

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: SAHAJ ANAND REHOBOTH HOSPITALITY, LLC

(Case No. 11602)

A hearing was held after due notice on July 6, 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 to reduce the parking spaces required for a hotel or motel (Section 115-162A of the Sussex County Zoning Ordinance).

Findings of Fact

The Board found that the Applicant is seeking a variance to reduce the parking spaces required for a hotel or motel according to Section 115-162A of the Sussex County Zoning Code. This application pertains to certain real property located on the south side of Airport Road approximately 210 feet southwest of Route One. The property is further identified as Sussex County Tax Map and Parcel Number 3-34 13.00 178.02, with a 911 address of 36012 Airport Road, Rehoboth Beach, Delaware.

After the hearing, the Board made the following finding of fact:

1. The Board was given copies of the Application and a portion of the tax map of the area.
2. Janelle Cornwell, of Sussex County, described the case and stated that the Office of Planning and Zoning has received one letter in opposition to the Application and has not received any correspondence in support of the Application.
3. Tim Willard, Esquire stated that the Applicant is requesting a variance of .3 parking spaces per rental room or suite from the 1.5 parking space per rental room or suite requirement of the Sussex County Zoning Code.
4. The Board found that Mr. Willard stated that the existing hotel has 49 rooms and that the existing 74 parking spaces meet the parking requirements.
5. The Board found that Mr. Willard stated that the Applicant proposes to add 22 additional rooms on the site which would lead to 109 parking spaces under the Sussex County Zoning Code. The proposed plan has only 87 parking spaces available.
6. The Board found that Mr. Willard stated that the property is uniquely shaped because of the curvature of Airport Road, it is triangular, that there is an existing stormwater management pond and there is an existing access easement on the property.
7. The Board found that Mr. Willard also stated his belief that the variance will not alter the character of the neighborhood and that the hotel has had no past issues with parking overflow.
8. The Board found that Mr. John Murray testified that he is the project manager with Kercher Engineering, the engineering firm hired to design the proposed extension to the hotel.
9. The Board found that Mr. Kercher testified that there is no available space to expand the parking lot on the site due the existing structure, road, access easement and stormwater pond, but the applicant plans to enhance the existing parking lot by reducing the parking space size to meet the current code dimensions for parking spaces. Mr. Murray also testified that as part of the plan expansion, the hotel will increase the number of handicap parking spaces from 2 to 4 and that they will have 17 compact car spaces.
10. The Board found that Mr. Murray testified that the proposed parking lot allows 1.2 parking spaces per rental room. However, Mr. Murray testified that his should not create any parking issues, since at peak times with 46 rooms rented on July 5, 2015, there were only 48 cars in the parking lot, including the manager's vehicle. Mr. Murray testified that this left 26 parking spaces still available.
11. The Board found that Lynn Hopkins testified that she is the manager of the existing hotel, and that she agreed with the information presented by Mr. Willard.
12. The Board found that Ms. Hopkins testified that occupancy during the month of January through April does not exceed 40% and that the highest occupancies are only during July and August and during a calendar year the occupancy percentage rarely exceeds 70%.

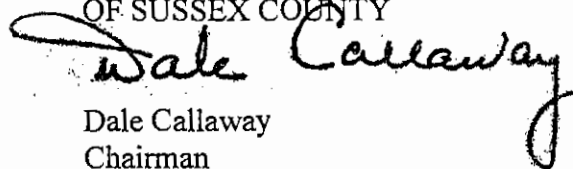
13. The Board found that Ms. Hopkins testified that during the July 4 holiday weekend, all 49 hotel rooms were rented with only 42 parking spaces used by the guests and that a majority of guests may rent more than one room but drive only one vehicle. She further testified that at another time when 46 rooms are rented, the guests used 48 parking spaces. The Board found that Ms. Hopkins submitted a photograph showing approximately 15 spaces that were open when the hotel was rented a full capacity.
14. The Board found that Sanford Hazzard and Jeron Duffy testified in opposition to the Application. The Board found that Mr. Hazzard and Mr. Duffy testified that the existing stormwater pond is used by both the hotel and the neighboring properties. The Board found that Mr. Hazzard and Mr. Duffy testified that there is an existing 25 foot easement between the Hazzard property and the hotel for use of the Duffy family only but the hotel uses it for deliveries and trash pickup. Mr. Hazzard and Mr. Duffy further testified that increasing the number of rooms and not providing adequate parking will adversely affect the easement and their property. Mr. Hazzard and Mr. Duffy testified that the guests of the hotel already park in the easement and that the additional rooms will create more congestion and more problems for the surrounding properties.
15. Based on the findings above and the testimony and evidence presented during the Public Hearing and contained in the Public Record, the Board determined that the Variance Application should be denied for granting a variance to reduce the parking spaces required for a hotel or motel under Section 115-162A of the Sussex County Zoning Code. The findings below further support the Board's decision to deny the Variance Application:
 - a. The property is not unique in shape or circumstance. Based upon the record before it, including a survey and the Tax Map of Parcel 3-34 13.00 178.02, the Board was not convinced that the Property has a unique physical condition such as shape, size or topographical condition or that another unique circumstance existed which presented an exceptional practical difficulty for the Applicant.
 - b. The property can otherwise be developed in strict conformity with the Sussex County Zoning Ordinance. The property is currently developed as a hotel and there is no information in the record to support a claim that it is not usable in its current configuration.
 - c. The Applicant stated that the hotel predominantly operates at no more than 70% occupancy. As a result, there is no apparent need for the increased size of the hotel as a basis for the requested variance. There is no exceptional practical difficulty in the current operations of the hotel as they relate to parking. The expanded hotel, with the requested parking variance, will not cure a deficiency in the current use of the property as a hotel, or eliminate any difficulties that currently exist as part of its operations.
 - d. The Variance is not necessary to enable a reasonable use of the property. Again, the property can be used in its current configuration as a hotel. There is no need or requirement for the expansion of the property for it to be used reasonably. Rather, the Applicant seeks the variance for reasons of profit, convenience and / or caprice. These are not a valid basis for granting the requested variance.
 - e. The exceptionable practical difficulty required to approve a variance has been created by the Applicant. The Applicant desires to expand the hotel. The expansion of the hotel is not necessary to enable the reasonable use of the property; it is simply a desire of the Applicant. That does not justify the basis for granting a Variance or satisfying the exceptional practical difficulty standard.
 - f. Since the variance is not necessary to enable the reasonable use of the property, the requested variance is not the minimum variance to afford relief to the Applicant.
 - g. The Variance will alter the essential character of the neighborhood. There was testimony in the record that parking is already an issue in the area and that allowing an expansion of the hotel on this already cramped space will create additional congestion and parking issues for the neighboring and adjacent properties and the neighborhood in general.
 - h. Denying the variance will not adversely affect the existing, and ongoing, legal use of the property.
 - i. The Applicant has not satisfied the elements of establishing an exceptional practical difficulty necessary for approving the variance application.

Based on the foregoing, the Board denied the Variance to reduce the parking spaces required for a hotel or motel pursuant to Section 115-162A of the Sussex County Zoning Code.

Decision of the Board

Upon motion duly made and seconded, the Variance Application to reduce the parking spaces required for a hotel or motel was denied. The Board Members in favor of the denial were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard and Mr. Brent Workman.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


Dale Callaway
Chairman

Date August 18, 2015.