

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: LEWES FARMERS MARKET, LLC

(Case No. 11635)

A hearing was held after due notice on September 21, 2015. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicant is seeking a variance of 0.4 feet from the five (5) feet side yard setback requirement for an existing structure. This application pertains to certain real property located on the north side of Kings Highway approximately 200 feet south of Clay Road (911 Address: 16704 Kings Highway, Lewes); said property being identified as Sussex County Tax Map Parcel Number 3-34-6.00-54.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, and a survey of the Property dated June 23, 2015.
2. The Board found that the Office of Planning & Zoning received one (1) letter in support of the Application and had not received any correspondence in opposition to the Application.
3. Andrew Ratner was sworn in to testify about the Application and William Schab, Esquire, presented the Application on behalf of the Applicant.
4. The Board found that Mr. Schab stated that the Property has three buildings located thereon.
5. The Board found that Mr. Schab stated that the Applicant previously received variances for other encroachments on the Property.
6. The Board found that Mr. Schab stated that a recent survey showed the existing encroachment which stems from an existing stairwell to the rear of the two story building on the northeast side of the Property.
7. The Board found that Mr. Schab stated that, during the construction of the two (2) story building, an enclosed stairwell was added to the plan.
8. The Board found that Mr. Schab stated that only a small portion of the stairwell encroaches into the setback area as only one (1) corner of the building encroaches.
9. The Board found that Mr. Schab stated that the building was inspected after it was constructed and a Certificate of Compliance was issued for the building.
10. The Board found that Mr. Schab stated that the Applicant obtained all necessary approvals for the structure when it was constructed.
11. The Board found that Mr. Schab stated that the Property is odd in shape and the building is angled on the Property.
12. The Board found that Mr. Schab stated that the structure cannot be moved and only removal of the required stairwell would bring the structure into compliance.
13. The Board found that Mr. Schab stated that the exceptional practical difficulty was not created by the Applicant.
14. The Board found that Mr. Schab stated that the building is adjacent to commercially zoned property. The neighbor supports the application.
15. The Board found that Mr. Schab stated that the variance does not alter the character of the neighborhood.

16. The Board found that Mr. Schab stated that variance requested is the minimum variance to afford relief.
17. The Board found that Mr. Schab stated that the existing shed has been moved into compliance with the Sussex County Zoning Code.
18. The Board found that Mr. Ratner confirmed, under oath, the statements made by Mr. Schab.
19. The Board found that Mr. Ratner testified that the original building plans did not include a second exterior stairwell. The second stairwell was added as a fire exit and the State Fire Marshal required the stairwell.
20. The Board found that Mr. Ratner testified that there are two (2) tenants on the second floor and stairwells were added for both sides give a secondary exit for emergencies. The stairwell is not a main access to the second floor.
21. The Board found that Mr. Ratner testified that the stairwell would have to be removed in order to comply with the Code.
22. The Board found that Mr. Ratner testified that the builder constructed the stairwell to the minimum width allowed.
23. The Board found that Mr. Ratner testified that the shed has been moved into compliance with the Code.
24. The Board found that Mr. Ratner testified that the building was constructed in 2008.
25. The Board found that no parties appeared in support of or in opposition to the Application.
26. 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 unusual shape. The Property is a commercial development with multiple buildings and has multiple entrances. The Property also has an angled property line located adjacent to the lands of Russell Palmer Builders. The building in question is located near that angled property line. The situation is also unique because the Applicant designed the building only to later be required by the Fire Marshal to include a second stairwell. The Applicant built the structure in 2008 and received all necessary approvals only to recently learn that a portion of the stairwell encroached inches into the setback area. The unique characteristics of this Property have created an exceptional practical difficulty for the Applicant who seeks to retain a reasonably sized building on the lot.
 - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique shape and angle which makes development thereof challenging. The Applicant seeks to retain a building which slightly encroaches into the setback area. The building cannot be moved, as it is on a permanent foundation, and the encroaching portion thereof is a stairwell which is enclosed and also on a permanent foundation. The stairwell was constructed at the time the building was constructed and was required to be placed thereon by the Fire Marshal. The stairwell cannot be relocated or moved and the stairwell is the minimum size necessary to meet the Fire Marshal requirements. It is clear to the Board that the Applicant is unable to retain the stairwell without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow a reasonably sized building to remain on the Property. The Board is convinced that the

size, shape, and location of this building are reasonable, which is confirmed when reviewing the survey provided by the Applicant.

- c. The exceptional practical difficulty was not created by the Applicant. The Property has an unusual shape and the shape has limited the development thereof. The Applicant also relied on its builder to construct the building in compliance with the Sussex County Zoning Code and the Applicant only learned of the encroachment many years after the project was complete. The Applicant obtained all necessary approvals, including a Certificate of Compliance from Sussex County, which indicated that the project complied with the Code. The fact that the stairwell only encroaches into the setback area by mere inches supports the conclusion that the need for the variance was likely caused by a measuring error at the time of construction; an error which may have been caused by the unusual shape of the Property. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created the lot's unique characteristics and by the likely measuring errors during construction.
- 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 building will have no effect on the character of the neighborhood. The Property is a commercial development with multiple buildings located thereon and the Property is adjacent to other commercial businesses. The neighbor most affected by the variance has even submitted a letter in support of the Application. No evidence was presented which indicated that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to retain a building with an important exterior, rear stairwell on the Property. No additions to the building are proposed.

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, and Mr. Brent Workman. No Board Member voted against the Motion to Approve the Application. Mr. Norman Rickard was not present and did not participate in the discussion or vote 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 November 17, 2015