

**TOWN OF MILLVILLE
BOARD OF ADJUSTMENT HEARING MINUTES
January 11, 2016**

1. **CALL TO ORDER & PLEDGE:** Chairperson Andy Lyons called the meeting to order at 7:00 p.m.
2. **PLEDGE OF ALLEGIANCE**
3. **IN ATTENDANCE:** Commissioners' Andy Lyons, Dana Ryer, and Valerie Faden. Attorney Vince Robertson of Griffin and Robertson P.A., Town Solicitor Seth Thompson, Town Manager Debbie Botchie, Code & Building Administrator Eric Evans, and Town Executive Assistant Matt Amerling.
4. **DISCUSSION AND DECISION ON THE FOLLOWING:**
 - A. Consideration of BOA 16-01 submitted by Richard Bloch, Tax Map Parcel #134-12.00-282.00, 35715 Atlantic Avenue, Millville, DE 19967, to appeal a decision by the Town Administrative Official relating to signage. Synopsis: The Board of Adjustment (BOA) Commission had a public hearing on December 14, 2015, hearing from Mr. Bloch and the Town as to the matter at hand. It was decided at the end of the hearing that the BOA would table its decision until a later date.

Mr. Robertson stated the public hearing on this matter has been closed so now there should be a discussion on the matter, and, if someone has a motion to make, that can be done. Mr. Lyons asked the Board if any of them had any questions or discussion to have before a vote. Mr. Lyons stated his thanks to Town Executive Assistant Matt Amerling for transcribing the minutes of the December 14, 2015, hearing, and stated he has read over those minutes, making him pretty clear on where he stands with the decision. Commissioner Dana Ryer stated he is also clear where he stands on the decision. Commissioner Valerie Faden stated she felt the same.

Ms. Faden stated in matters of an appeal by Richard Bloch from a decision of the Town Administrative Official relating to his sign, which is located on his property at 35715 Atlantic Avenue in Millville, this property is zoned C-1, and the Town Administrative Zoning Official determined that the changeable sign that was installed by Mr. Bloch was without a permit and was not permitted in the C-1 Zoning District under Chapter 155, Article IX, Section 46 of the Code. Ms. Faden stated the Town Administrative Official found that signs like this are prohibited in all districts, including flashing signs, animated signs, and signs that provide blinking, moving, animation, revolving, chaser lights or moving spotlights. Ms. Faden further stated the Town Administrative Official also found that the only changeable signs permitted in Town are for municipal buildings, police, fire and ambulance departments under Chapter 155, Article IX, Section 44F. Ms. Faden stated for these reasons, the Official denied Mr. Bloch's sign permit. Ms. Faden stated after considering all the information submitted by Mr. Bloch in his appeal, as

well as the evidence and arguments supplied by the Town Administrative Official, Ms. Faden motions to approve the Town Administrative Official's decision to deny the permit relating to the signage at 35715 Atlantic Avenue, Millville, Delaware, for the following reasons:

- 1) Mr. Bloch's sign is not permitted in all Zoning districts of the Town under Chapter 155, Section 44 of the Town Zoning Code.
- 2) Mr. Bloch's sign is not permitted in the C-1 Zoning District under Chapter 155, Section 46, item B of the Code. Because it is not listed as a permitted sign, it is prohibited.
- 3) The only changeable signage permitted within the Town of Millville is specifically limited to municipal buildings, police, fire and ambulance departments. Mr. Bloch's property is not a municipal building, and it is not used or occupied by the police, fire or ambulance departments. So, this changeable sign is not permitted on Mr. Bloch's property.
- 4) While there are existing changeable signs within the Town, these are permitted under Section 155, Section 44F of the Code, or they are grandfathered as legal non-conforming signs.
- 5) Mr. Bloch's sign is also prohibited in all zoning districts under Chapter 155, Article IX, Section 43A, B, and N, which prohibit flashing signs (except time and temperature indicators), animated signs and signs that provide blinking, moving animation, revolving, chaser lights or moving spotlights. This sign provides these features, so it is prohibited under the Code.
- 6) Mr. Bloch argues that the sign is not specifically prohibited on his property, since changeable signs are not specifically excluded from the C-1 District by the Town's Code. That is contrary to Chapter 155, Article V, Section 8 of the Zoning Code, which states that "Permitted uses are listed for the various districts. Unless the contrary is clear from the context of the list of other regulations in this Chapter, uses not specifically listed are prohibited." As a result, the Code does not support Mr. Bloch's argument that his changeable sign is permitted in the C-1 District because it is not specifically excluded.
- 7) Mr. Bloch's argument - that although his sign has the capability of changing and the fact that he chooses not to change it makes it a permitted sign - is not compelling. First, this position is contrary to the definition of a "changeable sign" in the Town's Code, as recited within Mr. Bloch's power point presentation. According to the definition, the sign must only have "the capability of content change." Mr. Bloch's sign has the capability of content change by manual or remote input, whether he chooses to use it or not. Because the sign is capable of change, it is a "changeable sign" that is not permitted on Mr. Bloch's property - whether he actually chooses to change it or not.
- 8) Second, the facts do not support Mr. Bloch's contention that his sign is not changeable. Based upon evidence in the record including Mr. Bloch's own statements, the sign advertises an event on a specific date. Since this is a one-time event, and there have been other one-time events advertised on the sign, it is changeable and, as a result, is not permitted under the Town's Code. In summary, the type of sign that Mr. Bloch installed upon his

property without a permit is not permitted in the C-1 District of the Town of Millville. As a result, the Town Administrative Official's decision should be affirmed.

Mr. Ryer seconded the motion. Mr. Ryer stated he is in favor of the Town because several of the sections of the Code as mentioned have not been followed, and to the point of the Code where it states one business shall be allowed one detached sign, Mr. Bloch technically has two (2) detached signs - the one above and the electronic one below, which is not allowed by the Code. Mr. Lyons stated he votes in favor of the Town Administrator with his reasons mirroring the reasons in the motion. Mr. Lyons further stated there were a few arguments which Mr. Bloch made which, although quite lucid, were not compelling, and Mr. Lyons thinks the Town Administrator correctly interpreted the rules. Ms. Faden stated she would reflect on the motion she just made as well as the citing of the various sections of the Code. Mr. Vince Robertson stated there were three motions to approve the Town's denial of Mr. Bloch's sign, the motion carried 3-0, so the matter is now closed.

B. Consideration of BOA 16-02 submitted by A Shade Above, Tax Map Parcel #134-12.00-414.02, 35722 Atlantic Avenue, Millville, DE 19967, including a public hearing, for a variance of Town Code 155-29B(2), to reduce the buffer to twenty-four (24) feet; Town Code 155-28C(13), for parking encroachment of front yard by two-and-a-half (2 ½) feet, as well as encroachment into the side yard by eleven (11) feet.

Mr. Robertson asked Town Manager Debbie Botchie if the Town followed all of the advertisement requirements. Ms. Botchie stated yes. Mr. Robertson asked the Board if they needed either Ms. Botchie or Town Code and Building Administrator Eric Evans to explain the nature of the variance application. Mr. Lyons stated he is ready for the applicant to begin his presentation.

Mr. Tom Ford, of Land Design, representing applicant Keith Kalmbach of A Shade Above, stated on the left side of the site plan is the current existing conditions to the site in review, and there is a green rancher house on the site which has been at that location since the late 1980s, and it is in disrepair so Mr. Kalmbach is planning on tearing down the structure. Mr. Ford further stated given the existing conditions, Land Design has located trees, located the new sidewalk, the utilities, and there's a dotted trapezoidal shape on the plan which shows all the setbacks from the side, front and rear in the Zoning Code. Mr. Ford stated the site is also zoned C-1, it is below par in size as the Town Code calls for fourteen-thousand (14,000) square-foot properties, but this one existed prior to and is in the low thirteen-thousand (13,000) square-foot size, and doesn't have the same depth as it has about one-hundred-twenty (120) feet and the Code calls for one-hundred-forty (140) feet, so it is a bit smaller of a site, which means every square foot on the site is a little more difficult to deal with because Mr. Kalmbach still has the same setbacks. Mr. Ford stated Mr. Kalmbach and Land Tech did not create this difficulty as it was already given due to the dimensions of the lot. Mr. Ford stated the drawing on the right of the plan is the proposed plan, with a dotted shape showing where the existing house and garage exist that is just lightly inside the new parking

area. Mr. Ford further stated the new building Mr. Kalmbach is proposing is eleven-hundred-fifty (1150) square feet, it's going to require, under the Town Code, one (1) parking space per two-hundred-fifty (250) square feet, so Land Tech will need five (5) parking spaces - with one of those spaces being a handicapped space - and Land Tech is also proposing a new handicapped ramp to get under Code for this particular new building. Mr. Ford further stated this is not a large building, and is pretty much in conformity to the building that is there in size. Mr. Ford stated the reason why he and Mr. Kalmbach are here tonight is variance number one (1), which requests a reduction of the buffer to twenty-four (24) feet. Mr. Ford stated if the Board looks at the Town's tax code, it does not show the site incorporating the ditch to the east, but when Land Tech did the survey, it was obvious that it does. Mr. Ford stated in that ditch there are wetlands and what is classified as a perennial stream; and under Code 155-29B(2), someone would need two (2) things which would fall on this site: (1) to be fifty (50) feet back from a wetland, which is indicated as going right through the center of the site on the plan; and (2) under the same Code article, it calls for one hundred (100) feet back from streams, which puts Mr. Kalmbach all the way back to the other side of the site, which means this site is going to stay the way it is or hopefully win favor with the BOA ruling in favor of this variance.

Mr. Ford stated on the exiting building, there is about a twenty-one (21) foot offset from the existing wetlands today, and, on the proposed drawing, Mr. Kalmbach would be twenty-four (24) feet from the wetlands. Mr. Ford further stated Land Tech is shoving over a little bit with the proposed building, but, either way, Land Tech would need an adjustment on this because of the hundred (100) feet and because it eliminates anything you can do on this site. Mr. Robinson asked because the site is zoned C-1 and the current house is so old, would Mr. Ford say the house is not feasible to use as a residence along Route Twenty-Six (26) in its current state. Mr. Ford stated it is unusable and is pretty deteriorated. Mr. Evans stated the structure is condemnable. Mr. Robertson asked Mr. Ford if he thinks it's appropriate to use this lot as a residence now with Route 26 being so much busier. Mr. Ford stated he would say no. Mr. Ryer asked Mr. Ford if they were planning on knocking the current structure down and putting a new structure up. Mr. Ford stated yes. Ms. Faden asked if the problem with the current structure is due to lack of use, as well as an area which could be subject to water problems. Mr. Ford stated no, there is no water issue, other than water seeping in through the broken windows and the carpets holding moisture. Mr. Lyons stated he doesn't think the mold issue relates to the nearby stream. Mr. Ford stated it doesn't. Mr. Keith Kalmbach, of A Shade Above, stated when he purchased the building, he noticed the windows were all left open and the back slider had been open, but he has since boarded everything up for safety and security reasons. Mr. Ford stated the plan does show the flood-zone line, and the lot is in a hundred (100) year flood-zone, so there's no issue in that regard to flooding, moisture, etc.

Mr. Ford stated, with variance two (2), which requests parking encroachment for the front yard to be two-and-a-half (2 ½) feet, the stormwater regulations, which were recently passed, are quite involved and, when Land Tech was developing this potential site, Land Tech wanted to be as efficient with the land as they could to

keep this property with the least amount of impervious surface so it would simplify the stormwater criteria that needs to be adhered to. Mr. Ford further stated in the same instance, Land Tech was conscious of the vegetation, woods, and other things there, so, being there was a footprint of the house and there's hardly anything in front of it, Land Tech placed the parking where they thought it would be most suitable, rather than moving the building up and moving the parking around to the back where the thirty (30) foot setback is and so forth. Mr. Ford stated by condensing the lot and its parking, but, by doing so, and trying to give some planting area off the proposed porch, Land Tech is encroaching on a twenty (20) foot setback from Route 26, hence the request for a two-point-five (2.5) foot variance.

Mr. Ford stated, along with that variance, there is variance three (3), where all the setback areas are allowed fifty percent (50%) encroachment with parking in a setback area. Mr. Ford stated, therefore, with variance three (3), Mr. Kalmbach is requesting an encroachment for the sideyard of eleven (11) feet. Mr. Ford stated this variance request is within the fifty percent (50%), which is code reference 155-28(13), and Land Tech tried to minimize the land disturbance, as well as save the trees in the back, and they wanted to not disturb anything in the back because there is a residence behind the rear property line, as the trees will be used as a buffer. Mr. Ford further stated he would hope that any liability to the 2.5 feet which may encroach on the road can be offset by the other considerations Land Tech has on the site. Ms. Faden asked, regarding the parking, where the fifth parking space is located. Mr. Ford pointed it out on the site plan. Mr. Robertson asked if the 2.5 feet will be something anyone would notice as they're driving along Route 26. Mr. Ford stated he thinks not many people - if any - will notice, but it will still leave seventeen-and-a-half (17 ½) feet of green space between the back of the sidewalk and to the parking spot, so there will still be a nice landscaped area there. Ms. Faden asked if there was any consideration given the shape of the building to, for instance, make it more rectangular to get more parking around the front corner. Mr. Ford stated Mr. Kalmbach has the building plans and the design, so Land Tech adheres to the shape Mr. Kalmbach has it in his design. Mr. Robertson asked if these requested variances are the minimum amount necessary to have the design Mr. Kalmbach and Land Tech are looking for. Mr. Ford stated yes, and the building is not a big building. Mr. Robertson asked the Board if they had any other questions. Mr. Ford stated the adjacent site to the parking is only about eight (8) feet away with their vehicular, so it would be within the fifty (50) foot setback as well, and the uses will be compatible with each other, so, in the future, if there were ever any interconnectivity desired, this would make that possible. Mr. Lyons asked if the variance one (1) would be the fifty (50) foot setback and if it was not passed, then the rest of the variances and the property would be void of any uses. Mr. Ford stated with both the wetlands and the stream, the hundred (100) foot and fifty (50) foot setbacks make it impossible to build upon the site. Mr. Ford further stated the property and structure are basically unbuildable, causing a hardship the owner did not cause, which is why Mr. Kalmbach and Land Tech are here for the variances. Mr. Robertson asked Mr. Evans, after hearing Mr. Ford's explanation of the lot being unbuildable per the Code, if Mr. Evans agrees with Mr. Ford's assessment. Mr. Evans stated yes, he does agree with Mr. Ford. Mr. Ryer asked Mr.

Evans if, once the old building was torn down and a new building put up, would that constitute the applicant having to follow the new building ordinance code. Mr. Evans stated yes, should the Board grant the variances, the applicant will still have to come before the Planning & Zoning (P&Z) Committee and Town Council for site plan approval, as well as have their structure reviewed for following the current Code and the Route 26 Design Standards.

Mr. Robertson stated the public hearing portion is now closed. Mr. Lyons stated he has no problem with grouping all three (3) variances together, and he can see a definite hardship with this case. Mr. Ryer stated he has no problem voting now. Ms. Faden agreed. Mr. Lyons motioned to vote for the approval of the three (3) variances requested by A Shade Above in BOA case 16-02 because the property can't be developed in strict conformity with the Town Code and these variances do not seem to adversely affect any of the neighboring lots or structures; Mr. Lyons believes the applicant has done their best to squeeze everything they can into the lot and asking the least amount of relief; and the situation of this case is unique with the stream and wetlands next to the property. Ms. Faden stated she seconds the motion to approve the variances because it is not contrary to the public interest of the spirit of the law in promoting reasonable business within the Town of Millville and not contrary to the public interest in that it's not harming the neighboring properties by granting the variance, owing to those special conditions of the Code relative to the property as it currently sits and the setbacks which are required; and the enforcement of the Code's standards would cause an unnecessary hardship, making the lot undevelopable. Mr. Ryer stated he is voting in favor of granting the variances. Ms. Faden stated she is in favor of granting the variances. Mr. Lyons stated he is in favor of granting the variances. Motion carries 3-0.

5. ADJOURNMENT:

Ms. Faden motioned to adjourn the meeting at 7:41 p.m. Mr. Lyons seconded the motion. All present voted in favor. The motion carried unanimously 3-0. Meeting adjourned at 7:41 p.m.

Respectfully submitted, Matt Amerling