

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY
IN RE: GERALD W. HOCKER, TRUSTEE AND EMILY W. HOCKER, TRUSTEE
(Case No. 11695)

A hearing was held after due notice on January 4, 2016. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a special use exception to replace two (2) existing billboards and variances from the maximum height, maximum square footage, side yard setback, and distance from a residential dwelling setback requirements.

Findings of Fact

The Board found that the Applicants are requesting a special use exception to replace two (2) billboards, a variance of six (6) feet from the twenty-five (25) feet maximum height requirement for a billboard, a variance of three-hundred (300) square feet from the three-hundred (300) maximum square footage requirement for a billboard, a variance of fourteen (14) feet from the fifty (50) feet side yard setback requirement for a billboard, a variance of 45.5 feet from the three-hundred (300) feet separation requirement from a neighboring dwelling, and a variance of 171.3 feet from the three-hundred (300) feet separation requirement from a neighboring dwelling. This application pertains to certain real property located on the southeast corner of Atlantic Avenue and Roxana Road (911 Address: 34960 Atlantic Avenue, Ocean View); said property being identified as Sussex County Tax Map Parcel Number 1-34-12.00-330.01. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a portion of a survey of the area, and a survey dated August 11, 2015.
2. The Board found that the Office of Planning and Zoning received four (4) letters in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Gerald Hocker, Jr., was 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 a deed to the Property, portions of the tax maps, an aerial photograph of the Property, photographs of existing off-premises signs, photographs showing proposed off-premise sign, a site plan dated August 11, 2015, a schematic of the proposed sign, a letter of no objection from the Delaware Department of Transportation ("DelDOT"), findings of fact for Case Nos. 7223 & 7225-2000, and recent decisions of the Board of Adjustment.
4. The Board found that Mr. Hutt stated that the Applicants seek to replace two existing billboards which are located on the same property as the Hocker Super Center at the intersection of Route 26 and Route 17.
5. The Board found that Mr. Hutt stated that the Applicants have owned the Property since the 1980s. The Property is zoned C-1, which is the appropriate zoning district for off-premise signs, and the Property is located along a busy corridor which consists of numerous businesses.
6. The Board found that Mr. Hutt stated that the existing billboards are wooden structures with eight (8) support poles and each board measures 12 feet by 24 feet. The proposed billboard will be a single steel monopole structure and each sign facing will measure 10 feet by 30 feet.

7. The Board found that Mr. Hutt stated that the Board approved the existing billboards in August 2000.
8. The Board found that Mr. Hutt stated that existing billboards are located near the entrance to the Hocker Super Center. A storm water management pond is located behind the billboards which prevents them from being moved away from the entrance.
9. The Board found that Mr. Hutt stated that the proposed billboard structure will be located in the same location as the existing billboards.
10. The Board found that Mr. Hutt stated that DeIDOT has no objection to the Application.
11. The Board found that Mr. Hutt stated that that the billboards will be 31 feet tall. The proposed height of the billboards will help with issues the current billboards create such as interference with traffic and visibility concerns. The current billboards also do not allow enough room for proper sign maintenance.
12. The Board found that Mr. Hutt stated that the proposed billboard will have a catwalk which will provide a safety to anyone maintaining the signage on the proposed billboard. A catwalk cannot be placed on a billboard 25 feet tall because it would then interfere with the traffic entering the Property.
13. The Board found that Mr. Hutt stated that the extra height will provide more room for large vehicles entering and exiting the Property.
14. The Board found that Mr. Hutt stated that the billboard sign faces will be 10 feet tall rather than 12 feet tall so as to minimize the height of the sign structure.
15. The Board found that Mr. Hutt stated that the use will not substantially adversely affect the uses of the neighboring and adjacent properties. The nearby properties have already been developed and the existing billboards did not affect that development.
16. The Board found that Mr. Hutt stated that the proposed billboard will not alter the character of the neighborhood since there are other billboards in the area.
17. The Board found that Mr. Hutt stated that this application is consistent with other applications for replacement billboards which have been approved recently by the Board.
18. The Board found that Mr. Hutt stated that the proposed billboard is a safer structure than the existing billboards.
19. The Board found that Mr. Hutt stated that the Property is unique due to changes required by DeIDOT in 2000.
20. The Board found that Mr. Hutt stated that the proposed location is the only available location for the proposed billboard due to the existing structures, storm water pond, and parking lot.
21. The Board found that Mr. Hutt stated that the Property is already being used in this capacity.
22. The Board found that Mr. Hutt stated that the Property cannot otherwise be developed and the variances will enable reasonable use of the Property.
23. The Board found that Mr. Hutt stated that the exceptional practical difficulty was not created by the Applicants.
24. The Board found that Mr. Hutt stated that the billboard will not be detrimental to the public welfare.
25. The Board found that Mr. Hutt stated that the proposed billboard is in the same location as the previous billboards but will be a safer structure and less intrusive on traffic in the parking lot.
26. The Board found that Mr. Hutt stated that neighbors immediately adjacent to the site support the Application.
27. The Board found that Mr. Hutt stated that the variances sought are the minimum variances to afford relief.

28. The Board found that Mr. Hocker, under oath affirmed the statements made by Mr. Hutt.
29. The Board found that Mr. Hocker testified that all four (4) facings have always been leased on the existing billboards. The current vacant board is a tenant that is out of business but he has a new lease pending the approval of the proposed billboard.
30. The Board found that Mr. Hutt stated that the proposed billboard is wider than the existing billboards so it is slightly closer to the residential dwellings.
31. The Board found that Mr. Hutt stated that the billboard will have 4 facings with a small gap between the signs. The billboard will not have electronic message capabilities as the signs will be lit by traditional lighting.
32. The Board found that Mr. Hutt stated that the proposed signs will be 12 square feet larger per side than the existing sign.
33. The Board found that one (1) party appeared in support of the Application.
34. The Board found that no parties appeared in opposition to the Application.
35. The case was tabled until February 15, 2016 at which time the Board discussed and voted on the Application.
36. 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 development and unique history. The Property is located at the intersection of Route 26 and Route 17 and is used for Hocker's Super Store. Two previous billboards on the Property were relocated as a result of road construction and were replaced after obtaining approval from the Board in 2000. DeIDOT previously requested that the billboards be located in their present location. The Applicants seek to replace the existing billboards but are unable to do so due to the uniqueness of the Property. This unique history and the development of the Property have created an exceptional practical difficulty for the Applicants.
 - b. Due to the uniqueness of the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants seek to replace the existing billboard with a sturdier, newer structure. Due to the location of a billboard on a property near residential dwellings, the Applicants are unable to replace the billboard in strict conformity with the Sussex County Zoning Code. Furthermore, the Applicants are unable to place the billboards outside of the side yard setback area due to the location of the existing parking lot, storm water management pond, and shopping center. Likewise, the height of the billboard needs to be raised to alleviate traffic, visibility and safety concerns. The proposed billboard will have a catwalk which will allow for proper and safe sign maintenance while providing enough clearance for large trucks to safely pass underneath. Ultimately, the Applicants seek the variances so that they can replace the billboard in the same general location as the existing billboard with a catwalk. Without the variances, the Applicants would likely keep the existing, non-conforming billboard on the Property even though it needs to be replaced and is difficult and unsafe to repair and maintain. 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 Applicants.

- c. The exceptional practical difficulty was not created by the Applicants. The Applicant did not 1) create the shape or topography of the Property, 2) erect dwellings on neighboring lands or 3) direct that the existing billboard be relocated on the Property. Rather, the existing billboard was placed on the Property in its current location at the request of DeIDOT. The existing billboard needs repair due its condition and instead of continuing with the existing billboard, the Applicants seek 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 Applicants. The Board is convinced that the exceptional practical difficulty was not created by the Applicants.
 - 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 has submitted a letter of no objection. The Property is located in a commercial zone at the intersection of Route 17 and Route 26, which is a busy area. There are many other commercial properties in the area and similar billboards located nearby. The proposed sign will fit with the character of the neighborhood. The current sign has been in its present location for many years. Despite the longstanding location of the billboard and notification to neighbors, no complaints were noted in the record about the location of the billboard. Furthermore, 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 Applicants have demonstrated that the variances sought will allow the Applicants to replace the existing billboard with a newer, sturdier structure in the same location as the present billboard. The new billboard will be raised slightly to provide ample room to allow for safe sign maintenance and to alleviate traffic concerns. The Board notes that the height of the sign face is shorter than the previous billboard so as to minimize the need for the height variance.
37. 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 at the intersection of Route 17 and Route 26, which is a well-traveled, commercial zone where other commercial properties and billboards are located.
 - b. The Property is a large commercial 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. The Board finds this lack of evidence telling since opposition to the sign would presumably have ample evidence that the current billboard substantially affects adversely

neighboring and adjacent properties yet no such evidence was presented to the Board.

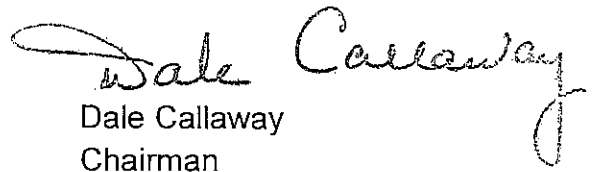
- d. The proposed sign will be a safety and aesthetic improvement from the current sign.
- e. The proposed sign will meet all DelDOT requirements.

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 April 5, 2016.