

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: TERRY MEGEE

(Case No. 11663)

A hearing was held after due notice on November 2, 2015. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Brent Workman, and Mr. Norman Rickard.

Nature of the Proceedings

This is an application for a special use exception to place a billboard and a variance from the maximum height requirement for a billboard.

Findings of Fact

The Board found that the Applicant is requesting a special use exception to place a billboard and a variance of twenty-three (23) feet from the twenty-five (25) feet maximum height requirement for a billboard. This application pertains to certain real property located on the northwest corner of DuPont Boulevard and Dickerson Road (911 Address: None Available); said property being identified as Sussex County Tax Map Parcel Number 2-33-5.00-110.02. 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 July 27, 2015, a subdivision plan dated December 2001, a portion of the tax map of the area, a letter from the Planning & Zoning Department, an aerial photograph of the Property, zoning maps of the Property and nearby lands, and Google Earth street views of the Property and nearby areas.
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 Carlton Savage was sworn in to testify about the Application.
4. The Board found that Mr. Savage testified that the Property is located on the corner of Dickerson Road and Route 113 and is commercially zoned.
5. The Board found that Mr. Savage testified that the nearby medical center is located in a shopping center.
6. The Board found that Mr. Savage testified that the proposed billboard will be 48 feet tall.
7. The Board found that Mr. Savage testified that the Property is unique as a ditch runs through the middle of the Property and renders much of the Property useless.
8. The Board found that Mr. Savage testified that there is another billboard located nearby.
9. The Board found that Mr. Savage testified that the proposed location of the billboard will allow the billboard to meet the separation and setback requirements set forth in the Sussex County Zoning Code.
10. The Board found that Mr. Savage testified that the grade of the Property is approximately eight (8) feet below the grade of the adjacent road.
11. The Board found that Mr. Savage testified that the height variance is needed so that the billboard can be seen from the roads and so as not to block visibility of the neighboring commercial property.
12. The Board found that Mr. Savage testified that the Property cannot otherwise be developed because the existence of the ditch.

13. The Board found that Mr. Savage testified that the exceptional practical difficulty was not created by the Applicant as the Applicant did not create the unusual topography of the Property.
14. The Board found that Mr. Savage testified that the billboard will not alter the character of the neighborhood since there are similar billboards in the area. A majority of the nearby billboards are taller than twenty-five (25) feet.
15. The Board found that Mr. Savage testified that Peninsula Crossing is located north of the Property and it has a tall sign as well.
16. The Board found that Mr. Savage testified that use will not substantially adversely affect the uses of the neighboring and adjacent properties.
17. The Board found that Mr. Savage testified that the proposed elevation of the billboard allows for better visibility of neighboring businesses and also allows for the billboard to clear the height of existing trees located on the Property.
18. The Board found that Mr. Savage testified that there will be some removal of trees to accommodate the proposed billboard. The trees, however, lie in a ditch and there is possible jurisdictional issue which may restrict the Applicant from removing enough trees to erect a billboard that meets the 25 feet tall height requirement. The Applicant is waiting for approval from either the Army Corps of Engineers or the Department of Natural Resources and Environmental Control ("DNREC") regarding whether the Applicant can remove the trees located in the ditch. The billboard would be blocked by the trees if the trees cannot be removed. The process through the Army Corps of Engineers and DNREC takes approximately six to nine months.
19. The Board found that Mr. Savage testified that there is a right-of-way from Route 113 so the billboard will be located far from the existing road.
20. The Board found that Mr. Savage testified that a height variance would be necessary even if the trees are removed because the topography of the Property is unique.
21. The Board found that Mr. Savage testified that the Applicant did not create the topography or plant the trees on the Property.
22. The Board found that Mr. Savage testified that the proposed location of the billboard may allow for the Applicant to later develop other portions of the Property.
23. The Board found that Mr. Savage testified that the Applicant seeks approval to raise the billboard above the trees.
24. The Board found that no parties appeared in support of or in opposition to the Application.
25. The Board voted to leave the case open for six (6) months for the Applicant to submit responses from the Army Corps of Engineers and DNREC as to the jurisdictional issues related to the ditch and for the Applicant to submit documentation as to whether the ditch is classified as a tax ditch.
26. The Board found that the Applicant submitted a letter dated April 25, 2016, with a letter from DNREC dated September 28, 2015, a topographical map of the Property, and a letter from the Department of the Army dated January 12, 2016. In the letter, the Applicant noted that it was amending its application to seek a variance of only eight (8) feet from the maximum height requirement.
27. On May 2, 2016, the Board discussed and voted on the Application.
28. 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 due to its unusual topography. The Property has a deep ditch which is located in the area where the proposed billboard

would be located. The Applicant is limited in its placement options for the billboard because there are dwellings and billboards located nearby and the billboard must be a certain distance from them. As such, the proposed location is the only place where the billboard can be placed so that it can be seen from the road while also meeting the separation and setback requirements in the Sussex County Zoning Code. The proposed location of the billboard is approximately eight (8) feet below the grade of the adjacent roadway. The Applicant proposes to raise the billboard to a height of 33 feet so that it can be more easily seen from the adjacent road and to limit the impact of the billboard on the visibility of signs on neighboring properties. The Board is convinced that the unique topography of the Property has created an exceptional practical difficulty for the Applicant.

- 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 a billboard on the Property but is unable to do so in strict conformity with the Sussex County Zoning Code. The only location where the billboard can be placed to meet separation and setback requirements is near a deep ditch on the Property which is approximately eight (8) feet below the adjacent road. 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 Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance 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 create the topography of the Property or place billboards on neighboring lands on neighboring lands. 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 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. There are other billboards in the area and there was no evidence presented that the proposed variance would somehow alter the character of the neighborhood. Furthermore, the Property is located in a commercial zone along Route 113 and there are 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.
- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance 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. The Board is convinced that the Applicant has attempted to minimize the need for this variance and that these variance will afford the Applicant relief.

- f. Based on the above findings, the Board approves the variance sought by the Applicant from the height requirement. The Board notes that the variance is approved only for a variance of eight (8) feet and not twenty-three (23) feet as originally sought by the Applicant in his initial application.
29. 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 113 in a well-traveled, commercial zone where other commercial properties and billboards are located.
 - b. The Applicant intends to construct the billboard so that it complies with all setback, square footage, and separation distance requirements.
 - c. No evidence was presented which convinced the Board that the billboard would have a substantial adverse effect on neighboring and adjacent properties.

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 height 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 June 21, 2016