

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

**IN RE: 19366 COASTAL HIGHWAY, LLC**

**(Case No. 11612)**

A hearing was held after due notice on August 3, 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 replace an existing billboard and variances from the side yard setback, the separation from another billboard, height, the distance from public lands and maximum square footage for a billboard requirements.

Findings of Fact

The Board found that the Applicant is requesting a special use exception to replace an existing billboard, a variance of 42 feet from the fifty (50) feet side yard setback requirement for a billboard, a variance of 89 feet from the three hundred (300) feet separation requirement from another billboard, a variance of 292 feet from the three hundred (300) feet separation requirement from public lands, a variance of six (6) feet from the twenty-five (25) feet maximum height requirement for a billboard, and a variance of 276 square feet from the 300 square feet maximum allowable square footage for a billboard per side. This application pertains to certain real property located on the west side of Coastal Highway (Route One) between Miller Road and Airport Road (911 Address: 19366 Coastal Highway, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-13.00-325.29. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a billboard placement site plan dated May 12, 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 Patricia Derrick and James Derrick were sworn in to testify about the Application. David Hutt, Esquire, presented the Application to the Board and submitted exhibits to the Board to review. The exhibits included deeds to the Property, tax maps, findings of fact for Case No. 5853-1995, billboard placement site plan with overlay, Google Earth street views of the Property and nearby areas, and findings of fact for other billboard applications.
4. The Board found that Mr. Hutt stated that the Applicants want to replace the existing billboard. The current billboard advertises The Sea Shell Shop, which is located on the same property and the Applicants intend to correct the type of advertising on the sign.
5. The Board found that Mr. Hutt stated that at the Property is located along Coastal Highway and was historically used as a rest stop. A billboard was located on the Property at that time. A store and miniature golf course are located on a high point / knoll of the Property.
6. The Board found that Mr. Hutt stated that the Derrick family purchased the Property in 1993 and transferred the Property to an LLC in 2010.
7. The Board found that Mr. Hutt stated that the Property is zoned commercial.
8. The Board found that Mr. Hutt stated that the Property is unique in shape and topography.
9. The Board found that Mr. Hutt stated that the Property is wedge-shaped and there is more variation in the topography of this site than on most other

properties in the area. The existing billboard is located on the lowest point of the Property.

10. The Board found that Mr. Hutt stated that the existing wooden structure is in need of repair and requires regular maintenance. The Applicant has had to replace several telephone poles over the years due to damage to the sign.
11. The Board found that Mr. Hutt stated that the low lying land and other structures on and adjacent properties create a need for the height variance and the proposed height of the billboard will allow for better visibility of the sign.
12. The Board found that Mr. Hutt stated that the Sussex County Pump Station #201 is located on the adjacent property and is at a higher elevation than the ground where the existing billboard stands.
13. The Board found that Mr. Hutt stated that there is an existing on-premise sign for a neighboring shopping center which sits on top of a small hill and that sign is located at a higher elevation than the existing billboard.
14. The Board found that Mr. Hutt stated that the existing billboard is approximately 500 square feet in size and a wooden pole structure.
15. The Board found that Mr. Hutt stated that the Applicant proposes to replace the billboard with a steel monopole structure and to raise it so that it does not appear to be located in a hole.
16. The Board found that Mr. Hutt stated that the existing billboard was on the Property when the Applicants purchased the Property in 1993. The Applicants modified the existing billboard in 1995 with the approval of the Board.
17. The Board found that Mr. Hutt stated that there are no dwellings, churches, or schools within a three-hundred (300) feet radius of the proposed billboard but there is an existing billboard within the three-hundred (300) feet of the proposed billboard and it predates zoning regulations.
18. The Board found that Mr. Hutt stated that the proposed steel monopole billboard will be thirty-one (31) feet tall and will be fully engineered to withstand wind loads. It will require minimal maintenance.
19. The Board found that Mr. Hutt stated that the billboard as proposed would be the correct height if it were located on ground which was even with the adjacent Route One. The ground where the billboard is located is below the height of the adjacent Route One.
20. The Board found that Mr. Hutt stated that the proposed billboard will measure 12 feet by 48 feet and be two-sided.
21. The Board found that Mr. Hutt stated that the proposed sign meets all of the requirements of the Delaware Department of Transportation ("DelDOT").
22. The Board found that Mr. Hutt stated that the proposed billboard will not substantially adversely affect the neighboring and adjacent properties. The proposed billboard will be less obtrusive than the existing billboard and is consistent with other billboards in the area. The area is also highly developed with commercial uses.
23. The Board found that Mr. Hutt stated that the Applicants are requesting similar approval that other replacement billboards have received from the Board.
24. The Board found that Mr. Hutt stated that replacement signs take aging and obsolete signs and replace them with engineered structures that are more aesthetically pleasing.
25. The Board found that Mr. Hutt stated that the proposed sign is not currently leased but there are no vacant billboards in the area along Route One. The Applicants have other businesses and can use the billboard for their advertisements.
26. The Board found that Mr. Hutt stated that the Property is unique in shape and topography. The Property cannot otherwise be developed and the variances are necessary to enable reasonable use of the Property.

27. The Board found that Mr. Hutt stated that the exceptional practical difficulty was not created by the Applicant. The Applicant did not create the Property or the existing elevations. The Applicant did not put in the pump station or neighboring sign.
28. The Board found that Mr. Hutt stated that the use will not be detrimental to the public welfare and the variances will not affect the character of the neighborhood.
29. The Board found that Mr. Hutt stated that the proposed billboard is smaller than nine (9) other billboards in the area.
30. The Board found that Mr. Hutt stated that the variances are the minimum variances to afford relief.
31. The Board found that Mr. Hutt stated that the current sign is eighteen (18) feet tall.
32. The Board found that Mr. Hutt stated that the height of the proposed sign will allow the sign to be the same height as the existing billboard across the street.
33. The Board found that Mr. Derrick, under oath, confirmed the statements made by Mr. Hutt.
34. The Board found that Ms. Derrick testified that the pump station has been on the neighboring property since 2005.
35. The Board found that Richard Berl, Esquire, appeared in opposition on behalf of Gannos, LLC. Mr. Berl submitted a booklet of exhibits including minutes of prior Board meetings, photographs of other signs on the Property, and objections from tenants and owners of a neighboring shopping center.
36. The Board found that Gregory Fisher was sworn in to testify in opposition to the Application.
37. The Board found that Mr. Berl stated that he represents Gannos, LLC, who is the neighboring property owner. Gannos, LLC owns the existing shopping center behind the Applicant's property and has owned that property since 2005.
38. The Board found that Mr. Berl stated that the existing billboard currently advertises the on-premise business, which is a violation of the Zoning Ordinance. The Applicant's existing on-premise sign advertises an off-premise business, which is also in violation of the Zoning Ordinance. There are also a second on-premise sign and a large ice cream cone on the Property, which possibly violate the Zoning Ordinance.
39. The Board found that Mr. Berl stated that the existing violations on the Property also raise concerns if the Application violates the "Clean Hands Ordinance".
40. The Board found that Mr. Berl stated that the Applicant chose the current location for the existing billboard and that the Applicant chose the low lying area and created its own hardship.
41. The Board found that Mr. Berl stated that Gannos, LLC and the tenants in the shopping center are concerned the proposed sign will block visibility to their existing businesses. Gannos, LLC is concerned their current tenants will not renew their leases and seek property closer to Route One.
42. The Board found that Mr. Berl stated that the proposed billboard is much higher and larger than the existing billboard.
43. The Board found that Mr. Berl stated that the Property dips where the billboard is located but it has not changed since the Applicant placed the billboard.
44. The Board found that Mr. Berl stated that the Property is already reasonably developed and possibly even over-developed.
45. The Board found that Mr. Berl stated that the exceptional practical difficulty was created by the Applicant.
46. The Board found that Mr. Berl stated that the proposed billboard adversely affect the uses of the neighboring and adjacent properties. The character of the neighborhood has changed in recent years.

47. The Board found that Mr. Berl stated that the pending moratorium shows Sussex County is viewing billboards differently.
48. The Board found that Mr. Berl stated that the variances requested are not the minimum variances to afford relief.
49. The Board found that Mr. Berl stated that the proposed billboard will be two (2) times larger than the maximum allowable square footage for a billboard.
50. The Board found that Mr. Berl stated that existing billboard does not create an issue and does not block his client's sign. His client is concerned about the height of the proposed sign.
51. The Board found that Mr. Berl stated that that his client and their tenants are concerned that the proposed billboard will divert attention away from the shopping center. While they have gotten used to the current billboard, the proposed billboard is far different from the current billboard.
52. The Board found that Mr. Fisher, property manager for Gannos, LLC, under oath, confirmed the statements made by Mr. Berl.
53. The Board found that Mr. Hutt stated that Shell We Bounce is located off the Property but the other signs advertise businesses on the Property. The signs in violation on the Applicant's property were not willful and the Applicant never received notice of violation from Sussex County in reference to the sign issues.
54. The Board found that Mr. Hutt stated that the existing billboard has existed on the Property for approximately fifty (50) years and was on the Property when the Applicant purchased the Property.
55. The Board found that Mr. Hutt stated that the proposed billboard will be V-shaped.
56. The Board found that Mr. Hutt stated that the proposed billboard will not impact the view of the existing shopping center.
57. The Board found that Mr. Hutt stated that tenants in the existing shopping center wanting to relocate closer to Route One should have no bearing on this application.
58. The Board found that Mr. Hutt stated that it is not economically feasible to replace the sign with a smaller sign.
59. The Board found that Patricia Derrick testified that they replaced the poles on the existing billboard in 2009.
60. The Board found that Patricia Derrick testified that she has verbal approval for the ice cream sign from the Planning and Zoning Department. The ice cream sign is temporary and only used May through September. She was not aware of any violations with her current signs.
61. The Board found that Patricia Derrick testified that the Board approved the existing billboard in 1995 and a picture showed it would advertise the Sea Shell Shop. They replaced the pylons and added plywood to the existing sign in 1995.
62. The Board found that Patricia Derrick testified that at a smaller sign would not be economically feasible to replace with a steel monopole structure.
63. The Board found that no parties appeared in support of the Application.
64. The Board found that two (2) parties appeared in opposition to the Application.
65. The Board tabled its decision on the Application until a vote on October 5, 2015.
66. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board has considered and weighed, 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 in shape and topography. The shape of the Property is particularly odd; as clearly shown on the survey and tax maps. It is undisputed that the Property also has unique topography. Portions of the Property are located on a knoll while the current billboard on the

Property is located in an area much lower than other portions of the lot. This lower area is several feet below the height of the adjacent Route One and the adjacent properties. The Property currently has an existing, wooden billboard but the existing billboard is in need of repair or replacement. The Applicant seeks to replace the existing billboard with a newer, steel monopole structure. The condition of the existing billboard and the unique characteristics of the Property 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, newer structure. Due to the location of a billboard on a property across from Route One and a pump station on an adjacent lot, the Applicant is unable to replace the billboard in strict conformity with the Sussex County Zoning Code. Meanwhile, the unique topography of the Property limits the Applicant's ability to construct a billboard which is the same height as the other nearby billboard. The low lying area where the billboard is located is several feet below the adjacent Route One and the Applicant needs a variance in order to place a billboard that is consistent with the height of other billboards in the area. The Board finds that the variance requested by the Applicant for the height variance is consistent with the spirit of the Sussex County Zoning Code. The unique shape of the Property has also created an unusual building envelope which limits the placement options for the billboard. The Applicant seeks the variances so that it can replace the billboard in the same general location as the existing billboard. Without the variances, the Board is concerned that the Applicant would likely keep the existing, non-conforming billboard on the Property even though it is in poor condition. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the new billboard to be constructed on the Property. The Board is convinced that the height, 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 1) create the shape or topography of the Property, 2) place the billboard on neighboring lands or 3) erect the existing billboard on the Property. Rather, the billboard was on the Property when the Applicant acquired the Property and the billboard was later modified in 1995. The existing billboard needs repair due its condition and instead of continuing with the existing billboard, the Applicant seeks to replace the sign with a structure which will be safer and more aesthetically pleasing. The unique characteristics of the Property are clear when reviewing the survey and 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 proposed billboard will be an improvement as it will replace an old, wooden sign with a newer, more aesthetically pleasing sign. The sign will meet all requirements of DeIDOT which indicates that it should have little to no impact on traffic. The Property is located in a commercial zone along Route One and there are many other commercial properties in the area. Photographs submitted by the Applicant confirm that similar billboards are located nearby and that the proposed sign will fit with the

character of the neighborhood. The Board was not swayed by arguments raised by the opposition that the billboard would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The opposition argued that the sign will block views of the sign of the adjacent shopping center. Clearly, the billboard will have no effect on the visibility of the shopping center's sign from south bound traffic along Route One since the shopping center's sign is north of the proposed billboard. Any potential effect on the visibility of the shopping center's sign would be on views from northbound traffic. The opposition has stated that the current sign poses no such visibility issues but they are concerned that the size and the height of the new billboard will block those views. The photographs submitted by the Applicant, however, indicate that the shopping center's sign is quite visible from the south and the Board is not convinced that a billboard, as proposed, will have any effect on the views of the shopping center's sign. There appears to be a great distance between the signs and the shopping center sign should still be visible from the south. Furthermore, the shopping center sign is located on a hill which raises its height well above the adjacent roadway and the Applicant's billboard.

- e. With the exception of the variance request from the maximum square footage requirement, 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. The height variance will enable the Applicant to erect a billboard of a similar height of nearby billboards and the separation and setback variances will enable the Applicant to replace the existing billboard. The Board is convinced that the Applicant has attempted to minimize the need for those variances and that these variances will afford the Applicant relief. Nevertheless, the Board is not convinced that the variance requested from the maximum square footage requirement is the minimum variance necessary to afford relief. Rather than apply for a variance which would allow the Applicant to construct a billboard of the same size as the current billboard, the Applicant seeks to construct a larger billboard. The Board finds that the Applicant could build a billboard of the same size as the current billboard and that a variance of 180 square feet per side from the maximum square footage requirement is appropriate. Such a variance would allow the Applicant to replace its current billboard with a newer one in the same location.
- f. Based on the above findings, the Board approves the variances sought by the Applicant from the side yard setback, height, and separation distance between billboards, and separation distance between public lands requirements. The Board approves a variance request from the requirement for maximum square footage of a billboard with the condition that the maximum square footage of the billboard is limited to 480 square feet per side (or a variance of 180 square feet per side).

67. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board has considered and weighed, 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 and billboards are located.
  - b. 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. Comments from the opposition indicate that the opposition has actually become accustomed to the existing billboard. The petition signed by members of the opposition indicates that some members have been at the shopping center since 1989. If the billboard had caused a substantial adverse effect, certainly there would be evidence to that effect.
  - c. While the opposition presented concerns about the proposed billboard (particularly with regard to the effect on the views of the nearby shopping center), the Board finds that those concerns are general in nature and do not rise to the level of substantial evidence which would convince the Board that the proposed billboard would have a substantial adverse effect on the neighborhood. No specific evidence was presented by the opposition regarding the effect of the proposed billboard on property values. No appraisal or expert report was offered. Likewise, while the opposition was concerned that the billboard would affect its ability to rent out space in the shopping center, no specific evidence was presented to confirm this suspicion such as testimony from actual tenants that they would not seek to lease space at the shopping center if the billboard were approved. The Board was simply not convinced that the billboard would have a substantial adverse effect on these properties.
  - d. The proposed sign will be a safety and aesthetic improvement from the current sign.
  - e. The proposed sign will meet all DeIDOT requirements.
68. The Board also considered the arguments raised by the opposition that the Application could not be considered due to the Clean Hands Ordinance. After review of the Clean Hands Ordinance, it is clear to the Board that the Applicant may apply for the special use exception and these variances because the Clean Hands Ordinance only limits the Board from hearing applications where monetary obligations are owed to Sussex County. No evidence was provided to demonstrate that monetary obligations were owed in violation of the Clean Hands Ordinance. Rather, the opposition focused on the use of existing signage on the Property and alleged that this usage was in violation of the Sussex County Zoning Code. The Applicant has advised the Board that it was unaware of these potential violations and, to the extent such violations exist, would correct them.

The Board granted the special use exception and variance application finding that it met the standards for granting a special use exception and variance. The variance from the maximum square footage requirement was modified as discussed above.

Decision of the Board

Upon motion duly made and seconded, the special use exception and variance application was approved with modification. The Board Members in favor were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, and Mr. Brent Workman. No Board Members voted against the Motion to approve the special use exception and variance application with modification. Mr. Norman Rickard 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 November 17, 2015