

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: TWO FARMS, INC.

(Case No. 11518)

A hearing was held after due notice on February 2, 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 for variances from the front yard requirement, side yard requirement, the distance from a dwelling requirement, the maximum height requirement and the maximum square footage for an off-premise sign requirement.

Findings of Fact

The Board found that the Applicant was seeking a special use exception to place an off-premise sign, a variance of seven (7) feet from the sixty (60) feet front yard setback requirement for a proposed canopy, a variance of 46 feet from the fifty (50) feet side yard setback requirement for an off-premise sign, a variance of 54 feet from the 300 feet separation requirement from a residential dwelling, a variance of 43 feet from the 300 feet separation requirement from a residential dwelling, a variance of 32 feet from the 300 feet separation requirement from a residential dwelling, a variance of 14 feet from the 25 feet maximum height requirement for an off-premise sign, and a variance of 300 square-feet from the 300 square-feet maximum allowable square footage for an off-premise sign. This application pertains to certain real property located at the southwest corner of Route One (Coastal Highway) and Route 24 (John J. Williams Highway) (911 Address: None Available); said property being identified as Sussex County Tax Map Parcel Number 3-34-12.00-165.00, 166.00, 167.00, 168.00, & 170.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, correspondence from Garth Jones, a site plan dated November 18, 2014, and a survey of the Property dated September 8, 2014.
2. The Board found that the Office of Planning and Zoning received no other correspondence regarding the Application.
3. Jeffrey Bainbridge and Garth Jones were 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, copies of the deeds to the Property, a site plan of the proposed improvements, a site plan of the existing improvements, Clear Channel's Engineered Plans for replacement of the off-premises sign, renderings of the proposed Royal Farms, a Brownfield's Development Agreement, and aerial overlays and photographs of the Property.
4. The Board found that Mr. Hutt stated that the Property consists of five (5) parcels which previously housed the gas station, billboard and Millman's Appliances. Royal Farms has purchased the Property and that the Applicant intends to update the gas station and billboard.
5. The Board found that Mr. Hutt stated that the Property is located at the intersection of Route 24 and Route 1, which is one of the busiest intersections in Sussex County. McDonald's, Rehoboth Mall, and other businesses are located nearby.

6. The Board found that Mr. Hutt stated that the Property is unique because a fuel spill occurred on the Property in the 1970s which has made development of this property difficult.
7. The Board found that Mr. Hutt stated that the Applicant has a Brownfield agreement with the Department of Natural Resources and Environmental Control ("DNREC") to investigate and remediate the environmental concerns. The Property has been vacant for some time due to the environmental issues.
8. The Board found that Mr. Hutt stated that the Property is zoned commercial which is the appropriate zoning for a gas station and a billboard.
9. The Board found that Mr. Hutt stated that the Property fronts on three (3) roads. The Property currently has seven (7) entrances to the existing parcels and that the proposed site plan for the Property will only have two (2) entrances.
10. The Board found that Mr. Hutt stated that the current gas station sits 37 feet from Route 1 and Millman's Appliances sits 45 feet from Route 1 while the setback off of Route 1 is 60 feet.
11. The Board found that Mr. Hutt stated that the Applicant intends to demolish the current structures on the Property and that a new building will be built on the Property.
12. The Board found that Mr. Hutt stated that the proposed building and gas pumps will meet the required setback requirements but the proposed canopy over the gas pumps requires a variance.
13. The Board found that Mr. Hutt stated that fuel pumps can be placed within twenty (20) feet of Route 1 but canopies over the fuel pumps cannot be within twenty (20) feet of Route 1. The proposed location of the canopy allows room for larger vehicles, such as tanker trucks and motor homes, to navigate the Property.
14. The Board found that Mr. Hutt stated that the existing off-premise sign needs to be relocated and replaced. The existing billboard with two poles has been on the Property since the 1980s.
15. The Board found that Mr. Hutt stated that Clear Channel owns the existing billboard and that the proposed billboard will be a steel monopole structure.
16. The Board found that Mr. Hutt stated that replacing the existing billboard with an upgraded structure is more feasible than disassembling and reassembling the existing billboard.
17. The Board found that Mr. Hutt stated that the proposed billboard will be the same height and size as the existing billboard and that there are fourteen (14) billboards in the area of similar height and size. Billboards, similar to the one proposed, are common for the area.
18. The Board found that Mr. Hutt stated that four (4) houses are within 300 feet of the proposed billboard.
19. The Board found that Mr. Hutt stated that similar variances have been granted for billboards in the surrounding area and that the billboard will not substantially affect adversely the uses of neighboring and adjacent properties.
20. The Board found that Mr. Hutt stated that the Applicant used its urban scale model in developing this site to minimize the need for the variance for the canopy. The Applicant has also chosen a store design and will angle the pumps on the Property to best accommodate the area.
21. The Board found that Mr. Hutt stated that this area is a busy, commercial area and that the uses will be similar to the current uses of the Property.
22. The Board found that Mr. Hutt stated that the Property is unique due to the three (3) road frontages and the environmental issues which make the Property difficult to develop.
23. The Board found that Mr. Hutt stated that the Property cannot be developed in strict conformity with the Sussex County Code and that the variances will enable reasonable use of the Property.

24. The Board found that Mr. Hutt stated that the exceptional practical difficulty was not created by the Applicant.
25. The Board found that Mr. Hutt stated that the variances will not alter the essential character of the neighborhood and that the gas station and billboard are consistent with the neighborhood.
26. The Board found that Mr. Hutt stated that the use is not detrimental to the public welfare.
27. The Board found that Mr. Hutt stated that the billboard is currently leased and will not be vacant.
28. The Board found that Mr. Hutt stated that the variances are the minimum variances to afford relief.
29. The Board found that Mr. Bainbridge, under oath, confirmed the statements made by Mr. Hutt.
30. The Board found that Sandra Hinsch, James Yingling, Tammy Rash, and Mary Rash were sworn in and testified in opposition to the Application.
31. The Board found that Ms. Hinsch testified that she is a resident of Truitt's Midway Development; which is a residential community is to the rear of the Applicant's property. She is concerned about the location of the entrances and increased traffic. Ms. Hinsch testified that the existing entrances used by Millman's Appliance were only used for delivery and loading.
32. The Board found that Mr. Yingling testified that he is also concerned about the traffic issues in the area.
33. The Board found that Mr. Jones testified that the entrance on Truitt Avenue was moved to the far south of the Property to accommodate the Delaware Department of Transportation ("DelDOT") requirements and that, per DelDOT requirements, the entrance had to be located away from the major intersection of Route One and Route 24. DelDOT has not yet given final approval of the proposed site plan.
34. The Board found that Janice Burns testified in opposition to the Application but withdrew her opposition after reviewing the renderings prepared by the Applicant.
35. The Board found that Tammy Rash testified that Mary Rash is the owner of Farmer Girl located on the adjacent property and that they are not in favor of the proposed location of the billboard.
36. The Board found that Tammy Rash testified that the proposed billboard will only be four (4) feet from her mother's property line.
37. The Board found that Tammy Rash testified that the area is already very congested, that the billboard is not needed, and that the billboard will be a distraction and safety hazard to the area.
38. The Board found that Mary Rash testified that the billboard is a distraction and is not needed.
39. The Board found that Mary Rash testified that she welcomes the Royal Farms store but she has an issue with the side yard variance request.
40. The Board found that no parties appeared in support of the Application.
41. The Board found that eight (8) parties appeared in opposition to the Application.
42. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, 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 Board was convinced by the testimony and evidence presented by the Applicant that the billboard would not substantially affect adversely the uses of neighboring and adjacent properties. The Board was not swayed by testimony and argument of neighbors to the contrary.
 - b. An existing billboard is already located on the Property of a same size and height as the proposed billboard.

- c. The area is commercial in nature and the billboard is consistent with the uses of those properties.
 - d. Evidence was presented that billboards of a similar size and height were located nearby.
 - e. The renderings presented by the Applicant demonstrate that the proposed billboard will not block any signage on neighboring properties and the billboard will be located further away from the busy Route 1 / Route 24 intersection.
43. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, 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 the fact it borders on three (3) roads which greatly limit the buildable area of the Property. The Property is also unique because of the environmental issues thereon which limit the use of the Property. It is undisputed that a fuel spill occurred on the Property in the 1970s and that the Applicant has entered into a Brownfields Development Plan with DNREC to remediate those concerns. The unique characteristics of this Property have created an exceptional practical difficulty for the Applicant.
 - b. Due to the Property's unique characteristics, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property currently consists of an abandoned gas station, a billboard and a former appliance store. The Applicant proposes to demolish the existing buildings and to relocate the billboard to another location on the Property. The Applicant intends to construct a new gas station with pumps and canopies covering those pumps. Due to the limited buildable area caused by the multiple road frontages, the accesses required by DelDOT, and the need for fuel trucks and large vehicles to navigate safely around the site, the Applicant is unable to build the canopies within the building envelope. Likewise, variances are necessary to relocate the existing billboard so that the gas station and its related improvements can be constructed. The variances sought related to the billboard will allow a billboard of the same height and size to be placed in a location that is located away further away from the busy Route 1 – Route 24 intersection. The Board is convinced that the variances for the canopies and the billboard are necessary to enable the reasonable use of the Property.
 - c. The exceptional practical difficulty was not created by the Applicant. The Property has been developed as a gas station with a billboard and appliance store for many years. The Applicant seeks to build a new gas station and relocate the billboard but cannot do so in compliance with the Sussex County Zoning Code because of the multiple road frontages which limit its buildable area. The environmental issues related to the previous fuel spill have further complicated the development of the Property and limit its uses. The Board is convinced that the exceptional practical difficulty was not something created by the Applicant. The unique characteristics of the Property are also clear when reviewing the survey.
 - d. The variances 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 Property has already been developed as a gas station with a billboard for many years. The Property is located at the busy intersection of Route 1 and Route 24 and is located along a commercial corridor. The proposed use of the Property is consistent with its historical use and will not alter the

character of the neighborhood. Rather, the variances will allow a billboard of the same height and size as the existing billboard to replace the existing billboard. Additionally, the proposed gas station and improvements will be more in compliance with the Sussex County Zoning Code than the current buildings. Neighbors have expressed concerns about the traffic in the area but the Property is commercially zoned and traffic related to businesses on commercially zoned properties is to be expected. The Applicant is in the process of seeking approvals from DeIDOT and DeIDOT controls the traffic patterns related to the Property. The Board was not convinced that the granting of these variances would somehow increase traffic more than if the Property was commercially developed without variances. Ultimately, the Board was not convinced by the opposition that the granting of the variances would be detrimental to the public welfare or would alter the essential character of the neighborhood.

- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modification possible of the regulation at issue. The unrebutted testimony of Applicant demonstrates that the Applicant has used its urban scale model to design the proposed gas station in an effort to minimize the need for variances on the Property. The proposed gas station and improvements will be more in compliance with the Sussex County Zoning Code than the existing gas station and appliance store while the billboard will be of the same size and height as the existing billboard being replaced. The Board is convinced that the variances sought are the minimum variances to afford relief and represent the least modifications of the regulations at issue.

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 April 7, 2015