

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DAVID L. BANKS / RT. 26 CAR WASH, INC.

(Case No. 11448)

A hearing was held after due notice on September 22, 2014. 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 variance from the separation requirement from another off-premise sign and a special use exception to place an off-premise sign.

Findings of Fact

The Board found that the Applicants were seeking a variance of 165 feet from the three hundred (300) separation requirement from another off-premise sign and a special use exception to place an off-premise sign. This application pertains to certain real property located southwest of Route 26 (Atlantic Avenue) 70 feet northwest of Route 17 (Roxana Road); said property being identified as Sussex County Tax Map Parcel Number 1-34-11.00-179.04. After a hearing, the Board made the following findings of fact:

1. The Board found that the Office of Planning & Zoning received no letters regarding to the Application.
2. David Banks was sworn in to testify about the Application and David C. Hutt, Esquire, presented the Application to the Board.
3. The Board found that Mr. Hutt submitted exhibits and two (2) letters of support for the Board to review.
4. The Board found that Mr. Hutt stated that Mr. Banks is the principal of Rt. 26 Car Wash, Inc.
5. The Board found that Mr. Hutt stated that the Property is zoned C-1 (commercial), and is less than one acre in size.
6. The Board found that Mr. Hutt stated that the Property is surrounded by other commercial property and is near the intersection of Route 26 and Route 17.
7. The Board found that Mr. Hutt stated that a car wash and a telecommunications tower are located on the Property.
8. The Board found that Mr. Hutt stated that the Property is unique as the existing building is closer to Route 26 than is now allowed by the Sussex County Code.
9. The Board found that Mr. Hutt stated that the Delaware Department of Transportation ("DelDOT") has expanded Route 26 and has taken a portion of the Applicant's property.
10. The Board found that Mr. Hutt stated that the existing car wash building now encroaches due to the expansion.
11. The Board found that Mr. Hutt stated that the proposed billboard will be 138 feet away from an existing billboard across the street.
12. The Board found that Mr. Hutt stated that the proposed billboard will cantilever over the existing building and will meet all square-footage, height and setback requirements.
13. The Board found that Mr. Hutt stated that there are ten (10) other billboards in the area and that the neighbors support the Application.
14. The Board found that Mr. Hutt stated that the billboard will not substantially adversely affect the neighbors or adjacent properties.
15. The Board found that Mr. Hutt stated that the Property is unique in size due to the DelDOT road expansion and existing building and tower.

16. The Board found that Mr. Hutt stated that the variance will enable reasonable use of the Property.
17. The Board found that Mr. Hutt stated that the difficulty has not been created by the Applicants.
18. The Board found that Mr. Hutt stated that the variance will not alter the character of the neighborhood and that the proposed billboard is consistent with the pattern of billboards in the area.
19. The Board found that Mr. Hutt stated that the variance requested is the minimum variance to afford relief.
20. The Board found that Mr. Banks, under oath, confirmed the statements made by Mr. Hutt.
21. The Board found that no parties appeared in support of or in opposition to the Application.
22. Based on the findings above and the testimony and exhibits 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 use does not substantially affect adversely the uses of adjacent or neighboring properties. The area surrounding the Property is commercial in nature and other billboards are located nearby. Neighbors have indicated support of the Application and there was no evidence presented that would indicate that the billboard would substantially affect adversely the uses of adjacent or neighboring properties.
23. Based on the findings above and the testimony and exhibits presented at the public hearing and the public record, the Board determined that the application met the standards for granting a variance. The Property is unique due to the DeIDOT road expansion and the proximity to other billboards. The Property cannot be developed in strict conformity with the Sussex County Zoning Code due to the unique conditions of the Property. The variance is necessary to enable reasonable use of the Property. The Applicants have made accommodations in the design of the billboard but still need the variance in order to place the billboard on the Property and the billboard is a reasonable use of the Property. The exceptional practical difficulty was not created by the Applicants. The variance will not alter the essential character of the neighborhood. There are other billboards in the area and the neighboring properties are commercial in nature. The variance will not be detrimental to the public welfare. The variance sought is the minimum variance necessary to afford relief.

The Board granted the special use exception and the variance application finding that it met the standards for granting a special use exception and a variance.

Decision of the Board

Upon motion duly made and seconded, the special use exception and variance application was approved. The Board Members in favor were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Members voted against the Motion to approve the special use exception and variance 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 November 18, 2014.