

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: CHRISTOPHER LOPEZ

(Case No. 11385)

A hearing was held after due notice on May 5, 2014. 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 and side yard setback requirements.

Findings of Fact

The Board found that the Applicant was seeking a variance of 32.06 feet from the forty (40) feet front yard setback requirement and a variance of 8.48 feet from the ten (10) feet side yard setback requirement for a proposed automotive facility. The Applicant has requested that the aforementioned requested variances be granted as they pertain to certain real property located east of US Route 113, 1,420 feet south of Road 321 (Woodbranch Road); said property being identified as Sussex County Tax Map Parcel Number 1-33-2.00-21.00. After a hearing, the Board made the following findings of fact:

1. The Board found that the Office of Planning & Zoning received no correspondence regarding the Application.
2. Christopher Lopez and Mark Davidson were sworn in to testify on behalf of the Application.
3. The Board found that Mr. Davidson submitted exhibits to the Board to review.
4. The Board found that Mr. Davidson testified that he is the engineer on behalf of the Applicant.
5. The Board found that Mr. Davidson testified that the Property is located along Route 113 outside the Town of Georgetown.
6. The Board found that Mr. Davidson testified that the Planning and Zoning Commission and Sussex County Council have approved a Conditional Use allowing the Applicant to operate an automotive business on the Property.
7. The Board found that Mr. Davidson testified that the Board approved variances for the proposed structure in 2012.
8. The Board found that Mr. Davidson testified that the original plan was to use the existing structure and to make renovations and additions thereto.
9. The Board found that Mr. Davidson testified that the original approval expired prior to the Applicant being able to apply for the building permit.
10. The Board found that Mr. Davidson testified that it has taken the Applicant over a year and a half to secure financing for this project.
11. The Board found that Mr. Davidson testified that, during the removal of the roof on the existing structure, the Applicant discovered that the walls were unstable and the entire structure had to come down.
12. The Board found that Mr. Davidson testified that the existing walls were built on a concrete pad and not on footers and that the footers and wall system had to be redesigned.
13. The Board found that Mr. Davidson testified that the only portion of the existing structure left is the fireplace.
14. The Board found that Mr. Davidson testified that the Applicant seeks a renewal of the original variance approval.

15. The Board found that Mr. Davidson testified that the lot is 70 feet wide by 208 feet deep.
16. The Board found that Mr. Davidson testified that the proposed building will not encroach any further into the setback area than the original structure.
17. The Board found that Mr. Davidson testified that the building cannot be developed in strict conformity with the Sussex County Zoning Code.
18. The Board found that Mr. Davidson testified that all other agency approvals are secured.
19. The Board found that Mr. Davidson testified that there will be an entrance approved by the Delaware Department of Transportation ("DelDOT") constructed.
20. The Board found that Mr. Davidson testified that all water runoff will be contained on the site through a storm water management system.
21. The Board found that Mr. Davidson testified that the septic system is located in the rear of the Property.
22. The Board found that Mr. Davidson testified that the variances are necessary to enable reasonable use of the Property.
23. The Board found that Mr. Davidson testified that the difficulty was not created by the Applicant.
24. The Board found that Mr. Davidson testified that the variances will not alter the essential character of the neighborhood and that there are numerous commercial properties in the area along Route 113.
25. The Board found that Mr. Davidson testified that the variances will not be detrimental to the public welfare.
26. The Board found that Mr. Davidson testified that the Fire Marshal has approved fire lanes around the building.
27. The Board found that Mr. Davidson testified that the variances are the least modifications necessary of the regulations at issue and that the variances are the minimum variances necessary to afford relief.
28. The Board found that no parties appeared in support of or in opposition to the Application.
29. Based on the findings above and the testimony and exhibits 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 due to its small frontage. The circumstances are also unique because the Applicant previously obtained a variance for an addition to an existing structure but discovered during the construction phase that the existing structure had structural problems. The variances are necessary to enable reasonable use of the Property. The Applicant has obtained approvals for a storm water management system, a septic system, and fire lanes which limit the location of the building. The difficulty was not created by the Applicant. The variances will not alter the essential character of the neighborhood. There are numerous commercial businesses in the area. The variances sought are the minimum variances necessary to afford relief. The variances sought represent the least modifications of the regulations at issue.

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 June 3, 2014