

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: W. RALPH BRUMBLEY

(Case No. 11558)

A hearing was held after due notice on April 20, 2015. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the front yard setback requirement.

Findings of Fact

The Board found that the Applicant was seeking a variance of nineteen (19) feet from the forty (40) feet front yard setback requirement for a food vendor truck. This application pertains to certain real property located northeast of Route One (Coastal Highway) across from Route 5 (Union Street Extended) (911 Address: 12209 Coastal Highway, Milton, DE); said property being identified as Sussex County Tax Map Parcel Number 2-35-7.00-44.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, an undated survey of the Property, and responses from the Applicant regarding the standards for granting a variance.
2. The Board found that the Office of Planning & Zoning did not receive any correspondence regarding the Application. The Applicant previously received from Sussex County Council a conditional use approval to place a food vendor truck on the Property.
3. Ralph Brumbley was sworn in to testify about the Application and he submitted pictures of the Property to the Board to review.
4. The Board found that Mr. Brumbley testified that the Property is unique due to the natural curve of the Property. The Property slopes and the truck must be placed on level ground. Without the variance, the truck would sit on uneven ground and the variance will allow the truck to be placed on level ground.
5. The Board found that Mr. Brumbley testified that the difficulty was not created by the Applicant as the natural curve of the Property has created the difficulty.
6. The Board found that Mr. Brumbley testified that the variance will not alter the essential character of the neighborhood.
7. The Board found that Mr. Brumbley testified that the variance will not affect any neighboring property and the use will not be detrimental to the public welfare.
8. The Board found that Mr. Brumbley testified that the variance requested is the minimum variance necessary to afford relief and represents the least modification possible of the regulation at issue.
9. The Board found that Mr. Brumbley testified that the truck is still a safe distance from the road.
10. The Board found that Mr. Brumbley testified that the variance will enable reasonable use of the Property by allowing the truck to sit level on the Property.
11. The Board found that Mr. Brumbley testified that he owns the adjacent property and that the truck will be accessible to the neighboring campground he owns. The truck will provide a service to the campground visitors.
12. The Board found that Mr. Brumbley testified that the existing building on the Property is currently vacant but was previously a day care.
13. The Board found that two (2) parties appeared in support of the Application.
14. The Board found that no parties appeared in opposition to the Application.

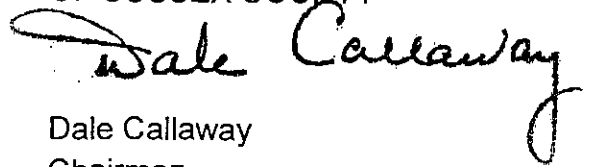
15. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board found credible, persuasive, and un rebutted, the Board determined that the application met the standards for granting a variance. The findings below further support the Board's decision to approve the Application.
- a. The Property is unique due to its slope and curvature. The Applicant's testimony regarding the unevenness of the Property was persuasive and convinced the Board that this uniqueness has created an exceptional practical difficulty for the Applicant as the Applicant needs level ground upon which to locate his food truck. The Property is also unusual due to its triangular shape as shown on the tax map and the survey. This unusual shape creates an odd building envelope upon which to place the food truck.
 - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant has received approval for a conditional use to operate a food truck on the Property but he unable to place the food truck in conformity with the Sussex County Zoning Code due to the unusual slope of the Property and its small building envelope. In order to have a level ground upon which to place the food truck, the Applicant must place the truck into the front yard setback area. The Board is convinced that the food truck needs to be placed on level ground and that the variance is necessary to enable the reasonable use of the Property. The Board is convinced that the size, shape, and location of the food truck are reasonable; which is confirmed when reviewing the survey.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual slope of the Property which limits the placement options for the food truck. The food truck needs to be on level ground and cannot be placed on a slope. The natural characteristics of the Property have created the exceptional practical difficulty for the Applicant.
 - 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 Board is convinced that the proposed food truck is consistent with the uses in the area. The Applicant owns adjacent property and operates a campground. The food truck will provide campground visitors with a place to find a meal without having to leave the Property. No evidence was presented which would indicate that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. Rather, the variance will allow the food truck to be placed on level ground near a parking lot. The parking lot itself is located between the food truck and the adjacent road as evidenced by the survey. The photographs of the food truck confirm that the truck is of a reasonable size and would likely be consistent with other vehicles which will use the campground and the parking lot.
 - e. The variance sought is the minimum variance necessary to afford relief and the variance requested represent the least modifications possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the proposed food truck to be placed in the proposed location. The location is on level ground and the food truck cannot be placed on sloping lands located elsewhere on the Property. The proposed location of the food truck will provide level ground while being a safe distance from the road.

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. Norman Rickard, and Mr. Brent Workman. Mr. John Mills voted against the Motion to approve the variance application. Mr. Jeff Hudson did not participate in the vote or discussion of this 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 9, 2015