

## BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

### IN RE: VRNS II, LLC

(Case No. 11506)

A hearing was held after due notice on January 5, 2015. 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 required separation requirement from a dwelling.

#### Findings of Fact

The Board found that the Applicant was seeking a special use exception to place an off-premise sign and a variance of 125 feet from the three hundred (300) feet separation requirement from a dwelling. This application pertains to certain real property located at intersection southwest of DuPont Boulevard (U.S. Route 113) and northeast of Handy Road (Road 337) (911 Address: 28880 DuPont Boulevard, Millsboro, DE); said property being identified as Sussex County Tax Map Parcel Number 2-33-5.00-99.00.

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 one (1) letter from Delmarva Power in support of the Application.
3. Nino Desai was sworn in to testify about the Application. David Hutt, Esquire, presented the Application on behalf of the Applicant and submitted exhibits to the Board to review which included a copy of the Application, a copy of the deed to the Property, a portion of the tax map of the area, photographs of the Property, site plan of the Property dated October 31, 2014, an aerial overlay of the Property, and a letter from Delmarva Power.
4. The Board found that Mr. Hutt stated that the Property is located on Route 113 south of Millsboro at the intersection with Handy Road and that Millsboro Discount Liquor store exists on the Property.
5. The Board found that Mr. Hutt stated that the Property is zoned commercial.
6. The Board found that Mr. Hutt stated that the Property is irregularly shaped and comes to a point.
7. The Board found that Mr. Hutt stated that the proposed billboard is a steel monopole that will meet all required setback requirements from property lines and square footage and height requirements for a billboard but that the Applicant needs a variance from the separation distance requirement as the proposed billboard is to be located 175 feet from an abandoned residential structure.
8. The Board found that Mr. Hutt stated that the Property is unique in shape and due to its frontage on both Route 113 and Handy Road.
9. The Board found that Mr. Hutt stated that the Property has double front yard setbacks but the Applicant was able to place the billboard in compliance with the double front yard setback requirements.
10. The Board found that Mr. Hutt stated that an abandoned dwelling on nearby lands creates the need for the separation variance requested.
11. The Board found that Mr. Hutt stated that the owner of the abandoned dwelling, Delmarva Power, plans to demolish the dwelling in the future.
12. The Board found that Mr. Hutt stated that Delmarva Power recently obtained a change in zone to CR-1 in October 2014.

13. The Board found that Mr. Hutt stated that Delmarva Power has confirmed its intent in a letter submitted to the record.
14. The Board found that Mr. Hutt stated that proposed billboard will not substantially adversely affect the uses of neighboring and adjacent properties.
15. The Board found that Mr. Hutt stated that billboards are consistent with the character of the neighborhood as there are billboards located across the street.
16. The Board found that Mr. Hutt stated that the area around the Property is a developing commercial corridor and that other businesses have been established in the area south of Millsboro along Route 113.
17. The Board found that Mr. Hutt stated that the proposed billboard will not have an adverse effect on these neighbors.
18. The Board found that Mr. Hutt stated that no objection to the proposed billboard has been raised to the Applicant.
19. The Board found that Mr. Hutt stated that the abandoned residential dwelling will be demolished and will not be used as a residence.
20. The Board found that Mr. Hutt stated that the Property is unique in shape and fronts on two (2) roads.
21. The Board found that Mr. Hutt stated that the variance is necessary to enable reasonable use of the Property.
22. The Board found that Mr. Hutt stated that billboards are permissible on commercially zoned properties.
23. The Board found that Mr. Hutt stated that the difficulty was not created by the Applicant.
24. The Board found that Mr. Hutt stated that the Applicant did not place the residential structure on the neighboring property and that structure is being torn down anyway.
25. The Board found that Mr. Hutt stated that the variance will not alter the essential character of the neighborhood.
26. The Board found that Mr. Hutt stated that the proposed use is consistent with uses in the neighborhood.
27. The Board found that Mr. Hutt stated that the variance is the minimum variance to afford relief and that the Applicant took great steps to minimize the need for additional variances by placing the proposed billboard in this location.
28. The Board found that Mr. Desai confirmed the statements made by Mr. Hutt as being true and correct.
29. The Board found that Mr. Desai testified that there are some signs on the wall but the signs along Route 113 as shown in the pictures in Tab #4 of the exhibit book have been removed.
30. The Board found that no parties appeared in support of or in opposition to the Application.
31. The Board voted to leave the record open for the limited purpose of allowing the Planning & Zoning Department to investigate the existence of signage on the Property and report back to the Board.
32. On January 26, 2015, Planning & Zoning official Kelly Passwaters informed the Board that the signs on the Property were in compliance with the Sussex County Zoning Code.
33. 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.

- b. The Property is located along Route 113, which is a busy road. The un rebutted testimony also indicates that the area nearby is a developing commercial corridor and the billboard is consistent with that development.
  - c. The Property is currently used as a commercial liquor store.
  - d. Other billboards similar to the one proposed are located nearby.
  - e. No evidence was presented which would indicate that the billboard would substantially affect adversely the uses of neighboring and adjacent properties.
34. 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 due to its irregular shape. The situation is also unique because the Property is within 300 feet of an abandoned residential building that is planned to be demolished by its owner. The existence of this residential building, albeit abandoned, necessitates that the Applicant obtain a variance in order to construct the proposed billboard. If the residential building is removed, as planned, there would be no need for the variance.
  - b. Due to the unique conditions of the lot, the billboard cannot be constructed in strict conformity with the Sussex County Zoning Code. The existence of the residential dwelling on a nearby property restricts the Applicant's construction of the billboard even though the residential building is owned by Delmarva Power and Delmarva Power intends to demolish the billboard. Other billboards are located in the area and the Property is located on a well-traveled road in a developing commercial area. A billboard is consistent with the uses on commercial properties but the Applicant is unable to build the billboard without a variance. Accordingly, the variance is necessary to enable reasonable use of the Property.
  - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not construct the nearby residential structure nor did it create the unusual shape of the Property. Even though Delmarva Power has indicated its intention to demolish the residential structure, its mere existence has created the exceptional practical difficulty for the Applicant. The exceptional practical difficulty has not been self-created by the Applicant.
  - d. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The area near the Property is commercial in nature and other billboards are located nearby. The Property is zoned commercial and is used as a liquor store. The variance will allow the billboard to be constructed on the Property. As previously discussed, the variance would not be necessary if the nearby residential structure were to be demolished as indicated by its owner; who does not object to the variance request. No evidence was presented which would indicate that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. Rather, the evidence provided to the Board indicates that nearby properties have already been developed in a similar manner.
  - e. The variance sought is the minimum variance necessary to afford relief and the variance requested represent the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance requested will allow the billboard to be placed on the Property and that the

sign will otherwise meet all setback and height requirements for a 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 March 3, 2015