Façade, 2 Sheets
- G. Proper application and escrow fees as required by ordinance.

5. The Board's Engineer, Wayne Johnson, and Board's Planner Barbara Fegley, submitted an Engineering & Planning Report dated September 27, 2023 commenting on the application which is hereby incorporated into the record.

6. Ordinance §30-264A(2) regulates signs permitted by a theatre use. The ordinance permits one sign attached flat against the front of the building not exceeding an

area equivalent to 5% of the front of the building or 100 square feet in area, whichever is smaller.

7. Mr. Nathan Van Embden provided that the Applicant proposes no increase in square footage from the existing signs to the new LED panel digital signs. The Applicant seeks to avoid the cost of printing and fabricating a hard panel to slide into the slot to advertise a given show and has applied for a use variance to permit the use of LED screens that will permit advertising of multiple shows and activities without the cost of fabrication.

8. Mr. N. Van Embden further provided that the Applicant proposes two signs on the front of the marquee façade, and one each on the north and south ends of the marquee. The proposed front signs are 15' 0" x 2'4" and the north and south side signs are 8'10" x 2'4".

9. Ordinance §30-264A(2) regulates signs permitted by a theatre use. The ordinance permits one sign attached flat against the front of the building not exceeding an area equivalent to 5% of the front of the building or 100 square feet in area, whichever is smaller.

10. The Levoy Theatre site has previously received approval for the current sign structure and function which includes back-lit display panels.

11. Currently, the Levoy Theatre has an architectural period appropriate sign with internal replaceable backlit panels two (2) in front and one (1) each on the North and South faces of the sign (endcaps). The backlighting is fluorescent.

12. The reason for the use variance is the type of sign proposed which includes or potentially includes changeable copy, digital display, message boards and flashing signs. All of these types of signs are defined in the zoning ordinance, however, §30-264A(2) is silent on whether or not they are permitted for a theatre use. The only type of the above referenced sign that is prohibited in all zoning districts is a flashing sign.

13. Applicant's representative, Mr. Philip Van Emden stated that the types of messages they are proposing would be primarily photos, posters, and names of the acts appearing at the theater. They would also like to display upcoming events in text format. The messages that are displayed would be related to the theater's operations.

14. Mr. P Van Emden stated that the Marquee now has fixed portions, backlit portions, and lights. They would like to change the panels that are backlit. These panels

require Lucite and other plastic materials to be printed which are brought out in sheet forms. They use lifts and ladders to insert them

15. Mr. P. Van Embden testified that the duration of the messages on the proposed sign would be eight (8) seconds to thirty (30) minutes. If there is a need to change the message every 8 seconds, it would be just one picture at a time. Pictures could stay up longer; it could be an hour or twenty (20) minutes. For the transition time, it is estimated to be between one (1) to three (3) seconds.

16. Mr. P. Van Embden continued that he spoke with Urban Signs, the contractor for the project. The panels will have automatic sensing devices to monitor the ambient light.

17. Mr. P. Van Embden stated the sign will be available 24 hours. The panels will be turned off late at night and overnight. The expected time is between 6:00 a.m. to midnight but not always.

18. The current marquee has 1,000 or 1,100 small lights, that part won't change according to Mr. P. Van Embden.

19. Mr. P. Van Emden stated that they do not have the intent to have flashing lights.

20. Mr. P. Van Embden stated if the variance is approved, they will have the ability to advertise/promote substantially more events. They have approximately 110 events a year and always have 20 or 30 coming up. The current limitation of an ad display is 4 to 6 ads displayed a month or in 6 weeks. They are missing out 40% to 60% on the potential to advertise. The variance would also improve the ability to change out the events on demand. This will eliminate the unsafe use of a manlift on a high street. Theaters usually rely on advertisements to prosper as a theater and support surrounding merchants.

21. Zoning Board Member, Mr. Will Beck asked about the weight of the panels. Mr. P. Van Emden stated that the company that built the Marquee is the same one that will be doing the retrofit of the LEDs and that no issues have been brought to his attention.

22. Zoning Board Member, Mr. John Worthington asked if they were considering animation. Mr. P. Van Emden stated that they are not.

23. Mr. Worthington asked if the panels would create a bigger inconvenience to the residence due to the change of the pictures in the display. Mr. P. Van Embden stated that the LED lights will not be lit all night just from dawn to midnight at the latest.

24. City Zoning Official, Mr. Wayne Caregnstated that it cannot be a “pop” transition, he stated that it must be at least 8 seconds by state law. Mr. P. Van Embden confirmed they would abide by the state law.

25. Zoning Board Member, Mr. Paul Williams, asked if this upgrade would change the actual physical aspect of the Marquee that is there currently. Mr. P. Van Emden stated that people would not notice the difference unless the sign was turned off.

26. Zoning Board Chairman, Kevin Smaniotto, asked about the negative impacts on the apartment’s renters across the street. Mr. P. Van Emden stated that they are not planning on making it into a spectacle, and there would be no change in impact from what is there currently.

27. Chairman Smaniotto asked if all 4 screens were going to show the same message or if they would rotate. Mr. P. Van Emden stated that it would be confusing for drivers to display different images at once, and the display will not negatively impact drivers.

28. Chairman Smaniotto asked about the amount of time that anticipated to install and will the sidewalk be blocked. Mr. P. Van Emden stated installation will be no more than a day or two. The modules are pre-built by the company to fit into the boxes. He estimated taking the boxes down will be an hour for each piece, and then putting in the new ones will be about the same. They already have wires and cabling in place; the control will be wireless.

29. Mr. Worthington stated that he sees the potential to draw more business by advertising more shows and creating more interest.

30. Mr. Beck stated that as a resident of the downtown district, his first interaction with the Levoy Theater is as a pedestrian. He thinks that is going to be a major net improvement to Downtown and Millville’s culture.

31. The Board accepts the testimony of the applicant, and the City’s Zoning Officer as credible and probative.

17. No public comment was offered on the application.

CONCLUSIONS OF LAW

1. The Board finds that the proposed use variance can be approved pursuant to N.J.S.A. 40:55D-70(d)(1), because with regard to this particular property the benefits of the community of providing solar energy on this property that are consistent with development of the neighborhood outweigh any detriment to the public good or impairment of the zone plan that may flow from these relatively minor deviations from applicable ordinance standards. The Board has determined that the applicant has met both the positive and negative criteria and does not perceive any substantial detriment to the public good or impairment of the zone plan which would flow from the proposed development.

Therefore, the Board finds it appropriate, pursuant to N.J.S.A. 40:55D-70(d)(1), and subject to appropriate conditions, to grant the requested use variance.

In addition to the conclusions set forth above the applicant has fulfilled the procedural requirements for the proposed development. Therefore, the requested use variance should be granted.

NOW, BE IT RESOLVED by the City of Millville Zoning Board of Adjustment in the County of Cumberland, State of New Jersey that the application of Levoy Theatre Preservation Society, Inc., with mailing address P.O. Box 678, Millville, NJ, seeking a Use Variance for Signage that includes LED Panels on the façade of the building at a property located at 126-130 High Street and known on the Official Tax Maps of the City of Millville as Block 416, Lot 3, Tax Map Sheet 46 and located in the DC-Downtown Commercial Zoning District, be and hereby is **GRANTED**, subject to the following conditions:

1. The Board relied upon the testimony of the applicant and factual findings discussed above in this Resolution, and such testimony and findings are incorporated as conditions of this approval as though set forth herein.

2. Compliance with all federal, state, county and local laws, rules, regulations and any other governmental approvals which may be required in implementation of this development, including but not limited to: City of Millville Construction Office.

3. If another governmental agency grants a waiver or variance of a regulation, affecting this approval or the conditions attached to it, then this Board shall have the right

to review that issue as it relates to this approval and these conditions and modify or amend same.

4. The applicant shall pursue with good faith and due diligence any and all additional approvals as may be required and shall provide the Board with copies of all reports and approvals from same, including copies of any and all applications filed.

5. Publication of a brief notice of this decision in the official newspaper of the municipality within 10 days of the date thereof.

The conditions of this approval shall run with the land and be binding on all successors in interest, purchasers and assignees. In the event that the applicant does not perfect this approval within one year of the date hereof (or such extended date as may be provided by statute or Board action), this approval shall be void, unless, for good cause shown, the applicant seeks extension thereof.

ROLL CALL

Motion to Approve:
Seconded:

MEMBER	YEA	NAY	ABSENT	ABSTAIN	EXCUSED
Kevin Smaniotto, Chairman					
William Smith, Vice-Chairman					
John Worthington					
Paul Williams					
Timothy Carty					
William Beck					
Ricardo Lim					
Vacant, Alt. I					
Angeline Broomhall, Alt. II					
Vacant, Alt III					
Vacant, Alt. IV					

AND BE IT FURTHER RESOLVED that a copy of this Resolution be forwarded to the applicant and to all who request a copy for a reasonable fee. In addition, a copy of this Resolution shall be filed in the Office of the Zoning Board Secretary of the City of Millville.

By: _____
Itzel Torres, Board Secretary

By: _____
Kevin Smaniotto, Chairman

Dated:

CERTIFICATION

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the City of Millville at a meeting of October 5, 2023, memorializing action taken by the Board at its regular meeting held on November 2, 2023.

By: _____
Itzel Torres, Board Secretary