

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: SCRUFF, LLC, d/b/a PAPA GRANDES

(Case No. 11181)

A hearing was held after due notice on April 1, 2013. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front yard setback requirement for a through lot.

Findings of Fact

The Board found that the Applicant was seeking a variance of 42.83 feet from the 60 feet front yard setback requirement for a through lot for a proposed deck, and a variance of 59.64 feet from the 60 feet front yard setback requirement for a through lot for an existing deck. The Applicant has requested that the aforementioned requested variances be granted as they pertain to certain real property located north of Route 54 (Lighthouse Road) east of Bennett Avenue, being Lot 13 thru 15 within Glen Acres development; said property being identified as Sussex County Tax Map Parcel Number 5-33-20.19-91.00, 92.00, 93.00, & 99.00. After a hearing, the Board made the following findings of fact:

1. Matthew Haley was sworn in to testify on behalf of the Application.
2. Adam Gerber, Esquire, was present to present the Application.
3. The Board found that Mr. Gerber stated that the existing deck needs to be expanded to allow for a handicap ramp and a second floor deck and that the existing and proposed decking is required by the State Fire Marshal.
4. The Board found that Mr. Gerber stated that the Applicant owns the adjacent property where the Catch 54 Restaurant is located.
5. The Board found that Mr. Gerber stated that the Property is unique because it is oddly shaped and narrow and that the Property is also a through lot which creates additional setback requirements.
6. The Board found that Mr. Gerber stated that the Applicant is unable to open the restaurant without the handicap ramp.
7. The Board found that Mr. Gerber stated that the variances are necessary to enable reasonable use.
8. The Board found that Mr. Gerber stated that the Applicant would be at a competitive disadvantage without decking for patrons because nearby restaurants have decks.
9. The Board found that Mr. Gerber stated that the Applicant purchased the Property in 2011 and a deck existed at that time.
10. The Board found that Mr. Gerber stated that the difficulty has not been created by the Applicant.
11. The Board found that Mr. Gerber stated that a portion of the building has been removed to allow more parking spaces.
12. The Board found that Mr. Gerber stated that the variances will not alter the essential character of the neighborhood and will actually enhance the character of the neighborhood.
13. The Board found that Mr. Gerber stated that the variances are not detrimental to public welfare and that the variances sought are the minimum variances necessary to afford relief.

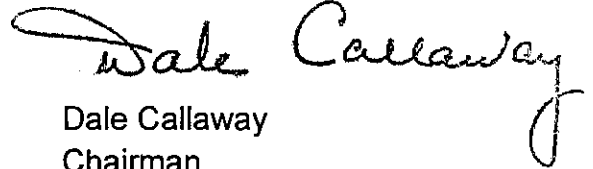
14. The Board found that Mr. Gerber stated that the second floor deck is necessary for ingress and egress per the Fire Marshal requirements.
15. The Board found that Mr. Gerber submitted exhibits to the Board for review.
16. The Board found that Mr. Haley testified that he has been in the restaurant business for years and operates over twenty (20) restaurants including Catch 54, which has a deck.
17. The Board found that Mr. Haley testified that most restaurants in the area have decks and that the building had a deck when he purchased it.
18. The Board found that Mr. Haley testified that he has not expanded the building but actually removed a portion of the building to increase parking.
19. The Board found that Mr. Haley testified that the architect and Fire Marshal required the improvements.
20. The Board found that Mr. Haley testified that he wants to have a safe restaurant.
21. The Board found that Mr. Haley confirmed the statements made by Mr. Gerber.
22. The Board found that Mr. Robert Rollins was sworn in and testified in support of the Application.
23. The Board found that Mr. Rollins testified that he is the architect for the project and that he has been an architect for over twenty (20) years.
24. The Board found that Mr. Rollins testified that the code requires handicap accessibility.
25. The Board found that Mr. Rollins testified that the Fire Marshal requires two methods of ingress and egress to the second floor.
26. The Board found that Mr. Rollins testified that the second floor deck is needed to meet the required ingress / egress requirements and that the proposed location is necessary to prevent losing all the indoor seating area for the restaurant.
27. The Board found that Kim Hamer was sworn in and testified in support of the Application.
28. The Board found that Ms. Hamer testified that she is a realtor in the area and that the variances will not alter the essential character of the neighborhood.
29. The Board found that Ms. Hamer testified that the variances will not be detrimental to the public welfare.
30. The Board found that Ms. Hamer testified that the decking will enhance the neighborhood and is a valuable asset to the restaurant because the Applicant needs the deck to be competitive with other restaurants.
31. The Board found that Herb Hendricks was sworn in and testified in support of the Application.
32. The Board found that Mr. Hendricks testified that he is the contractor working on the project and that the ramp and stairway are necessary for egress.
33. The Board found that Mr. Hendricks testified that the restaurant cannot open without the handicap ramp and the second floor deck with staircase.
34. The Board found that Mr. Hendricks testified that the variances will enable reasonable use of the Property.
35. The Board found that five (5) parties appeared in support of the Application.
36. The Board found that no parties appeared in opposition to the Application.
37. Based on the findings above and the testimony presented at the public hearing and the public record, the Board determined that the Application met the standards for granting a variance. The Property is unique in shape and that the ramp and the State Fire Marshal requirements create a unique situation. The Property cannot be built in strict conformity with the Sussex County Zoning Code. The variances are necessary to enable reasonable use of the Property. The difficulty was not created by the Applicant. The variances will not alter the essential character of the neighborhood as there are restaurants nearby. The variances sought are the minimum variances necessary to afford relief.

The Board approved the variance application finding that it met the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the Application was approved. The Board Members voting to approve the Application were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Member voted against the Motion to Approve the 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 May 7, 2013