

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ZERBY LLC

(Case No. 11273)

A hearing was held after due notice on October 7, 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 requirements for a through lot.

Findings of Fact

The Board found that the Applicant was seeking variances of fifty (50) feet from the sixty (60) feet front yard setback requirements for a through lot for a proposed retail building. The Applicant has requested that the aforementioned requested variances be granted as they pertain to certain real property located southeast corner of the intersection of Rehoboth Avenue Extended and Route One; said property being identified as Sussex County Tax Map Parcel Number 3-34-13.19-84.00, 85.00, 86.00. After a hearing, the Board made the following findings of fact:

1. Jeff Zerby was sworn in to testify about the Application.
2. James Fuqua, Esquire, appeared on behalf of the Applicant to present the Application.
3. The Board found that Mr. Fuqua submitted exhibits to the Board.
4. The Board found that Mr. Fuqua stated that the Applicant owns the Property which consists of three (3) adjacent parcels totaling 32,666-square-feet in size.
5. The Board found that Mr. Fuqua stated that the Property is zoned General Commercial (C-1) and that the Property has road frontage on Rehoboth Avenue Extended and Route One.
6. The Board found that Mr. Fuqua stated that the Rehoboth Professional Center borders the Property on the east.
7. The Board found that Mr. Fuqua stated that the Property comes to a point and is located at the main entrance to Rehoboth Beach.
8. The Board found that Mr. Fuqua stated that the Property has an unusual shape.
9. The Board found that Mr. Fuqua stated that a coffee shop, warehouse and two (2) older dwellings are located on the Property.
10. The Board found that Mr. Fuqua stated that all of the existing buildings are non-conforming structures and that the Applicant plans to demolish all existing structures and build a modern commercial retail building on the Property.
11. The Board found that Mr. Fuqua stated that the Applicant plans to design a structure to serve as a landmark for the entrance of Rehoboth Beach.
12. The Board found that Mr. Fuqua stated that, due to the fact that the Property is located within Route One Combined Highway Corridor Overlay Zone ("CHCOZ"), a sixty (60) feet setback requirement and landscape buffer apply.
13. The Board found that Mr. Fuqua stated that the Applicant would be required to have a sixty (60) feet setback from both Route One and Rehoboth Avenue Extended.
14. The Board found that Mr. Fuqua stated that these setback requirements create a severe hardship and make it impossible to build any structures on the Property.
15. The Board found that Mr. Fuqua stated that the CHCOZ was designed for projects such as the Tanger Outlets to maintain distance from Route One and to have landscaping buffers along Route One.

16. The Board found that Mr. Fuqua stated that the variance will allow for a ten (10) foot setback around the Property.
17. The Board found that Mr. Fuqua stated that the variance request is consistent with the goals of the CHCOZ Ordinance.
18. The Board found that Mr. Fuqua stated that there will be a ten (10) feet sidewalk around the perimeter of the Property.
19. The Board found that Mr. Fuqua stated that a proposed five (5) feet landscape buffer has been proposed to the Delaware Department of Transportation ("DelDOT") and is subject to the approval of DelDOT as the landscape buffer would be located in DelDOT's right of way.
20. The Board found that Mr. Fuqua stated that the entrances to the site will be modified per DelDOT's approval and that DelDOT has indicated it has no objection to the concept plan which included the proposed variance request.
21. The Board found that Mr. Fuqua stated that the Property is unique in size and shape.
22. The Board found that Mr. Fuqua stated that the variances will enable reasonable use of the Property.
23. The Board found that Mr. Fuqua stated that the Property cannot be developed in strict conformity and that the difficulty has not been created by the Applicant as the Applicant did not create the lot.
24. The Board found that Mr. Fuqua stated that the size of the Property has been lessened over the years by DelDOT.
25. The Board found that Mr. Fuqua stated that the visibility of traffic will not be harmed.
26. The Board found that Mr. Fuqua stated that the variance, if granted, will not alter the character of the neighborhood.
27. The Board found that Mr. Fuqua stated that the variances, if granted, will not be detrimental to the public welfare.
28. The Board found that Mr. Fuqua stated that the neighbor who owns the Rehoboth Professional Center has no objection to the Application.
29. The Board found that Mr. Fuqua stated that the variances requested are the minimum variances to afford relief.
30. The Board found that Mr. Fuqua stated that the Planning and Zoning Commission has to approve the site plan.
31. The Board found that Mr. Fuqua stated that deliveries will be made through the front entrances of the proposed retail stores.
32. The Board found that Mr. Fuqua stated that the proposed project will meet the required parking space requirements.
33. The Board found that Mr. Fuqua stated that the Applicant is a lifetime resident of Sussex County and wants to create an attractive entrance to Rehoboth Beach.
34. The Board found that Mr. Zerby, under oath, confirmed the statements made by Mr. Fuqua.
35. The Board found that the Office of Planning & Zoning received one (1) letter in support of the Application.
36. The Board found that no parties appeared in support of or 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 based on the following reasons. The Property is unique. 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. The variances sought are the least modifications of the regulation at issue. 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

Dale Callaway
Chairman

If the use is not established within one (1)
year from the date below the application
becomes void.

Date November 5, 2013