

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: B P G PROPERTIES**

**(Case No. 11603)**

A hearing was held after due notice on July 6, 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 a billboard and variances from the height, maximum square footage, side yard and rear yard setback requirements for a billboard.

Findings of Fact

The Board found that the Applicant is requesting a special use exception to place a billboard, a variance of twenty-two (22) feet from the twenty-five (25) feet maximum height requirement for a billboard, a variance of 912 square feet from the 600 square feet maximum allowable square footage for a billboard requirement, a variance of 39.28 feet from the three-hundred (300) feet separation requirement from a dwelling, a variance of 47.61 feet from the three-hundred (300) feet separation requirement from a dwelling, a variance of 32.05 feet from the three-hundred (300) feet separation requirement from a dwelling, a variance of 48.5 feet from the fifty (50) feet side yard setback requirement for a billboard. This application pertains to certain real property located on the west side of Coastal Highway (Route 1) approximately 1000 feet north of John J. Williams Highway (Route 24); said property being identified as Sussex County Tax Map Parcel Number 3-34-12.00-90.00. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a photograph with the proposed billboard superimposed thereon, 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 Preston Dyer and Dale McCalister were sworn in and testified regarding the Application. Mr. McCalister submitted a letter of support from a neighbor to the Board to review.
4. The Board found that Mr. McCalister testified that the existing billboard on the Property is in poor shape and in need of repair. The existing billboard is warped and is supported by telephone poles.
5. The Board found that Mr. McCalister testified that the Applicant approached the neighbor who owns a Burger King restaurant to discuss proposed repairs to the billboard and the neighbor had issues with the current billboard because it blocks views of the Burger King. The neighbor has requested that the proposed billboard be raised to exceed the twenty-five (25) feet maximum height requirement and be set back from the front property line approximately fifty (50) feet (which is double the required front yard setback). The height and front yard setback requests are to allow better visibility of the neighbor's existing business.
6. The Board found that Mr. McCalister testified that the proposed billboard will be a monopole structure and will be lit with LED lights.
7. The Board found that Mr. McCalister testified that the existing billboard is closer to the rear property line and is actually closer to neighboring residential properties than the proposed billboard will be.
8. The Board found that Mr. McCalister testified that the character of the neighborhood will not be altered.

9. The Board found that Mr. McCalister testified that the existing billboard has two signs each measuring 12 feet by 32 feet (384 square feet). The proposed billboard will have two signs which each measure 378 square feet per side.
10. The Board found that Mr. McCalister testified that a billboard measuring 10 feet by 30 feet would not be as effective because the billboard will be located farther from the road and will be elevated.
11. The Board found that Mr. McCalister testified that the neighbor supports this proposal and the proposed billboard will have less impact on the neighbor's property.
12. The Board found that Mr. McCalister testified that the Applicant did not create the existing condition of the billboard.
13. The Board found that Mr. McCalister testified that the variances are the minimum to afford relief.
14. The Board found that Mr. McCalister testified that the proposed billboard will meet all State of Delaware requirements.
15. The Board found that Mr. McCalister testified that the current billboard is an eyesore and that new billboard will be an improvement.
16. The Board found that Mr. McCalister testified that the bottom billboard will be twenty-four (24) feet from grade and there will be one (1) foot between the billboards to allow enough room to wrap the signage.
17. The Board found that Mr. McCalister testified that if the variances are denied, the Applicant will have to repair the existing billboard.
18. The Board found that Mr. McCalister testified that the Applicant would suffer a financial hardship if unable to have two (2) signs per side. If the Applicant was unable to place two signs per face, the Applicant may decide to simply repair the existing billboard.
19. The Board found that Mr. McCalister testified that the existing billboards were not rented during the pending application so as not to upset pending tenants by disrupting their advertising. The location, however, is a prime site and believe the Applicant will have no problem leasing the proposed billboards.
20. The Board found that Mr. McCalister testified that the current billboard will be removed if this application is approved.
21. The Board found that Mr. McCalister testified that the use will not substantially adversely affect the uses of the neighboring and adjacent properties.
22. The Board found that Mr. Dyer testified that the current billboard blocks the Burger King signage and that the Burger King owner urged him to raise the height of the billboard.
23. The Board found that no parties appeared in support of or in opposition to the Application.
24. 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 location along Route 1, which is a busy commercial corridor, and its proximity to a neighboring Burger King restaurant. The Property currently has an existing, wooden billboard but the billboard blocks the views of the neighboring restaurant. The neighbor has requested that the Applicant raise the sign and set it at least 50 feet from the front yard property line in order to allow better visibility of the Burger King site. The situation is also unique because the existing billboard is warped and in need of repair. The condition of the existing billboard and the requests from the neighbor have created an exceptional practical difficulty for the Applicant.

- b. Due to the uniqueness of the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to replace its existing billboard with a sturdier and newer structure. The Applicant could repair the existing billboard but the existing sign is larger than the proposed sign and blocks views of the neighboring business. In order to accommodate requests from a neighbor, the Applicant seeks variances which will enable the Applicant to construct a billboard which does not block the neighbor's views. The proposed billboard is also farther from neighboring residential properties than the existing sign. Without the variances, the Applicant would likely repair the existing billboard which does not solve the visibility issues for the Burger King site. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the billboard to be constructed on the Property. The Board is convinced that the size, shape, and location of the billboard are reasonable, which is confirmed when reviewing the pictures and schematics provided by the Applicant.
- c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the business located on the adjacent property and its needs for greater visibility. The neighbor's requests have greatly limited the placement options for the billboard and it is unlikely that a new billboard could be placed in compliance with the Sussex County Zoning Code. Rather than continue with the sign, which is currently an eyesore and troubling for the Applicant's neighbor, the Applicant seeks to replace the sign with a structure which will benefit both parties as the proposed sign will give the Applicant an improved billboard structure while improving the views of the neighboring commercial property. The unique characteristics of the current development are clear when reviewing the pictures submitted by the Applicant. The Board is convinced that the exceptional practical difficulty was not 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 Board is convinced that the proposed billboard will have no adverse effect on the character of the neighborhood. Rather, the proposed billboard will be an improvement as it will replace an old, wooden sign with a newer, more aesthetically pleasing sign while also improving views of neighboring properties. The Property is also located in a commercial zone along Route 1 and there are many other commercial properties in the area. The proposed sign fits with the character of the neighborhood and is a preferred solution than having repairs made to the existing sign. No evidence was presented which would indicate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- 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 construct the billboard on the Property in such a way as to provide greater views of the neighboring property. The Board also notes that the proposed billboard is smaller than the current billboard and is farther away from neighboring residential properties than the current sign. It is clear to the Board that the Applicant has taken steps to minimize the need for variances while working with its neighbor to lessen the impact of the billboard on that property.

25. 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 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 Application.

- a. The Property is located along Route 1 in a well-traveled, commercial zone where other commercial properties are located.
- b. The Applicant has worked with its neighbor to the south to place the billboard in such a manner as to minimize the impact of the billboard on the neighboring property. The Board finds it compelling that the Applicant could simply repair the existing sign but has elected to replace the sign with one that improves the views of its neighbor's property.
- c. There is already a billboard located on the Property and no evidence was presented that the existing billboard had any substantial adverse effect on neighboring and adjacent property other than issues associated with visibility of the neighboring Burger King, which will be remedied to the neighbor's satisfaction by the proposed replacement billboard.
- d. The billboard will meet all requirements set forth by the State of Delaware and the Department of Transportation so that the billboard will have no negative impact on traffic.
- e. The proposed sign will be an improvement both aesthetically and in location from the current sign.

The Board granted the special use exception and variance application finding that it met the standards for granting a special use exception and 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 August 18, 2015