

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JUDITH ANN WHARTON

(Case No. 11521)

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 a variance from the distance from a dwelling requirement.

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 100 feet from dwellings of other ownership. This application pertains to certain real property located at northeast of Route 113 (DuPont Highway) approximately 2,300 feet northwest of Route 26 (Clayton Street in Dagsboro) (911 Address: 28085 Wharton Pond Lane, Dagsboro, DE); said property being identified as Sussex County Tax Map Parcel Number 2-33-10.00-33.00.

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 no correspondence regarding the Application.
3. Judith Ann Wharton 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, copies of the deed to the Property, a portion of the tax map with aerial overlays, photographs of the Property, a site plan of the proposed improvements, and correspondence from James Richards and Bessie Banks.
4. The Board found that Mr. Hutt stated that the Property is located along Route 113 south of Millsboro but north of Dagsboro and that the Applicant purchased the Property in 1980.
5. The Board found that Mr. Hutt stated that the Applicant previously owned Woody's Gun Shop on the Property and that a used car lot known as Wheelz-R-Us is currently on the Property. The Property is zoned commercial.
6. The Board found that Mr. Hutt stated that the proposed billboard will be a steel monopole structure designed to withstand winds of 90 miles per hour.
7. The Board found that Mr. Hutt stated that there are dwellings located to the north and south of the Property which fall within 300 feet of the billboard. The Applicant has contacted the neighbors and has their support for the Application.
8. The Board found that Mr. Hutt stated that the Property has been used commercially for over twenty (20) years.
9. The Board found that Mr. Hutt stated that the Savannah Square Shopping Center is located south of the Property and that there are other billboards in the area along Route 113.
10. The Board found that Mr. Hutt stated that the use will not substantially adversely affect the uses of surrounding and adjacent properties.
11. The Board found that Mr. Hutt stated that Property is unique in shape and that the variances are necessary enable reasonable use of the Property.
12. The Board found that Mr. Hutt stated that the difficulty was not created by the Applicant, since she cannot control where the neighboring dwellings were placed.

13. The Board found that Mr. Hutt stated that the variance will not alter the character of the neighborhood and that the use is not detrimental to the public welfare.
14. The Board found that Mr. Hutt stated that the variance is the minimum variance to afford relief.
15. The Board found that Ms. Wharton, under oath, confirmed the statements made by Mr. Hutt.
16. The Board found that no parties appeared in support of or in opposition to the Application.
17. 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 Board was convinced that the billboard would not substantially affect adversely the uses of neighboring and adjacent properties.
 - b. The area is commercial in nature and the billboard is consistent with the uses of those properties.
 - c. Evidence was presented that other billboards were located nearby.
 - d. The Applicant presented letters of support from neighbors who support the application.
 - e. No evidence was presented which would indicate that the proposed billboard would substantially affect adversely the uses of neighboring and adjacent properties.
18. 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 unusual shape and proximity to residential dwellings even though it is in a commercial area.
 - b. Due to the Property's unique characteristics, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property is located near two residential dwellings and the Applicant cannot place the billboard on the Property in strict conformity with the Sussex County Zoning Code. The Board is convinced that the variances for the billboard are necessary to enable the reasonable use of the Property.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not control the placement of the neighboring homes and the Applicant is unable to place the billboard on her property without a variance due to the location of the neighboring homes. The Board is convinced that the exceptional practical difficulty was not something created by the Applicant.
 - 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 commercial property for many years. The Property is located along the highly traveled Route 113 and is near other commercial properties and billboards. The proposed billboard is consistent with the character of the neighborhood and the Board has received correspondence from neighbors who own nearby residential dwellings supporting the billboard application.
 - 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 variances will allow the Applicant to place the proposed billboard on the Property.

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