

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JOHN M. SMUCKER and LINDA K. SMUCKER

(Case No. 11498)

A hearing was held after due notice on December 15, 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 a variance from the minimum separation requirement from a residential zoning.

Findings of Fact

The Board found that the Applicants were seeking a special use exception to place an off-premise sign and a variance of seventy (70) feet from the three hundred (300) feet separation requirement from public lands. This application pertains to certain real property located southwest of Route 113 (DuPont Boulevard) approximately 1,400 feet south of Road 213 (McColley's Chapel Road) (911 Address: None Available); said property being identified as Sussex County Tax Map Parcel Number 1-35-9.00-28.00. 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 an undated survey of the Property.
2. The Board found that the Office of Planning and Zoning received no letters regarding the Application.
3. John Smucker was sworn in to testify the Application and David Hutt, Esquire, presented the Application on behalf of the Applicants. Mr. Hutt submitted exhibits to the Board including a deed to the Property, photographs, and site plans for the Property dated October 3, 2014.
4. The Board found that Mr. Hutt stated that the Property is located north of Georgetown near the intersection of Route 113 and Redden Road and that Delmarva Sheds is located on the Property.
5. The Board found that Mr. Hutt stated that the Applicants purchased the Property in 2008.
6. The Board found that Mr. Hutt stated that the Property is zoned C-1.
7. The Board found that Mr. Hutt stated that there are other billboards of various sizes in the area.
8. The Board found that Mr. Hutt stated that the proposed steel monopole structure will comply with square-footage, height and setback requirements.
9. The Board found that Mr. Hutt stated that there are no dwellings, churches, or schools within 300 feet of the proposed billboard.
10. The Board found that Mr. Hutt stated that a separation variance is needed from public lands, which are owned by the State of Delaware located across the highway from the Property.
11. The Board found that Mr. Hutt stated that the lands across the highway are part of the Redden State Forest.
12. The Board found that Mr. Hutt stated that Delaware Department of Transportation ("DelDOT") is only concerned with billboards adjacent to their property not properties located across the street.
13. The Board found that Mr. Hutt stated that the proposed billboard is consistent with other billboards in the area which are also near lands owned by the State of Delaware.

14. The Board found that Mr. Hutt stated that there is no adverse effect on the lands owned by the State of Delaware.
15. The Board found that Mr. Hutt stated that there is a mixture of commercial and state lands surrounding the Property, which creates a unique situation.
16. The Board found that Mr. Hutt stated that the variance is necessary to enable reasonable use of the Property.
17. The Board found that Mr. Hutt stated that the difficulty was not created by the Applicants.
18. The Board found that Mr. Hutt stated that the Applicant has no control over which lands the State of Delaware owns or controls.
19. The Board found that Mr. Hutt stated that the billboard will not alter the character of the neighborhood and will not impair the uses of neighboring properties.
20. The Board found that Mr. Hutt stated that the variance requested is the minimum variance necessary to afford relief.
21. The Board found that Mr. Hutt stated that the proposed billboard will be sub-leased by the Applicants and will be leased upon completion of construction.
22. The Board found that Mr. Hutt stated that the proposed location for the billboard offers the best sight line and does not interfere with existing structures on the Property.
23. The Board found that Mr. Smucker, under oath, confirmed the statements made by Mr. Hutt as being true and correct.
24. The Board found that no parties appeared in support of or in opposition to the Application.
25. 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 proposed billboard will not substantially affect adversely the uses of neighboring and adjacent properties. Similar billboards are located in the area and the billboard is consistent with the commercial uses in the area. The billboard will meet all height and size requirements and is located along Route 113.
 - b. No evidence was presented that would indicate that the billboard would substantially affect adversely the uses of neighboring and adjacent properties.
26. 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. The Property is unique because it is a commercial property located along Route 113 in an area of mixed used, including forest land owned by the State of Delaware.
 - b. Due to the location of the State-owned lands, the Applicant is unable to place a billboard on the Property without first obtaining a variance. As such, the Property cannot be developed in strict conformity with the Sussex County Zoning Code and the variance is necessary to enable reasonable use of the Property. Similar billboards are located on nearby commercial properties and the proposed billboard will meet all requirements other than the separation from public lands requirement.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants have no control over the location of lands owned by the State of Delaware and the nearby wooded lands limit the visibility of the billboard thereby necessitating that the billboard be placed within 300 feet of public lands.

- d. The variance will not alter the essential character of the neighborhood as there are other similar signs in the area. The variance will also not substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. No evidence was presented to support findings to the contrary. The Applicants also presented evidence that DelDOT is interested in signs on the same side of the street as State lands and not signs located across the street; as is the case here.
- e. The variance sought is the minimum variance necessary to afford relief and the variance represents the least modification of the regulation at issue. The Applicants are unable to place the billboard a further distance from the public lands that would comply with all setback requirements and be visible to passersby.

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 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 February 18, 2015