

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

**IN RE: BO BILOBRAN & MICHAEL MOUTZALIAS**

**(Case No. 12247)**

A hearing was held after due notice on December 17, 2018. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a special use exception to allow for a temporary removable vendor stand.

Findings of Fact

The Board found that the Applicants are requesting a renewal of special use exception for an additional five (5) years for a temporary removable vendor stand. This application pertains to certain real property that is a through lot fronting on Coastal Highway (Route 1) and Beach Plum Road located on the southwest corner of Bayberry Road & Coastal Highway (Route 1) (911 Address: 33210 Coastal Highway, Bethany Beach); said property being identified as Sussex County Tax Map Parcel Number 1-34-17.16-47.00. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a site plan dated April 18, 2013, an aerial photograph of the Property, and a portion of the tax map of the area.
2. The Board found that the Office of Planning and Zoning received nine (9) letters in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Bo Bilobran was sworn in to testify about the Application and he submitted additional letters supporting the Application.
4. The Board found that Mr. Bilobran testified that the produce stand has been in operation for 6 summers from June 15 to September 15 and the produce stand has been at the same location for approximately six years.
5. The Board found that Mr. Bilobran testified that he is requesting the special use exception for tents and hay wagons related to the produce stand.
6. The Board found that Mr. Bilobran testified that the produce stand does not adversely affect the neighborhood.
7. The Board found that Mr. Bilobran testified that there have been no complaints from the Middlesex Community but he has been responsive to comments from neighbors.
8. The Board found that Mr. Bilobran testified that there will be no increase in the number of tents but he intends to erect a new shed on the site upon receipt of approval from the homeowners association.
9. The Board found that Mr. Bilobran testified that the tents are taken down when storms come.
10. The Board found that Mr. Bilobran testified that Sea Colony is located nearby and most of the customers walk or ride bikes to the produce stand. There have been no parking issues.
11. The Board found that no parties appeared in support of or in opposition to the Application.
12. 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 temporary removal vendor stand 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 site has been used as a produce stand for the past six summers and the Applicants seek approval to continue this use.
- b. The produce stand has been on the Property since 2013 and no complaints were noted in the record about it. The lack of complaints is telling because, if some substantial adverse effect on neighboring and adjacent properties existed, the Board would expect neighbors to present such evidence.
- c. The Applicants limit the structures on the site.
- d. The produce stand offers a service to neighboring communities, which should benefit neighbors who can obtain produce more conveniently.
- e. There was no evidence that the produce stand would present any substantial adverse effect on neighboring and adjacent properties due to noise, emissions, or lighting related to the produce stand.
- f. The Property has adequate parking for customers of the produce stand.
- g. There was no evidence that the produce stand presents any traffic issues.
- h. No evidence was presented which convinced the Board that the produce stand will have a substantial adverse effect on neighboring and adjacent properties.
- i. The special use exception was approved for a period of five (5) years.

The Board granted the special use exception application for a period of five (5) years finding that it met the standards for granting a special use exception.

Decision of the Board

Upon motion duly made and seconded, the special use exception application was approved for a period of five (5) years. The Board Members in favor were Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman. No Board Member voted against the Motion to approve the special use exception application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY

  
John Mills  
Chairman

If the use is not established within two (2) years from the date below the application becomes void.

Date March 5, 2019.