

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY
IN RE: FIRST STATE SIGNS**

(Case No. 11543)

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 variances from the front yard and side yard setback requirements.

Findings of Fact

The Board found that the Applicant is requesting a special use exception for an off-premise sign, a variance of twenty (20) feet from the twenty-five (25) feet front yard setback requirement for an off-premise sign, and a variance of 8.13 feet from the twenty (20) feet side yard setback requirement for an off-premise sign. This application pertains to certain real property located southwest of Route One (Coastal Highway) approximately 250 feet southeast of Sea Air Avenue (911 Address: 19724 Coastal Highway, Rehoboth Beach, DE); said property being identified as Sussex County Tax Map Parcel Number 3-34-13.00-319.02. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, renderings of the proposed sign, a portion of the tax map of the area, and a survey dated July 16, 2010.
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 Dale McCalister was sworn in and testified regarding the Application.
4. The Board found that Mr. McCalister testified that the Board granted a similar request for a sign on this property a few years ago but the sign was never built.
5. The Board found that Mr. McCalister testified that the Property is very unique. A proposed restaurant (Jimmy's Grill) will be located on a separate parcel that shares the same parking and entrance with another parcel and businesses. The property is unique in the fact that there are multiple parcels making up one large commercial area.
6. The Board found that Mr. McCalister testified that the owner of the property could not find a tenant until recently.
7. The Board found that Mr. McCalister testified that most off-premise signs are considered billboards but the proposed off-premise sign is not a billboard. Rather, the proposed off-premise sign will advertise a business (Jimmy's Grille) that cannot be easily seen from Route One.
8. The Board found that Mr. McCalister testified that the proposed off-premise sign will not exceed the square footage requirements of an on-premise sign. The variances requested would allow the proposed off-premise sign to be placed at the same setback requirements an on-premise sign would be required to meet.
9. The Board found that Mr. McCalister testified that the variances are needed because the requirements for an off-premise sign set forth a 25 feet setback, which would result in the sign being located in the middle of the parking lot.
10. The Board found that Mr. McCalister testified that, if the sign was placed farther away from Route One, the sign would block the views of the sign of a neighboring liquor store.

11. The Board found that Mr. McCalister testified that the off-premise sign is proposed to be located in the area which has the least amount of impact on neighboring signs.
12. The Board found that Mr. McCalister testified that the site was previously used as a PNC Bank and a Salvation Army. The bank has relocated closer to Route One and in front of the proposed restaurant.
13. The Board found that Mr. McCalister testified that the Applicant intends to develop the property formerly used by PNC Bank prior to its relocation for use by Jimmy's Grille, which will be open year-round. The proposed restaurant's lot is hidden.
14. The Board found that Mr. McCalister testified that the Applicant did not create the unique situation and that the proposal is the best possible place for development.
15. The Board found that Mr. McCalister testified that the variances are necessary enable reasonable use of the property and bring visibility to an otherwise hidden structure.
16. The Board found that Mr. McCalister testified that that the area is a commercial area and the sign is needed. The sign will allow patrons to find Jimmy's Grille and help make it a successful business
17. The Board found that Mr. McCalister testified that that use is not detrimental to the public welfare.
18. The Board found that Mr. McCalister testified that the use will not substantially adversely affect the uses of neighboring and adjacent properties.
19. The Board found that Mr. McCalister testified that the proposed sign will measure six (6) feet by twelve (12) feet, with an LED message board measuring four (4) feet by eight (8) feet and will not exceed the twenty-five (25) feet height requirement.
20. The Board found that Mr. McCalister testified that the Applicant meets the requirements for on-premise signs and will only be used to advertise the proposed restaurant.
21. The Board found that Mr. McCalister testified that the sign will not block any existing signage located on this property or adjacent properties.
22. The Board found that Planning & Zoning Director Lawrence Lank advised the Board that the restaurant will be located on Parcel 318 and the sign will be located on Parcel 319.02. PNC Bank was originally on Parcel 318 but moved to Parcel 319.02 and that Parcel 318 has been vacant for some time.
23. The Board found that Jeffrey Jones was sworn in and testified in opposition to the Application.
24. The Board found that Mr. Jones testified that he owns the adjacent property south of the Property (Parcel 319.01).
25. The Board found that Mr. Jones testified that the proposed sign will adversely affect his property as it will impede and obstruct the view of his tenants' existing signs.
26. The Board found that Mr. Jones testified that his tenants include Touch of Italy, Nage, Oreck, and Hickman's Meat Market.
27. The Board found that Mr. Jones testified that he reviewed the plan for the proposed sign and believed it would block his sign but he would agree to the proposed sign without the lower LED message board.
28. The Board found that Mr. McCalister testified that he could raise and reconfigure the proposed LED portion of the sign to prevent any issues with the neighboring signs.
29. The Board found that Mr. McCalister testified that he could submit a revised drawing to show the changes.
30. The Board found that no parties appeared in support of the Application.
31. The Board found that one (1) party appeared in opposition to the Application.

32. The Board voted to leave the case open for the limited purpose of allowing the Applicant to submit a revised documentation showing the changes discussed.
33. After the initial hearing, the Applicant submitted a letter to the Board, a photograph of the neighboring property and revised renderings of the proposed sign. The letter indicates that the Applicant seeks a lesser front yard setback variance based on the new schematic. Rather than requesting a variance of 20 feet from the front yard setback requirement, the Applicant now seeks a variance of 15 feet from the front yard setback requirement.
34. 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 because the proposed off-premises sign as shown on the revised schematic 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 surrounding area is commercial in nature and there are numerous other signs as shown on pictures submitted by the Applicant.
 - b. The sign will be the same size as on-premise signs and will benefit a business located on a nearby property.
 - c. The Applicant has revised its proposal to address concerns raised by a neighboring property owner and the proposal appears to provide clear view of the neighbor's signs.
 - d. The Board was not convinced that the sign as shown on the most recent schematic would have a substantial adverse effect on neighboring and adjacent properties.
 - e. The Board based this approval on the Applicant's representations that the sign will be built to the design shown on the most recent schematics and will be used to advertise the business on Parcel 318.
35. 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 its unusual development. The Property is adjacent to other commercial properties which share parking and an entrance. One of the nearby parcels is located off of the adjacent Route 1 and is largely hidden due to the development on the Property. The proposed business on the nearby parcel seeks to place a sign on the Property so that it be seen from the nearby Route 1. The location of the existing parking lot and other signs on the Property limit the placement of the sign. The unique conditions of the Property are clear when reviewing the survey and photographs.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to construct an off-premises sign to advertise a business on an adjacent parcel that is largely hidden from view. Due to the location of the existing signs and parking spaces, along with the unusual development of the Property, it is necessary that the Applicant obtain the variances in order to place the sign so as to minimize the impact on parking and other signs, which still providing usable signage. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will provide the Applicant sufficient views of the sign for its business. When reviewing the pictures of the property and the survey, it is clear that the sign is reasonable in size, shape, and location.
 - c. The Property is an unusual development with multiple commercial businesses on separate parcels. The business on Parcel 318 will be

largely hidden due to this development and needs a sign along the nearby Route 1 to be seen. The exceptional practical difficulty was not created by the Applicant. This proposed sign will be more akin to an on premises sign rather than an off-premises sign. The close proximity of the business which will use the sign indicates that the situation is very unique and has created an exceptional practical difficulty for 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. As previously noted in Paragraph 34, the sign will have no adverse effect on neighboring and adjacent properties; which is commercial property. There are other signs in the area and the neighborhood is commercial in nature. The revisions to the schematics as presented by the Applicant address the concerns raised by a neighbor about the impact on the neighboring property.
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to place the sign on the Property and the Applicant has revised its schematics to address concerns raised by the neighbor. It is clear to the Board that the variances requested are the minimum variances to afford relief.
- f. The Applicant shall construct the sign in accordance with the schematics submitted on March 31, 2015.

The Board granted the variance and special use exception application finding that it met the standards for granting a variance and special use exception.

Decision of the Board

Upon motion duly made and seconded, the special use exception application was approved. The Board Members in favor were Mr. Dale Callaway, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Members voted against the Motion to approve the special use exception application. Mr. Jeff Hudson did not participate in the vote of this 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 June 9, 2015