

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: GERALD A. HOCKER & EMILY W. HOCKER

(Case No. 11420)

A hearing was held after due notice on July 21, 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 a special use exception to place a manufactured home type structure for business, commercial use, and for a variance from the front yard setback requirement.

Findings of Fact

The Board found that the Applicants were seeking a special use exception to place a manufactured home type structure for business, commercial use and for a variance of 49.1 feet from the sixty (60) feet front yard setback requirement for a manufactured home type structure. This application pertains to certain real property located on the southeast corner of the intersection of Route 17 (Roxana Road) and Route 26 (Atlantic Avenue); said property being identified as Sussex County Tax Map Parcel Number 1-34-12.00-330.01. After a hearing, the Board made the following findings of fact:

1. The Board found that the Office of Planning & Zoning received no correspondence in opposition to the Application and received one (1) letter in support of the Application.
2. Gerald W. Hocker, Jr., was sworn in to testify about the Application and David C. Hutt, Esquire, presented the Application on behalf of the Applicants.
3. The Board found that Mr. Hutt submitted exhibits to the Board to review.
4. The Board found that Mr. Hutt stated that the Property is located on the corner of Roxana Road and Atlantic Avenue and is the location of the Hocker Super Center.
5. The Board found that Mr. Hutt stated that the Property consists of 9.6 acres and is zoned commercial consisting of an existing grocery store, pharmacy, car wash and gas station
6. The Board found that Mr. Hutt stated that commercial zoning surrounds the Property.
7. The Board found that Mr. Hutt stated that the proposed structure is a vendor trailer for Hockers's BBQ.
8. The Board found that Mr. Hutt stated that the vendor trailer is used for their catering business as well as sales on the Property.
9. The Board found that Mr. Hutt stated that the Applicants were approved on March 27, 2014 by the Planning and Zoning Commission, and were approved by the Sussex County Council on May 20, 2014, for a Conditional Use to operate the business on the Property.
10. The Board found that Mr. Hutt stated that that conditions of the approval are as follows:
 - a. That the use is limited to a take-out sales vendor;
 - b. That a maximum of three (3) picnic tables are allowed;
 - c. That the use is limited to a seasonal use from April 1 through November 1 each year from 11:00 a.m. to 8:00 p.m.;
 - d. That security lighting for the site not be directed off the site; and
 - e. That the Applicants obtain site plan approval from the Planning & Zoning Commission.

11. The Board found that Mr. Hutt stated that the Applicants are required to obtain approvals from the Delaware Department of Transportation ("DelDOT"), the Fire Marshal, and the Department of Public Health.
12. The Board found that Mr. Hutt stated that DelDOT has issued a letter of no objection for the project and that the Department of Public Health has issued a permit for the use.
13. The Board found that Mr. Hutt stated that existing curbing on the Property makes the location of the BBQ stand ideal as it protects the stand and patrons from parking lot traffic.
14. The Board found that Mr. Hutt stated that the location of the vendor trailer is also in the least used portion of the parking lot and keeps all traffic and patrons of the vendor trailer out of the main flow of the parking lot.
15. The Board found that Mr. Hutt stated that there is no food cooked in the vendor trailer.
16. The Board found that Mr. Hutt stated that the location of the trailer does not adversely affect the surrounding businesses.
17. The Board found that Mr. Hutt stated that the number of commercial businesses make the Property unique.
18. The Board found that Mr. Hutt stated that the location of the vendor trailer gives the property owner reasonable use of the Property.
19. The Board found that Mr. Hutt stated that the vendor trailer will be stored off site during the off season.
20. The Board found that Mr. Hutt stated that the difficulty was not created by the Applicants.
21. The Board found that Mr. Hutt stated that the design of the parking lot limits the placement of the trailer.
22. The Board found that Mr. Hutt stated that the use will not alter the essential character of the neighborhood.
23. The Board found that Mr. Hutt stated that the use will not be detrimental to the public welfare.
24. The Board found that Mr. Hutt stated that the variance is the minimum variance necessary to afford relief.
25. The Board found that Mr. Hutt stated that the only access to the vendor trailer is from the parking lot and that they have designated parking spaces for patrons.
26. The Board found that Mr. Hutt stated that the Applicants are seeking a five (5) year approval from the Board.
27. The Board found that Mr. Hocker, under oath, confirmed the statements made by Mr. Hutt.
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 evidence presented at the public hearing and the public record, the Board determined that the application met the standards for granting a special use exception because the use does not substantially affect adversely the uses of adjacent or neighboring properties. Other commercial businesses are in the area and adjacent properties are zoned commercially. The proposed use is consistent with the commercial uses in the area. No evidence was presented which would demonstrate that the use does not substantially affect adversely the uses of neighboring and adjacent properties.
30. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, the Board determined that the application met the standards for granting a variance for the following reasons. The existing use of the Property makes the Property unique. The Property has multiple commercial uses and the design of the parking lot thereon also makes the Property unique. The variance is necessary enable reasonable use of the

Property. The difficulty was not created by the Applicants. The variance will not alter the essential character of the neighborhood. The area surrounding the site is commercial and the proposed use is consistent with those uses. The variance sought is the minimum variance necessary to afford relief. The variance requested represents the least modification of the regulation at issue.

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

Decision of the Board

Upon motion duly made and seconded, the variance application was approved and the special use exception application was approved for a period of five (5) years. The Board Members in favor were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Members voted against the Motion to approve variance application and the special use exception application for a period of five (5) years.

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.

A placement permit must be obtained before the manufactured home is placed on the property.

Date September 9, 2014