

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: KJR HOLDINGS, LLC**

**(Case No. 11680)**

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

Nature of the Proceedings

This is an application for variances from the side yard and rear yard setback requirements.

Findings of Fact

The Board found that the Applicant is seeking a variance of 3.5 feet from the five (5) feet side yard setback requirement on the east side and a variance of 0.4 feet from the twenty (20) feet rear yard setback requirement for an existing building. This application pertains to certain real property located on the northwest side of John J. Williams Highway (Route 24) approximately 624 feet east of Washington Street Ext. (911 Address: 29920 John J. Williams Highway, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 2-34-32.00-38.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, and an undated survey.
2. The Board found that the Office of Planning & Zoning had not received any correspondence in support of or in opposition to the Application.
3. The Board found that Kelly Racz was sworn in to testify about the Application and William Schab, Esquire, appeared on behalf of the Applicant. Mr. Schab submitted photographs of the Property to the Board to review.
4. The Board found that Mr. Schab stated that a survey completed for settlement showed the encroachments. The existing building encroaches in the side yard setback area and slightly encroaches into the rear yard setback area. The previous owner was unaware of the encroachments.
5. The Board found that Mr. Schab stated that the previous owner built the commercial building in 1971.
6. The Board found that Mr. Schab stated that the Property is irregularly shaped making it unique.
7. The Board found that Mr. Schab stated that the shed on the survey that was also encroaching into the setback area has been removed.
8. The Board found that Mr. Schab stated that the Property cannot otherwise be developed without removing part of the building.
9. The Board found that Mr. Schab stated that the difficulty was not created by the Applicant.
10. The Board found that Mr. Schab stated that, since the structure has been on the lot for many years, the variances do not alter the character of the neighborhood. There have been no complaints about the location of the building even though the building has been used as a commercial building for many years.
11. The Board found that Mr. Schab stated that the variances requested are the minimum variances necessary to afford relief.
12. The Board found that Mr. Racz, under oath, affirmed the statements made by Mr. Schab.
13. The Board found that Mr. Racz testified that he is a member of the Applicant and plans to run a small archery shop and sporting goods store on the Property.

14. The Board found that Mr. Racz testified that he cannot correct the issue without tearing down a substantial portion of the building.
15. The Board found that Mr. Racz testified that there have been no complaints from the neighbors.
16. The Board found that no parties appeared in support of or in opposition to the Application.
17. 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 which is clearly evident when reviewing the survey provided by the Applicant. The rear property line is irregularly shaped as the center of the rear property line is approximately 128.37 feet closer to the front yard property line than the western side of the rear property line and 93.56 feet closer to the front yard property line than the eastern side of the rear property line. This shape greatly reduces the building envelope on the Property and has created an exceptional practical difficulty for the Applicant who seeks to retain an existing commercial 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 the buildable area thereof is limited due to its shape. The Applicant seeks to retain a commercial building of a reasonable size but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow a reasonably sized commercial building to remain on the Property. The Board is convinced that the shape and location of this building are also reasonable, which is confirmed when reviewing the survey and pictures provided by the Applicant. Furthermore, the Property is so uniquely shaped that it would be difficult to place a reasonably sized commercial building on the Property within the building envelope. Additionally, the Board notes that the building has been in its present location since approximately 1971 and a significant portion thereof would have to be removed in order to comply with the Sussex County Zoning Code. Due to the age of the building, the Board has concerns that such renovation is even practical.
  - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual shape of the Property which has resulted in a limited building envelope on the Property. The unusual building envelope has created the exceptional practical difficulty. Furthermore, the building was placed on the Property by a prior owner and has been in its present location since approximately 1971. 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 placement of the building thereon by the prior owner.
  - d. The variances 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 building has been on the Property since approximately 1971. Despite the longstanding location of this building, no complaints were noted in the record about the location of the

building. Furthermore, no evidence was presented which would indicate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.

- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain a reasonably sized building on the Property. The Applicant does not intend to make any additions to the building and only seek the variances to allow the existing building to remain in its current location. The Board notes that a shed encroached into the setback area has been removed.

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 Members 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 March 1, 2016