

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: GILLS NECK, LLC

(Case No. 11540)

A hearing was held after due notice on March 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 maximum height requirement.

Findings of Fact

The Board found that the Applicant is requesting a special use exception to place an off-premise sign and a variance of five (5) feet from the twenty-five feet maximum height requirement for an off-premise sign. This application pertains to certain real property located southwest of Route One (Coastal Highway) approximately 500 feet northwest of Road 270A (Miller Road) (911 Address: 19266 Coastal Highway, Rehoboth Beach, DE); said property being identified as Sussex County Tax Map Parcel Number 3-34-13.00-325.01. 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 a site plan dated November 2014.
2. The Board found that the Office of Planning and Zoning received no letters in support of or in opposition to the Application.
3. The Board found that Ring Lardner was sworn in and testified regarding the Application. Mr. Lardner presented a booklet of exhibits to the Board including a copy of the Application, a copy of the site plan, aerial photographs of the Property, and responses to the standards of relief.
4. The Board found that Mr. Lardner testified that the Applicant purchased the Property in 2001 and developed the Shops at Sea Coast including a Safeway grocery store, shops, and gas station.
5. The Board found that Mr. Lardner testified that the proposed 2-sided billboard will measure ten (10) feet by thirty (30) feet and will be located approximately five (5) feet from the building. The billboard will be a flagpole style sign.
6. The Board found that Mr. Lardner testified that the proposed billboard will meet all setback and separation requirements. There are other billboards nearby but there are no other billboards, churches, dwellings, or public lands within 300 feet of the proposed billboard.
7. The Board found that Mr. Lardner testified that the billboard will not substantially affect adversely the uses of neighboring and adjacent properties. The proposed billboard will blend in with the surrounding area.
8. The Board found that Mr. Lardner testified that the proposed billboard will overhang an existing service drive which is used for deliveries to the existing shopping center. A vertical clearance of fourteen (14) feet is required by the U.S. Department of Transportation Federal Highway Administration. The proposed height will allow for a clearance of eighteen (18) feet. The proposed billboard will not exceed the height of the existing building. The height variance will allow for traffic to access the service road and for maintenance of the building
9. The Board found that Mr. Lardner testified that there are trees planted along the front of the Property and the height variance will allow the existing landscaping to remain in place.

10. The Board found that Mr. Lardner testified that the variance will enable reasonable use of the Property and maintain the minimal vehicle clearance. The location of the billboard was also chosen because it will have the least impact on the site.
11. The Board found that Mr. Lardner testified that the billboard will not alter the character of the neighborhood and that the variance will not be detrimental to the public welfare.
12. The Board found that Mr. Lardner testified that the variance is the least modification of the regulation at issue and the variance requested is the minimum variance to afford relief.
13. The Board found that Mr. Lardner testified that the size of the sign is proportionate to travelers along the adjacent road at posted speed limits. The sign will not block views of travelers along the adjacent Route One or Miller Road.
14. The Board found that Mr. Lardner testified that the existing use of the Property creates a unique circumstance and exceptional practical difficulty by limiting the placement of the proposed billboard. The billboard cannot be installed at the height required by the Zoning Code due to the existence of the service road and the location of a building on a nearby property which may be obstructed by a shorter sign.
15. The Board found that Mr. Lardner testified that the proposed billboard will be leased and/or used by the Applicant for other entities of the Applicant on other properties.
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 because the proposed billboard will not substantially affect adversely the uses of neighboring and adjacent properties. The findings below further support the Board's decision to approve the Application.
 - a. The Applicant demonstrated that the Property is a commercial property and the billboard is consistent with the use of the Property. Nearby properties are also commercial properties and similar billboards are located in the neighborhood.
 - b. The Applicant demonstrated that the billboard will not negatively impact traffic or the view of neighboring properties.
 - c. No evidence was presented which would demonstrate that the billboard would have a substantial adverse effect on 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 the location of a service road which requires that service vehicles access the rear of the building. The billboard needs to be raised so that those vehicles can safely pass under the billboard. The unique characteristics of this Property have created an exceptional practical difficulty for the Applicant.
 - b. Due to the location of the service road, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property is zoned commercial and the Applicant is allowed to place a billboard

thereon provided that the Applicant meets the standards for a special use exception and, as previously noted, the Applicant meets those standards. While the Applicant is able to place a billboard on the Property at this location, the Applicant is unable to do so in strict conformity with the Sussex County Zoning Code due to the location of the service road which necessitates that large delivery vehicles have adequate height clearance to pass under the billboard. The Applicant is unable to place the billboard on this location in strict conformity with the Code while still providing enough space for the vehicles to pass safely. The Applicant thus seeks the variance to allow for the reasonable raising of the proposed billboard to allow those vehicles to safely pass under the billboard. The height variance will also allow the Applicant to better maintain the building. The height variance will also enable the sign to be better seen over existing landscaping and to avoid obstructing a neighboring building which would likely be obstructed if the billboard was constructed in strict conformity with the Zoning Code. The Board is convinced that the size and location of the billboard is reasonable and that the variance is necessary to enable the reasonable use of the Property. The survey attached to the Application confirms that the billboard is reasonable in size, shape and location.

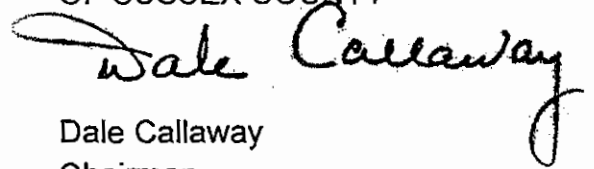
- c. The exceptional practical difficulty was not created by the Applicant. The service road located on the Property restricts the Applicant's ability to construct a billboard on the Property in compliance with the Sussex County Zoning Code. The unique characteristics of the Property are clear when reviewing the survey and photographs.
- 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. Similar billboards are located nearby and the area is commercial in nature. The Property is located along Route One, which is a well-traveled road with many commercial properties nearby. 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.
- 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 sought will allow the billboard to be constructed in its proposed location while providing adequate clearance for service vehicles which will travel beneath it.

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 April 21, 2015