

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JAMES C. PARKS and DONNA R. PARKS

(Case No. 11486)

A hearing was held after due notice on November 17, 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 special use exception to place an off-premise sign and for variances from the maximum square footage, height requirement and side yard setback requirement.

Findings of Fact

The Board found that the Applicants were seeking a special use exception for an off-premise sign, a variance of twenty (20) feet from the fifty (50) feet side yard setback requirement for a proposed off-premise sign, a variance of ten (10) feet from the maximum height requirement of twenty-five (25) feet for an off-premise sign, and a variance of 276 square-feet from the maximum 300-square-feet allowed per side requirement for an off-premise sign. This application pertains to certain real property located southwest of Route One (Coastal Highway) approximately 800 feet southeast of Dartmouth Drive (911 Address: None Available); said property being identified as Sussex County Tax Map Parcel Number 3-34-6.00-495.00 & 497.05. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a portion of the tax map of the area, and a survey of the Property dated September 30, 2014.
2. The Board found that the Office of Planning and Zoning received two (2) letters in support of the Application and received no correspondence in opposition to the Application.
3. James Parks was sworn in to testify about the Application. David Hutt, Esquire, presented the case to the Board on behalf of the Applicants and submitted exhibits for the Board to review which included copies of the Application, deeds to the Property, survey, and photographs of the Property.
4. The Board found that Mr. Hutt stated that the Property is currently under contract for sale.
5. The Board found that Mr. Hutt stated that the Property consists of two (2) parcels which will be combined into one (1) lot if the Application is approved.
6. The Board found that Mr. Hutt stated that the Application is to relocate an existing, non-conforming billboard.
7. The Board found that Mr. Hutt stated that Jimmy Lynn's Seafood operates on the Property and that B&B Music and the Tenley Court shopping center are located nearby.
8. The Board found that Mr. Hutt stated that the Property is located along Route 1 and is zoned commercial.
9. The Board found that Mr. Hutt stated that the Property is oddly shaped.
10. The Board found that Mr. Hutt stated that lands immediately to the north of the Property are owned by the State of Delaware for a stormwater drainage facility for Route 1 and that the Delaware Department of Transportation ("DelDOT") has easements over the Property for pipes to convey water from Route 1 to the drainage facility.
11. The Board found that Mr. Hutt stated that the existing billboard is two-sided and is located on the north side of the Property in a low-lying area.

12. The Board found that Mr. Hutt stated that the existing billboard obstructs the view of Jimmy Lynn's Seafood and B&B Music.
13. The Board found that Mr. Hutt stated that a wooden area separates the Property from the stormwater management facility and from the Summerlyn community.
14. The Board found that Mr. Hutt stated that the proposed billboard will not be within 300 feet of any schools, churches, residential buildings or existing billboards.
15. The Board found that Mr. Hutt stated that the existing billboard is within 300 feet of residential buildings so the new billboard will eliminate that non-conformity.
16. The Board found that Mr. Hutt stated that the side yard setback variance would not be required once the Property is sold and the parcels are combined.
17. The Board found that Mr. Hutt stated that the existing billboard is very close to the side property line on the north side of the Property so that non-conformity will be eliminated as well.
18. The Board found that Mr. Hutt stated that the existing billboard is 16 feet by 32 feet and the proposed billboard will measure 12 feet by 48 feet.
19. The Board found that Mr. Hutt stated that the proposed sign will be 576 square-feet on each side.
20. The Board found that Mr. Hutt stated that the proposed sign is a standard sized sign and will be 35 feet tall.
21. The Board found that Mr. Hutt stated that the proposed billboard will be a steel monopole structure and that the existing billboard is a wooden structure.
22. The Board found that Mr. Hutt stated that the billboard would then be raised so as not to obstruct the views of Jimmy Lynn's Seafood and B&B Music.
23. The Board found that Mr. Hutt stated that the height variance would eliminate obstructions of neighboring and existing businesses
24. The Board found that Mr. Hutt stated that Jimmy Lynn's Seafood has a peak roof height of 41 feet and B&B Music has a peak roof height of 42.4 feet.
25. The Board found that Mr. Hutt stated that the Applicant is minimizing the height variance by using a shorter, but wider, sign.
26. The Board found that Mr. Hutt stated that B&B Music sits within the 60 feet front yard setback requirement and the building predates the sixty (60) feet front yard setback requirement.
27. The Board found that Mr. Hutt stated that three (3) variances are needed in order to relocate the billboard.
28. The Board found that Mr. Hutt stated that the owner of B&B Music supports the Application because his business will be more visible with the proposed billboard.
29. The Board found that Mr. Hutt stated that the proposed billboard will not substantially adversely affect the neighboring and adjacent properties.
30. The Board found that Mr. Hutt stated that the proposed billboard is less obstructive than the existing billboard.
31. The Board found that Mr. Hutt stated that placement of a billboard along Route 1 is consistent with the character of properties along Route 1 and there are similar billboards in the area along Route 1.
32. The Board found that Mr. Hutt stated that neighboring property owners support the Application.
33. The Board found that Mr. Hutt stated that the Property is unique due to its odd shape and the existing of the non-conforming billboard.
34. The Board found that Mr. Hutt stated that the Property cannot be otherwise developed in strict conformity with the Sussex County Zoning Code.
35. The Board found that Mr. Hutt stated that the variances are necessary to enable reasonable use of the Property.
36. The Board found that Mr. Hutt stated that the difficulty was not created by the Applicants and that the shape of the Property was created by DelDOT.

37. The Board found that Mr. Hutt stated that the Applicant did not place the B&B Music building within the front yard setback area.
38. The Board found that Mr. Hutt stated that the billboard will not alter the essential character of the neighborhood.
39. The Board found that Mr. Hutt stated that there is a wooded buffer between the Property from residential properties and that commercial neighbors support the Application.
40. The Board found that Mr. Hutt stated that the billboard is the same size or smaller than eleven (11) other signs along Route 1.
41. The Board found that Mr. Hutt stated that the billboard will enhance the uses of neighboring properties.
42. The Board found that Mr. Hutt stated that patrons of Jimmy Lynn's Seafood often complain about missing the restaurant because they cannot see it until it is too late.
43. The Board found that Mr. Parks affirmed the statements made by Mr. Hutt as being true and correct.
44. The Board found that no parties appeared in support of or in opposition to the Application.
45. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board found credible, persuasive, and un rebutted, the Board determined that the application met the standards for granting a special use exception. The findings below further support the Board's decision to approve the Application.
 - a. The Applicants demonstrated that the proposed billboard will not substantially affect adversely the uses of neighboring properties.
 - b. The existing billboard located on the Property will be relocated to a different location on the lot which location will better enhance the views of the business located thereon and of the businesses located on neighboring commercial properties.
 - c. The owner of the neighboring B&B Music business has indicated support for the Application.
 - d. A wooden buffer exists between the billboard and nearby residential properties thereby minimizing the impact of the billboard on those properties.
 - e. No evidence was presented that would indicate that the proposed billboard will substantially affect adversely the uses of neighboring and adjacent properties.
46. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board found credible, persuasive, and un rebutted, the Board determined that the application met the standards for granting a variance. The findings below further support the Board's decision to approve the Application.
 - a. As shown on the survey, the Property is unique in shape. The Property is also unique because an existing, non-conforming billboard is located thereon.
 - b. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code and the variances are necessary to enable continued reasonable use of the Property. The billboard is consistent with the size of other billboards along Route 1 and is a reasonable use of the Property.
 - c. The exceptional practical difficulty and unnecessary hardship were not created by the Applicants. The Applicants did not construct the B&B Music building which is obstructed by the existing billboard and the Applicants did not create the unusual shape of the Property. The proposed billboard improves views of neighboring properties and the obstruction of the views has been a problem for nearby businesses.
 - d. The variances will not alter the essential character of the neighborhood. The Applicants demonstrated that there are many other billboards of a

similar size and character along Route 1. The use is also not detrimental to the public welfare.

- e. The variances sought are the minimum variances necessary to afford relief. The Applicants have reconfigured the billboard to minimize its height and to reduce its impact on neighboring properties.
- f. The proposed billboard will also eliminate some of the non-conformities related to the existing billboard.

The Board granted the special use exception and 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 were 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 January 27, 2015.