

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: WAWA, INC.

(Case No. 11534)

A hearing was held after due notice on February 16, 2015. 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 variance from the required density of landscape plantings.

Findings of Fact

The Board found that the Applicant was seeking a variance from the required density of landscape plantings within the Highway Corridor Overlay Zone buffer requirement. This application pertains to certain real property located northeast of Route One (Coastal Highway) approximately 300 feet southeast of Wolf Neck Road (Road 270) (911 Address: None Available); said property being identified as Sussex County Tax Map Parcel Number 3-34-12.00-105.05 & 106.01.

1. The Board was given copies of the Application, a portion of the tax map of the area, a letter from the Applicant's attorney, survey of the Property dated June 6, 2013, affidavits of Preston Schell, a survey dated September 18, 2014, a proposed landscape plan of the Property, and pictures of the Property and surrounding areas.
2. The Board found that the Office of Planning and Zoning received no correspondence regarding the Application.
3. Alexander Crouse and John Barwick were sworn in to testify about the Application. John Paradee, Esquire, presented the Application on behalf of the Applicant.
4. The Board found that Mr. Paradee stated that the landscaping required by the Sussex County Code is quite dense and would reduce visibility of the Property. The required landscaping and would also be out of character for the neighborhood.
5. The Board found that Mr. Paradee stated that the Property is located along Coastal Highway on a commercial corridor with heavy traffic and that the traffic needs to be able to see where it is going.
6. The Board found that Mr. Paradee stated that the landscaping buffer would impede visibility of the Property and restrict efficient access to the Property. Developing the Property to conform to the existing landscaping requirements would place an unreasonable burden on the Applicant and patrons.
7. The Board found that Mr. Paradee stated that improved visibility of the Property by the reduced landscape buffer will improve the safety of access to the site.
8. The Board found that Mr. Paradee stated that the difficulty has not been created by the Applicant.
9. The Board found that Mr. Paradee stated that variance will not alter the character of the neighborhood and the variance promotes public welfare.
10. The Board found that Mr. Paradee stated that that the variance is the minimum variance to afford relief.
11. The Board found that Mr. Paradee stated that attractive landscaping will still be placed on the Property but the landscaping, as proposed will be less dense than required by the Code. The landscaping buffer currently on site is minimal. The

proposed landscaping buffer will be denser than what is on the Property now but will be consistent with the area.

12. The Board found that Mr. Paradee stated that the Applicant is constructing a new entrance on Northbound Coastal Highway. The Delaware Department of Transportation ("DelDOT") supports the location of the proposed entrance and prefers this entrance as a way to avoid traffic congestion in the area.
13. The Board found that Mr. Barwick testified that the proposed landscaping will be reduced in height and density and will have gaps in between the trees to improve visibility. The Applicant proposes to plant lilacs and compact junipers.
14. The Board found that Mr. Barwick testified that the existing swale will remain in front of the existing Wawa and that an underground filtration system will replace the existing pond.
15. The Board found that Mr. Barwick testified that the new entrance will give access to the existing Wawa via an easement across lands owned by Ocean Atlantic and Sandpiper Group, LLC. There are three (3) easements recorded to allow for two (2) accesses for ingress and egress and one (1) access to allow for the Storm Water Management plan.
16. The Board found that Mr. Barwick testified that the statements made by Mr. Paradee were true and correct.
17. The Board found that no parties appeared in support of or in opposition to the Application.
18. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board found credible, persuasive, and un rebutted, the Board determined that the application met the standards for granting a variance. The findings below further support the Board's decision to approve the Application.
 - a. The Property is unique due to its location along Coastal Highway, which is a busy commercial corridor with heavy traffic. The Applicant has been working for some time on improving the entrance to its property and has entered into an agreement with an adjacent landowner for an access easement which should reduce congestion along Coastal Highway. The entrance will be south of the Applicant's business on the northbound side of Coastal Highway. The landscape buffering would severely limit the visibility of the Applicant's business and restrict efficient ingress and egress to the site. The unique characteristics of this Property have created an exceptional practical difficulty for the Applicant.
 - b. The Property cannot be developed in strict conformity with the Sussex County Zoning Code without placing an unreasonable burden on the Applicant and its patrons. The Applicant's business is located north of the proposed entrance and the landscaping required by the Code would require that dense landscaping be placed between the business and the entrance thereby impeding visibility of the site and possibly resulting in confusion among the public concerning ingress and egress to the site. The Applicant uses the site for its convenience store and gas station and a reduction of the landscaping buffer requirement is necessary for the Applicant to reasonably use its property as reducing landscaping will promote greater visibility and safer access to the site.
 - c. The exceptional practical difficulty was not created by the Applicant. The adjacent Coastal Highway is a busy commercial corridor where visibility of adjacent businesses is important. The Applicant did not create the traffic and congestion issues which create a need for improved visibility of the Applicant's business.
 - d. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of

adjacent property, nor be detrimental to the public welfare. The testimony and photographs presented by the Applicant demonstrate that other nearby properties do not have dense landscaping buffers. The proposed landscape buffer will provide some buffer but will allow for visibility of the Applicant's business and will promote safer and efficient egress and ingress to the site. This greater visibility should be a benefit to the area. No evidence was presented which would indicate that the variance would somehow alter the essential character of the neighbor or be detrimental to the public welfare. In fact, DeIDOT supports the new proposed entrance as a means to reduce the traffic congestion in the area.

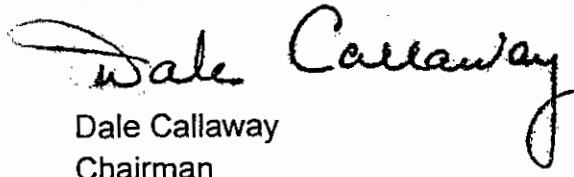
- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represent the least modification possible of the regulation at issue. The Applicant has demonstrated that the proposed landscaping will be attractive while still providing visibility to the Property.
19. As part of the Board's decision to approve the Application, the Board found that the Applicant must comply with the proposed landscaping plan dated September 18, 2014, which is attached hereto as Exhibit A to these Findings of Fact.

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. The Board Members in favor were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance 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 April 21, 2015