

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: BO BILOBRAN & MICHAEL MOUTZALIAS

(Case No. 11215)

A hearing was held after due notice on June 3, 2013. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a special use exception for a seasonal produce stand for a period of five (5) years.

Findings of Fact

The Board found that the Applicants were requesting a special use exception for a seasonal produce stand for a period of five (5) years. The Applicants have requested that the aforementioned requested special use exception be granted as it pertains to certain real property located west of Route 1 (Coastal Highway) south of Bayberry Road, being Lot 3, Block K, within Middlesex Beach development; said property being identified as Sussex County Tax Map Parcel Number 1-34-17.16-47.00. After a hearing, the Board made the following findings of fact:

1. Steven Bilobran and Michael Moutzalias were sworn in to testify about the Application.
2. The Board found that Mr. Biloban testified that the Property is zoned B-1, Neighborhood Business.
3. The Board found that Mr. Biloban testified that the temporary produce stand will be a free-standing, wagon-style stand.
4. The Board found that Mr. Biloban testified that Applicants have leased the Property until September 1, 2013, at which time the stand will be removed.
5. The Board found that Mr. Biloban testified that he reached out to Middlesex Beach Homeowners Association to inform them of his plans.
6. The Board found that Mr. Biloban testified that there will not be a tent structure on the Property.
7. The Board found that Mr. Biloban testified that there is an existing gravel parking area which can hold fourteen (14) parking spaces.
8. The Board found that Mr. Biloban testified that the Delaware Department of Transportation ("DelDOT") has approved the use of the site for the produce stand.
9. The Board found that Mr. Biloban testified that the Applicants expect mostly foot and bike traffic associated with the stand.
10. The Board found that Mr. Biloban testified that setback requirements will be met.
11. The Board found that Mr. Biloban testified that the trash will be removed from the site daily.
12. The Board found that Mr. Biloban testified that the structures can be removed within twenty four (24) hours in the event of severe weather and that the wagons can be secured during an unexpected storm.
13. The Board found that Mr. Biloban testified that the Applicants are seeking approval for one (1) year.
14. The Board found that Mr. Biloban testified that the proposed produce stand is a low impact business compared to what the Applicants could put on the Property.
15. The Board found that Mr. Biloban testified that the Applicants plan to have two (2) employees on site at all times.

16. The Board found that Mr. Biloban testified that there will not be portable toilets on site but the employees will have the ability to leave the Property for needed breaks.
17. The Board found that Mr. Biloban testified that he plans to designate the parking area with posts and nautical rope.
18. The Board found that Mr. Biloban testified that the produce stand will not have a negative effect to the surrounding businesses.
19. The Board found that Mr. Biloban testified that there are three other businesses in the area including a donut shop, a realtor's office, and an attorney's office.
20. The Board found that Mr. Biloban testified that there will be no additional signage.
21. The Board found that Mr. Biloban testified that the stand will be open seven (7) days per week from 8:00 a.m. to 8:00 p.m.
22. The Board found that Mr. Biloban testified that the Applicant will not light the area but will run temporary electric to the stand.
23. The Board found that Mr. Biloban testified that the Applicants have operated produce stands for over twenty (20) years.
24. The Board found that Mr. Biloban testified that a refrigerated truck used to store produce overnight will not stay on the site.
25. The Board found that Mr. Bilobran submitted pictures for the Board to review.
26. The Board found that Cathy Dryden was sworn in and testified in opposition to the Application.
27. The Board found that Ms. Dryden testified that she owns an adjacent property.
28. The Board found that Ms. Dryden testified that she believes traveling to the Property by foot is dangerous.
29. The Board found that Ms. Dryden testified that there is no designated parking area.
30. The Board found that Ms. Dryden testified that she is concerned patrons will park on her property.
31. The Board found that Ms. Dryden testified that, in August 2012, a yard sale was held on this site and cars were parked on the side of Route 1.
32. The Board found that Ms. Dryden testified that there are signs to prohibit parking, however, it does not stop people from parking on the side of the road.
33. The Board found that Ms. Dryden testified that there are plenty of produce stands in the area.
34. The Board found that Ms. Dryden testified that she feels this use is not permitted on the Property.
35. The Board found that Ms. Dryden testified that the Property is subject to the rules of Middlesex Beach and that Middlesex Beach requires permanent toilets be installed on the Property.
36. The Board found that Bruce Schoonover was sworn in and testified in opposition to the Application.
37. The Board found that Mr. Schoonover testified that he has lived in the area since 1980 and has served on the Homeowners Association throughout the years.
38. The Board found that Mr. Schoonover testified that his property is west of the site.
39. The Board found that Mr. Schoonover testified that Middlesex Beach is a unique development.
40. The Board found that Mr. Schoonover testified that pedestrian traffic has always been a large concern.
41. The Board found that Mr. Schoonover testified that there are five (5) designated crosswalks in place to gain access to the beach.
42. The Board found that Mr. Schoonover testified that he does not believe the produce stand is a permissible use.

43. The Board found that Mr. Biloban testified that the barbeque service noted on the survey was a typographical error and there will not be a barbeque stand on the Property.
44. The Board found that Mr. Schoonover testified that the produce stand does not meet the special use exception standard because the proposed location of the stand will have an adverse effect to the surrounding properties.
45. The Board found that Mr. Schoonover testified that the parking is designed so that cars will have to back out onto Bayberry Road, which is owned by the Middlesex Beach Homeowners Association.
46. The Board found that Mr. Schoonover testified that there are regular walkers on Bayberry Road throughout the day.
47. The Board found that Mr. Schoonover testified that businesses on Bridge Road have had to reconfigure entrances and parking to prevent backing out on the road.
48. The Board found that Mr. Schoonover testified that he submitted a letter to the Board on May 24, 2013.
49. The Board found that Mr. Schoonover testified that he would have less concerns if the parking access was limited by ropes.
50. The Board found that Mr. Schoonover testified that he has concerns about sanitation because Middlesex Beach bans portable toilets.
51. The Board found that Mr. Schoonover testified that the Applicants have addressed his concerns about trash.
52. The Board found that Eileen Waxman was sworn in and testified in opposition to the Application.
53. The Board found that Ms. Waxman testified that the roads in the development are twenty five (25) feet wide on average which is barely wide enough for two (2) cars.
54. The Board found that Ms. Waxman testified that there is no parking permitted on the roads in the development and that the commercial lots have access from Route 1.
55. The Board found that Ms. Waxman testified that they have put up fences in the past to prevent access to their roads.
56. The Board found that Ms. Waxman testified that the roads in the development are dead end streets.
57. The Board found that Ms. Waxman testified that cars backing out of this property will have to cross over the pedestrian crosswalk and that this is a great safety concern.
58. The Board found that Ms. Waxman testified that the Property was used as a real estate office ten (10) years ago.
59. The Board found that Ms. Waxman testified that she has concerns about the trash and sanitary issues.
60. The Board found that Ms. Waxman testified that she would rather see the approval for this stand be granted for only one (1) year.
61. The Board found that Ms. Waxman testified that her other concerns have been addressed but she is very concerned about the vehicles backing out onto Bayberry Lane.
62. The Board found that Ms. Waxman submitted a booklet to the Board for review.
63. The Board found that Jeff Waxman was sworn in and testified in opposition to the Application.
64. The Board found that Mr. Waxman testified that past actions are a good predictor of future issues.
65. The Board found that Mr. Waxman testified that he was concerned about inconsistencies in the Application.

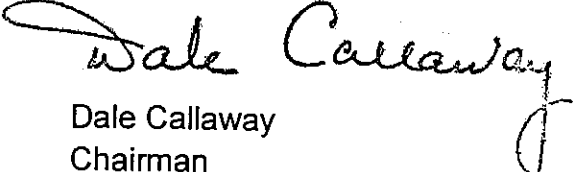
66. The Board found that Mr. Waxman testified that the Applicant stated to the Homeowners Association he was seeking a one (1) year approval but the Application states he is requesting a five (5) year approval.
67. The Board found that Mr. Waxman testified that he wants to know who enforces the promises made tonight are met.
68. The Board found that Mr. Waxman testified that he would support an approval for a one (1) year period.
69. The Board found that Mr. Bilobran testified that he has no objection to a one (1) year approval.
70. The Board found that Mr. Bilobran testified that the other businesses on this site always had head on parking and that the State right-of-way limits the parking on the Property.
71. The Board found that one (1) party appeared in support of the Application.
72. The Board found that the Office of Planning & Zoning received one (1) letter in support of the Application.
73. The Board found that eleven (11) parties appeared in opposition to the Application.
74. The Board found that the Office of Planning & Zoning received twelve (12) letters in opposition to the Application.
75. Based on the findings above and the testimony presented at the public hearing and the public record, the Board determined that the Application met the standards for granting a special use exception because the proposed use does not substantially affect adversely the uses of neighboring and adjacent properties. The Board granted the use for a period of one (1) year.

The Board approved the special use exception application for a period of one (1) year finding that it met the standards for granting a special use exception.

Decision of the Board

Upon motion duly made and seconded, the Application was approved. The Board Members voting to approve the Application were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, and Mr. Norman Rickard. Mr. Brent Workman voted against the Motion to Approve the Application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


Dale Callaway
Chairman

If the use is not established within one (1) year from the date below the application becomes void.

Date July 16, 2013