

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: LOBLOLLY, LLC

(Case No. 11504)

A hearing was held after due notice on December 1, 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 two (2) off-premise signs and variances from the maximum square footage, height, side yard setback requirements and the minimum separation requirement between off-premise signs.

Findings of Fact

The Board found that the Applicant is seeking a special use exception for two (2) off-premise signs, a variance of three hundred (300) square feet from the three hundred (300) square foot requirement each side for an off premise sign (Sign No. 1), a variance of three hundred (300) square foot from the from the three hundred (300) square foot requirement for an off premise sign (Sign No. 2), a variance of fifteen (15) feet from the twenty-five foot maximum height requirement for both Sign No. 1 and Sign No. 2, a variance of forty (40) feet from the fifty (50) foot side yard setback requirement for proposed Sign No. 2, and a variance of fifty (50) feet from the three hundred (300) foot separation requirement between off premise signs. This application pertains to certain real property located West of Coastal Highway (Route 1) and north of Route 5 (Union Street Extended), said property being further identified as Sussex County Tax Map and Parcel Number 2-35-7.00-43.00.

After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application and a portion of the tax map of the area.
2. The Board was provided with a notebook prepared by Davis, Bowen and Friedel, Inc. (the applicant's engineer) containing the Application, a site plan, a site plan with aerial photo, supporting information for the variance, an email from DelDOT, an email from the Department of Natural Resources and Environmental Control, a letter of No Objection from the Department of Natural Resources and Environmental Control, a proposed sign location map, and two proposed street views.
3. Mark Dunkle, Esquire, stated that one of the signs will be used by WBOC, an entity owned by the principals of Loblolly, LLC and one of the signs will be used by Mr. Sam Calagione, owner of Dogfish Head Brewery, to advertise the brewery operations within the Town of Milton.
4. The Board found that Mr. Dunkle stated that the proposed billboards will not substantially adversely affect the uses of neighboring and adjacent properties and that a letter of no objection has been received from the State of Delaware, the owner of the neighboring property.
5. The Board found that Mr. Zachary Crouch, P.E., testified that the property was once used for canoe rentals many years ago but has been vacant for some time and that the property is zoned commercial.
6. The Board found that Mr. Crouch testified the property is unique being located at the intersections of Route 1 and Route 5 which limits access to the property and that the applicant has been in contact with DelDOT about access. DelDOT has stated that it would only give very limited access approval from Route 5 to the property and that it has safety concerns about providing any direct access from Route 1.
7. Mr. Crouch testified that DelDOT has stated that despite the commercial zoning of the property, the applicant would have to purchase surrounding property in order to gain approval from DelDOT for additional access and that DelDOT based its access limitations to a use that would provide 200 trips per day which is not a lot of trips for a commercial use.
8. Mr. Crouch testified that the applicant explored other uses for the property, and found that billboards have the least traffic impact from the property, particularly in light of the

- very limited uses due to the DelDOT limitations. The proposed billboards would not require a commercial entrance from DelDOT.
9. The Board found that Mr. Crouch testified that despite the frontages on Route 5 and Route 1, DelDOT's access limitations on the property mean that it cannot be built in conformity with the Sussex County Code and the permitted uses with its underlying commercial zoning. However, the billboards will provide a source of income for the property while not requiring access that is not permitted by DelDOT.
 10. The Board found that Mr. Crouch testified that the applicant contacted the State of Delaware about purchasing adjacent lands to eliminate the need for some of the variances and to provide greater visibility for the billboards. The State of Delaware responded that it could not sell additional land to the applicant due to grant funding used by the State of Delaware to purchase property and that these grants also limit the State's authority to grant easements to the applicant or to trim trees on the State's property which block views of the billboards.
 11. The Board found that Mr. Crouch testified that the speed limit on Route 1 is 55 miles per hour but cars drive faster there and that the proposed locations, height, and square footage of the proposed billboards will provide the best visibility from Route 1.
 12. The Board found that Mr. Crouch testified that the variances requested due to the uniqueness of the property. The exceptional narrowness of the property and the limitations implemented by DelDOT create a unique situation on the property.
 13. The Board found that Mr. Crouch testified that the application has not created the difficulty which forms the basis for the variances and that the variances will enable reasonable use of the property.
 14. The Board found that Mr. Crouch stated that the variances will not alter the essential character of the neighborhood, consisting of the Route 1 highway corridor with Coastal Wine and Spirits and Brumbley's Mobile Home Park located across Route 1 from the site. In furtherance of this, the variances will allow the property to be used with minimum impact.
 15. The Board found that Mr. Crouch testified that the use will not be detrimental to the public welfare.
 16. The Board found that the variance that Mr. Crouch testified that the variances are the minimum variances to afford relief and the reasonable use of the property.
 17. The Board found that the proposed uses with the variances will not substantially affect adversely the uses of the neighboring and adjacent properties.
 18. The Board found that Mr. Sam Calagione testified that he owns Dogfish Head Brewery and that his facility in Milton averages approximately 1,000 visitors per week.
 19. The Board found that Mr. Calagione testified that it is difficult to find the brewery from Route 1 if you are not familiar with the area and that this difficulty creates traffic problems for tourist trying to locate the Town and the brewery.
 20. The Board found that Mr. Calagione testified that the proposed off premises signs will help direct the public to downtown Milton area and the local businesses.
 21. The Board found that Mr. Calagione testified that the size of the signs is needed for visibility to passing traffic due to the speed of the traffic and that smaller signs would not be effective.
 22. The Board found that Lisa Sumstein testified in support of the variance and special use exception application and testified that she is the director of the Milton Chamber of Commerce. She believes that the proposed billboards will have a positive impact on the town of Milton by directing patrons to Milton and that the billboards will contribute additional revenue to the Town's small businesses.
 23. The Board found that Mr. Harry Holtgrewe testified in opposition to the application and testified that he lives near Waples Pond.
 24. The Board found that Mr. Holtgrewe testified the lights from the existing liquor store shine into his window and that he does not think the lights from the billboards would be obscured.
 25. The Board found that Mr. Holtgrewe testified that it is his opinion that the billboards will impact his property in a negative way.
 26. The Board found that Mr. Holtgrewe testified that it is his opinion that the billboards would distract drivers from the busy intersection where cars leave the liquor store and Brumbley's Mobile Home Park.
 27. The Board found that one party appeared in support of the application and that one party appeared in opposition to the application.

28. The public hearing on this application occurred on December 15, 2014; the matter was tabled at that time until January 5, 2015. The matter was again tabled on January 5, 2015. It was discussed and voted on by the Board during its regularly scheduled February 5, 2015 meeting.
29. Based on the findings above the testimony and evidence presented during the public hearing and contained in the public record, the Board determined that the application met the standards for granting a special use exception for two (2) off premises signs. The findings below further support the Board's decision to approve the Special Use Exception Application.
 - a. The proposed billboards will not substantially affect adversely the uses of neighboring and adjacent properties. The billboards will be located along an intersection of Route 1 and Route 5, an appropriate location for the billboards. The property is zoned commercial and there are commercial uses in the vicinity of the property along Route 1.
 - b. No credible and empirical evidence was presented that would indicate that the billboards would substantially effect adversely the uses of the neighboring and adjacent properties. The Board was not convinced by the testimony of Mr. Holtgrewe that the billboards would impact his property in a negative way.
30. Based upon the finding above and the testimony and evidence presented during the public hearing contained in the public record, the Board determined that the application met the standards for granting the height variance, side yard variance and the variance from the required distance requirements between billboards. The findings below further support the Board's decision to approve the Application.
 - a. The proposed billboards provide the best use of the property under the circumstances, which is zoned commercial.
 - b. The restrictions implemented by DelDOT create an exceptional practical difficulty to the applicant, since the applicant does not have direct access to Route 1 and DelDOT's limitations severely impact the use of the property under its commercial zoning.
 - c. This is the appropriate and minimal relief to permit the uses of the commercially zoned property in a way that allows an economic return.
 - d. The odd shape and the restrictions on the use of the property limit the improvement and the possibility that it could be developed in strict conformity with the Sussex County Zoning Ordinance.
 - e. Due to the location of state owned lands adjacent to this property, the applicant is unable to place two billboards on the property without first obtaining the variances. As such, the variance is necessary to enable the reasonable use of the property.
 - f. The exceptional practical difficulty was not created by the applicant because the applicant has no control over the shape of the property, the adjoining properties (including the State of Delaware and Route 1) or the directives of regulatory agencies over its use.
 - g. The applicant has no control over the location of lands owned by the State of Delaware or the restrictions placed upon the property by the Delaware Department of Transportation.
 - h. The variances will not alter the essential character of the neighborhood as this parcel is located at the intersection of Route 1 a major highway and Route 5, one of the main access roads to the Town of Milton.
 - i. The billboards are also consistent with uses in the immediate vicinity of Route 1, including Coastal Wine and Spirits and Brumbley's Mobile Home Park.
 - j. The variances will also not substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.
 - k. No credible, persuasive or empirical evidence was presented to support findings that the variances will alter the essential character of the neighborhood or will substantially or permanently impair the use or development of adjacent properties.
 - l. The variances sought are the minimum necessary to afford relief and the variances represent the least modification of the regulations at issue.
 - m. The height variance request is appropriate since the applicants are not able to cut down existing trees on adjacent lands. Although requests were made to the State of Delaware, the State has denied the request to allow greater visibility for the billboards on the applicant's property.

- n. The unusual shape and narrowness of the property make it unique, justifying the variances. The property is shaped like a triangle resulting in limited usable frontage on Route 5 and Route 1.
31. The applicant must still seek and be granted a variance from the Board for the separation required from the adjacent public lands if the applicant intends to construct the billboards in the locations proposed in this application. Since the variance from the separation from public lands requirement was neither included in the subject application nor advertised as part of these proceedings, it cannot be acted on as part of this decision.
32. Based upon the findings above and the testimony and evidence presented during the public hearing and in the public record, the Board determined that the variance for additional square footage for both proposed billboards should be denied. The findings below further support the Board's decision is approve the application.
- There was no justification in the record that the proposed billboard should exceed the maximum square footage requirement of the Sussex County Code.
 - That the proposed size of the billboards with the requested variance would be too large for the area.
 - That there is no evidence that the billboards cannot be adequately viewed with the required 300 square foot per side size set forth in the Sussex County Zoning Ordinance.
 - That the alleged difficulty associated with the size of the billboards has created by the applicant solely to increase the space to be used by billboard tenants. This does not justify a variance.

Based upon the foregoing, the Board granted two (2) special use exception for two (2) billboards and the variances for the height, side yard and separation requirements between billboards and denied the variance for the square footage on both billboards.

Decision of the Board

Upon motion duly made and seconded, the two (2) special use exceptions for two (2) billboards and the variances for the height, side yard and separation requirements between billboards were approved, and the variances for the square footage of the billboards was denied. The Board members in favor were: Mr. Jeff Hudson, Mr. Brent Workman, Mr. John Mills, and Mr. Dale Callaway. The Board member in opposition was Mr. Norman Rickard.

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 April 7, 2015