

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY
IN RE: CLEAR CHANNEL OUTDOORS, INC.**

(Case No. 11588)

A hearing was held after due notice on June 8, 2015. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, 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 maximum square footage and maximum height requirements for an off-premise sign.

Findings of Fact

The Board found that the Applicant is requesting a special use exception for an off-premise sign and a variance of fifteen (15) feet from the twenty-five (25) height requirement for an off-premise sign, and a variance of 300 square feet per side from the required 300 square feet per side maximum square footage requirement. This application pertains to certain real property located at the west side of Route One (Coastal Highway) approximately 846 feet north of Willow Creek Road (911 Address: 16218 Coastal Highway, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-35-23.00-52.01. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a letter from John Paradee, Esquire, a letter from Qamer Mall, a survey dated March 9, 2015, an aerial photograph of the Property, photographs of the Property and other billboards, the application and decision for Case No. 11437, the application and decision for Case No. 11518, a site plan dated March 31, 2015, and a portion of the tax map of the area.
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 Nancy Chernoff was sworn in and testified regarding the Application. John Paradee, Esquire, presented the Application on behalf of the Applicant and submitted a booklet of exhibits to the Board to review.
4. The Board found that Mr. Paradee stated that the proposed sign will support no more than one sign and will be adequately set back from the front and side yards. The sign will be at least 300 feet from the nearest dwelling, church, school, public lands, or another sign regulated by the Code.
5. The Board found that Mr. Paradee stated that the billboard will not substantially adversely affect the uses of the uses of neighboring and adjacent properties.
6. The Board found that Mr. Paradee stated that the billboard will not alter the character of the surrounding area. There are numerous billboards along this span of Route 1 which is a heavily traveled highway.
7. The Board found that Mr. Paradee stated that the Board has approved similar signs including a sign ¼ miles north of the Property and 1.9 miles south of the Property.
8. The Board found that Mr. Paradee stated that the proposed off-premise sign will not be visible to residential properties in the area.
9. The Board found that Mr. Paradee stated that there is a substantial tree line and a hotel between the location of the proposed billboard and the nearest residential community.

10. The Board found that Mr. Paradee stated that the Property is located immediately adjacent to the southbound lane of Route 1 which supports the routine usage of billboard signs.
11. The Board found that Mr. Paradee stated that the Property is unique because it is bordered on the north and south by tree lines and structures of such significant height and density that limiting any billboard sign to the dimensional and height requirements would result in peculiar and exceptional practical difficulties.
12. The Board found that Mr. Paradee stated that a Code compliant billboard would not be readily visible and would be blocked by the trees and structures.
13. The Board found that Mr. Paradee stated that the proposed billboard would be located north of the Red Mill Inn sign and south of the large tub as shown on a photograph in Exhibit F of the booklet.
14. The Board found that Mr. Paradee stated that a Code compliant sign would be partially blocked by the existing tub and would be difficult to see from the north and the tree line would block the view of the billboard from the south.
15. The Board found that Mr. Paradee stated that requiring the Property to conform with the height and dimensional requirements of the Code would place an unreasonable burden on the Applicant, the property owner, the business patrons, and the general public.
16. The Board found that Mr. Paradee stated that without the variances the proposed off-premise sign would be less-visible, which could result in confusion or unsafe distraction to the driving public.
17. The Board found that Mr. Paradee stated that the difficulty was not created by the Applicant, due to the nature of the site and surrounding properties.
18. The Board found that Mr. Paradee stated that the billboard will not alter the essential character of the neighborhood or impair the use or development of adjacent properties or be detrimental to the public welfare.
19. The Board found that Mr. Paradee stated that strict compliance with the Code would provide minimal public benefit.
20. The Board found that Mr. Paradee stated that the variances are the minimum variances to afford relief.
21. The Board found that Mr. Paradee stated that the proposed billboard will be forty (40) feet tall and that the height variance would provide visibility above the existing tree line and building structures. The sign is the same height and size as a billboard located 1,000 feet to the north.
22. The Board found that Mr. Paradee stated that the difficulties presented to the Applicant are practical and exceptional and would place the Applicant at a competitive disadvantage.
23. The Board found that Mr. Paradee stated that the square footage variance will better proportion the sign and provide better visibility due to the proposed height.
24. The Board found that Mr. Paradee stated that the height of the other obstructions in the area is approximately 25 feet and that the billboard needs to clear those obstructions to be visible.
25. The Board found that Mr. Paradee stated that the existing tree line consists of mature trees and that the Applicant is not seeking to go higher than what is needed to clear the obstructions.
26. The Board found that Mr. Paradee stated that the height of the billboard is consistent with other signs in the area.
27. The Board found that Mr. Paradee stated that the proposed billboard will be a two-sided 12 feet by 50 feet and that there will be one (1) advertisement per side on the sign.
28. The Board found that Ms. Chernoff testified that the Applicant has a policy that billboards be leased 90% of the time.

29. The Board found that Ms. Chernoff testified that there are visibility concerns if the billboard is raised but not increased in square footage.
30. The Board found that Ms. Chernoff testified that the trees are on the neighbor's property and the neighbor had no desire to remove the trees.
31. The Board found that Ms. Chernoff testified that she confirms the statements made by Mr. Paradee as true and correct.
32. The Board found that Richard Bell and Susie Hudson were sworn in and testified in opposition to the Application.
33. The Board found that Mr. Bell testified that he owns the adjacent property where Harvard Business Services is located.
34. The Board found that Mr. Bell testified that properties north of the Property along Route 1 are mainly farmland.
35. The Board found that Mr. Bell testified that there are already traffic issues in the area and that the billboard will distract drivers. There have been accidents in that area and he is concerned the proposed billboard creates a safety issue.
36. The Board found that Ms. Hudson testified that she also owns an adjacent property but the billboards on her property were there at the time she purchased her lot.
37. The Board found that Ms. Hudson testified that the proposed billboard will add to the traffic issues in the area and that she feels there are better locations available for the sign.
38. The Board found that Ms. Hudson testified that there is a lot business in the area and that there are a lot of accidents in the area.
39. The Board found that one (1) party appeared in support of the Application.
40. The Board found that two (2) parties appeared in opposition to the Application.
41. 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-premise sign will not substantially affect adversely the uses of neighboring and adjacent properties. The findings below further support the Board's decision to approve the special use exception application.
 - a. The Property is located along Route 1 which is a well-traveled road.
 - b. A hotel and other businesses are located on or adjacent to the Property and the billboard appears to be consistent with character of the neighborhood.
 - c. The billboard will meet all setback and separation requirements under the Sussex County Code.
 - d. There are other commercial properties and billboards in the nearby area. This fact was unrebutted and Ms. Hudson even testified that there are businesses in the area.
 - e. The proposed billboard will not be visible to residential properties in the area.
 - f. The Board was not persuaded by the testimony presented by the opposition that the proposed billboard would substantially adversely affect their properties or other neighboring and adjacent properties.
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 failed to meet the standards for granting a variance. The findings below further support the Board's decision to deny the variance application.
 - a. The Board was not convinced that the Property presented any unique physical circumstances or conditions which created an exceptional practical difficulty for the Applicant. The Property is a large, commercially developed lot which already supports a hotel. The Property does not have a unique shape or topography which create an exceptional practical

difficulty. The Applicant argues that the trees, signs, and structures on neighboring properties create a unique situation but the Board is not convinced that a uniqueness exists such that the Applicant would be unable to develop the Property or be able to place a visible billboard thereon.

- b. The Board was not convinced that the Property could not be developed in strict conformity with the Sussex County Zoning Code. First, the Property has actually already been developed by a commercial business (the hotel). Based on its current development, the Property is being reasonably utilized in its present state. Second, the Board is not convinced that the variances are necessary to enable the *additional* use of the Property sought by the Applicant (e.g. the billboard) as the Applicant would be able to place a billboard on the Property without the need for a variance. The Applicant argued that the billboard needed to be larger and higher in order to be seen. The Board, however, did not find this argument persuasive. A billboard could be placed on the Property without the need for a variance. Accordingly, the variances are not necessary to enable the reasonable use of the Property.
 - c. The exceptional practical difficulty is being created by the Applicant. The Property is already developed by a hotel and the Applicant has room to place the billboard on the Property. The Board was not convinced that a billboard built in compliance with the Sussex County Zoning Code could not be seen. The Applicant can build a billboard on the Property without the need for a variance. As such, the Board was not convinced that the variance requests were the product of a *need*. Instead, the variance requests appear to be the produce of a *want* as the Applicant seeks to build the billboard as proposed for purposes of convenience and profit, and / or caprice. Applicant's need for the variance has everything to do with its preferences for the sign's visibility and efficient advertising and nothing at all to do with the physical uniqueness of the lot.
 - d. For the same reasons that the Board found that the variances are not necessary to enable the reasonable use of the Property, the variances sought are not the minimum variances necessary to afford relief and the variances requested do not represent the least modifications possible of the regulations at issue. The Applicant can construct the billboard in compliance with the Sussex County Zoning Code and the variances are not necessary to afford relief.
43. Though the Board has denied the variance request, the Board notes that the Applicant has demonstrated that the proposed variances will not alter the essential character of the neighborhood. As previously discussed, the Property is located along Route 1, which is a well-traveled road, and is near other commercial properties and billboards. The Board was not convinced by the opposition that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.

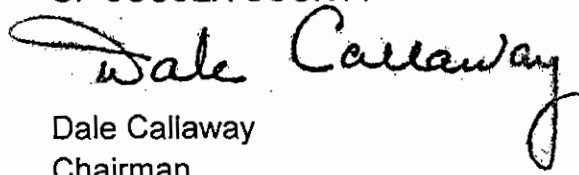
The Board granted the special use exception application finding that it met the standards for granting a special use exception but the Board denied the variance application finding that it failed to meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the special use exception application was approved and the variance application was denied. The Board Members in favor of the motion were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. Norman Rickard, and Mr.

Brent Workman. Mr. John Mills voted against the Motion to approve the special use exception application and to deny the 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 August 18, 2015.