

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: 84 OUTDOOR, LLC

(Case No. 11703)

A hearing was held after due notice on January 25, 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 place a billboard and variances from the height and the separation distance from residential dwellings requirements.

Findings of Fact

The Board found that the Applicant is requesting a special use exception to place a billboard and a variance of fifteen (15) feet from the twenty-five (25) foot height requirement for a billboard, a variance of sixty-six (66) feet from the three-hundred (300) foot separation requirement from a dwelling, a variance of 145 feet from the three hundred (300) feet separation requirement from a dwelling, a variance of 160.7 feet from the three hundred (300) feet separation requirement from a dwelling, and a variance of 87 feet from the three hundred (300) feet separation requirement from a dwelling. This application pertains to certain real property located on the southwest side of Atlantic Avenue (Route 26) approximately 675 feet northwest of Roxana Road (Route 17) (911 Address: 34848 Atlantic Avenue Ext., Ocean View); said property being identified as Sussex County Tax Map Parcel Number 1-34-11.00-179.05. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a portion of the tax map of the area, and a survey of the Property dated July 9, 2015.
2. The Board found that the Office of Planning and Zoning received a letter of no objection from the Delaware Department of Transportation ("DelDOT") to the Application and had not received any correspondence in opposition to the Application.
3. The Board found that Troy Speicher was sworn in to testify about the Application. Mr. Speicher submitted exhibits to the Board to review including a survey dated July 27, 2015, and photographs.
4. The Board found that Mr. Speicher testified that the Applicants seek the special use exception and variances to place a billboard on the Property. The Property is currently used as a location for 84 Lumber and the area is a commercial area with other billboards nearby.
5. The Board found that Mr. Speicher testified that the Property is a deep lot with a narrow road frontage and shared access.
6. The Board found that Mr. Speicher testified that the situation is unique because there are residences within this commercial area. The nearby residences are on the other side of Route 26.
7. The Board found that Mr. Speicher testified that the variances needed from the separation requirements were not created by the Applicant and the Applicant cannot move the residences.
8. The Board found that Mr. Speicher testified that there is a billboard located closer than the proposed billboard to the residential dwellings.
9. The Board found that Mr. Speicher testified that the proposed billboard meets the front yard setback requirement.

10. The Board found that Mr. Speicher testified that the Applicant cannot otherwise develop the Property and that the Property was developed without considering the proposed billboard.
11. The Board found that Mr. Speicher testified that the height variance is necessary so that the billboard can cantilever over the top of an existing building. The existing building creates the need for the height variance because it would block the sign if the billboard was only 25 feet tall.
12. The Board found that Mr. Speicher testified that the owner of the Property is a "sister" company to the Applicant.
13. The Board found that Mr. Speicher testified that the variances will not alter the character of the neighborhood and the proposed billboard will not substantially adversely affect the neighboring properties.
14. The Board found that Mr. Speicher testified that the Applicant never has vacant billboards.
15. The Board found that Mr. Speicher testified that the variances requested are the minimum variances to afford relief.
16. The Board found that Mr. Speicher testified that the height variance is needed to have complete visibility of the proposed billboard; which needs to be closer to the road in order to be visible.
17. The Board found that Mr. Speicher testified that the Route 26 expansion also limits the area available for the proposed billboard.
18. The Board found that Mr. Speicher testified that there are existing billboards in the area which are taller than the proposed billboard and the building is 27.5 feet tall.
19. The Board found that Mr. Speicher testified that the billboard will measure 10 feet by 30 feet.
20. The Board found that Mr. Speicher testified that the proposed billboard will not be used for on-premise advertising and will not have LED capability.
21. The Board found that no parties appeared in support of or in opposition to the Application.
22. The Board tabled the case until February 15, 2016, at which time it discussed and voted on the Application.
23. 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 failed to meet the standards for granting a variance. The findings below further support the Board's decision to deny the 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 consisting of approximately 3.8028 acres and already supports a business. The Property does not have a unique shape or topography which creates an exceptional practical difficulty. The Applicant argues that the existing building on the Property and dwellings on neighboring properties create a unique situation but the Board is not swayed by this argument. Rather, the need for the variances appears to be entirely self-created by the Applicant.
 - b. The Applicant did not convince the Board that the Property could not be developed in strict conformity with the Sussex County Zoning Code. In fact, the Property has actually already been developed by a commercial business - the 84 Lumber business shown on the photographs and on the survey. Based on its current development, the Property is being reasonably utilized in its present state. Variances are not justified simply because an applicant would be better off economically with a variance

than without one. Accordingly, the Property can be developed in strict conformity with the Sussex County Zoning Code and 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 business and the Property is quite large. The Board was not convinced that there was some uniqueness to the Property which created the exceptional practical difficulty. Furthermore, 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 reasonably use the Property in compliance with the Sussex County Zoning Code and the variances are not necessary to afford relief.
24. Since the Board has denied the Applicant's requests for variances and the Applicant would be unable to place the billboard in its proposed location without the separation distance variances, the issue of whether the proposed billboard meets the standards for granting a special use exception is moot.

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 application was denied. The Board Members in favor of the motion to deny 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 deny the application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


Dale Callaway
Chairman

Date April 5, 2016.