

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

**IN RE: JUNGLE JIM'S AMUSEMENT PARK**

**(Case No. 11713)**

A hearing was held after due notice on February 15, 2016. 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 height requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of five (5) feet from the forty-two (42) feet height requirement and a variance of eighteen (18) feet from the forty-two (42) feet height requirement for a proposed waterslide and canopy. This application pertains to certain real property located on the west side of Coastal Highway (Route 1) approximately 212 feet south of Country Club Road (911 Address: 36944 Country Club Road, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-19.00-163.00..

1. The Board was given copies of the Application, a schematic of the proposed slide, and a drawing of the Property dated July 31, 2015.
2. The Board found that the Office of Planning & Zoning received two (2) letters in support of the Application and one (1) letter in opposition to the Application.
3. William D. Lingo, T. William Lingo, and John Barwick were sworn in to testify about the Application. David Hutt, Esquire, presented the Application on behalf of the Applicant and submitted a booklet of exhibits including a letter from Dennis Schrader dated July 25, 2000, an informational letter from SplashTacular on the new waterslide complex, a site plan, and a depiction of the site plan with elevations.
4. The Board found that Mr. Hutt stated that the Property is a highly recognizable property used as an amusement park and the park has been at this location since 1974. The Applicant purchased the property in 1998.
5. The Board found that Mr. Hutt stated that the Property consists of approximately fifteen (15) acres and is zoned C-1. In 1974 the Sussex County Zoning Code permitted amusement parks but, in 1992, the Zoning Code changed and required amusement parks to file for Conditional Use approval. The park is non-conforming and the Applicant only needs commercial site plan approvals to make changes and update the existing park. The Applicant submitted a commercial site plan for review which was approved. In 2002 the Applicant made significant changes to the park pursuant to that plan and the two tallest waterslides measuring approximately sixty (60) feet tall were constructed at that time. In 2008 the Applicant added a spray area to the park after commercial site plan review and approval.
6. The Board found that Mr. Hutt stated that there are residential neighborhoods adjacent to the Property.
7. The Board found that Mr. Hutt stated that the most frequent complaints from neighbors referred to the noise from the go-kart tracks. The Applicant has been systematically removed the go-kart tracks from the park and the last track was removed last year. The proposed waterslides will replace an existing go-kart track attraction.
8. The Board found that Mr. Hutt stated that the Applicant consulted with waterslide manufacturers about the proposed waterslides and the proposed waterslide was

- designed to not exceed the height of the existing waterslides in the park. Most waterslides are designed in excess of seventy (70) feet tall.
9. The Board found that Mr. Hutt stated that the manufacturer stated the slide platform must be at forty-seven (47) feet in order to be safe and operate properly. This platform must also have a thirteen (13) feet high canopy attached to provide the required railing and shade protection.
  10. The Board found that Mr. Hutt stated that the proposed waterslide will be approximately eighty (80) feet from the southerly property line.
  11. The Board found that Mr. Hutt stated that an addition of a waterslide to an existing waterpark will not negatively impact the surrounding and neighboring properties.
  12. The Board found that Mr. Hutt stated that people using the waterslide will not be able to see into neighboring properties outside showers.
  13. The Board found that Mr. Hutt stated that in previous years the park would close at 8:00 p.m. and the go-kart tracks would remain open until 10:00 p.m. The park will now close at 8:00 p.m. since the all of the go-kart tracks have been removed. The earlier closing time eliminates any need for lighting and noise past 8:00 p.m.
  14. The Board found that Mr. Hutt stated that the park is open from Memorial Day until the weekend following Labor Day each year. The park closes at 6:00 p.m. except from June 15<sup>th</sup> through August 15<sup>th</sup> when it will close at 8:00 p.m.
  15. The Board found that Mr. Hutt stated that modernization and updates are crucial to maintain the park and keep it viable. Modernization includes the replacement of certain rides.
  16. The Board found that Mr. Hutt stated that the waterslide cannot be constructed with portions underground due to the topography of the Property.
  17. The Board found that Mr. Hutt stated that the pre-existing non-conforming use of the Property makes it unique.
  18. The Board found that Mr. Hutt stated that the variance was not created by the Applicant.
  19. The Board found that Mr. Hutt stated that the variances sought are the minimum variances to afford relief and provide the park with a safe waterslide.
  20. The Board found that Mr. Hutt stated that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code while meeting the manufacturer's safety standards.
  21. The Board found that Mr. Hutt stated that the variances are necessary to enable reasonable use of the Property.
  22. The Board found that Mr. Hutt stated that the waterslides will not alter the character of the neighborhood and will eliminate the source of complaints from the neighboring properties.
  23. The Board found that Mr. Hutt stated that the proposed waterslide platform is two (2) inches lower than the existing slides platforms.
  24. The Board found that Mr. T. William Lingo testified that he has been a certified appraiser since 1978.
  25. The Board found that Mr. T. William Lingo testified that the park pre-dated the development of the neighboring residential neighborhoods.
  26. The Board found that Mr. T. William Lingo testified that park does not negatively impact the property values since it was there prior to those developments.
  27. The Board found that Mr. T. William Lingo testified that he affirmed the statements made by Mr. Hutt.
  28. The Board found that Mr. Barwick testified that the angles of deflection in a shower make it impossible for anyone to see down into a shower from the proposed waterslide. Only someone directly above a shower can see down into a shower.

29. The Board found that Mr. Barwick testified that the slide manufacturer stated in order for the thrill of the trap door platform to work properly and safely it must be a minimum of forty-seven (47) feet tall. The proposed height will allow enough time for the slide to work as designed.
30. The Board found that Mr. Barwick testified that the slides are approximately 125 feet from neighboring houses.
31. The Board found that Mr. William D. Lingo testified that he is the general manager of the park and the proposed waterslide will not create any more noise than what is currently created from the existing waterslides. The removal of the go-karts will lower the noise level. The park will not have lights or loud music playing past 8:00 p.m. at night during their peak season.
32. The Board found that Mr. T. William Lingo testified that the Applicant received many complaints from the go-karts and that the Applicant has planted Leland Cypress trees around the perimeter of the Property to help buffer the residential properties.
33. The Board found that Mr. Hutt stated that the park generates approximately 76,000 visitors each year and updates to the park are needed to keep the park safe and desirable to returning and future visitors.
34. The Board found that Mr. Hutt stated that the removal of the go-karts had an economic impact on the park and the Applicant intends to use the new slides as a substitute for the go-karts.
35. The Board found that Esther Downes and Bruce Powell were sworn in and testified in opposition to the Application.
36. The Board found that Ms. Downes testified that she lives on a neighboring property that borders the park.
37. The Board found that Ms. Downes testified that the proposed waterslide serves no altruistic benefit to the community and that the slides will negatively impact the neighboring residents year round.
38. The Board found that Ms. Downes testified that the waterslide will be an imposing structure.
39. The Board found that Ms. Downes testified that the proposed waterslide will be placed squarely in the storm water drainage pond and she is concerned about the impact of the waterslide on storm water management as the pond is filled at times.
40. The Board found that Ms. Downes testified that patrons to the Park previously parked across the street but those lands are being developed.
41. The Board found that Ms. Downes testified that the proposed waterslide will reduce property values of nearby property values.
42. The Board found that Ms. Downes testified that the use of outdoor decks, hot tubs, and outside showers will be compromised and users of the waterslides will be able to see into the outdoor showers.
43. The Board found that Ms. Downes testified that the neighboring residents are entitled to their privacy.
44. The Board found that Ms. Downes testified that she planted trees along the property line and there are no trees on the Applicant's property adjacent to her property.
45. The Board found that Ms. Downes testified that she is strongly opposed to the height and location of the proposed waterslide.
46. The Board found that Ms. Downes testified that the waterslide will be closer to her house than the previous go-kart tracks.
47. The Board found that Ms. Downes testified that the noise pollution has been reduced with the removal of the go-karts.
48. The Board found that Ms. Downes testified that the other waterslides are located in a more interior location inside the park.

49. The Board found that Ms. Downes testified that she would still disapprove of the slide even if it complied with the height requirement.
50. The Board found that Mr. Powell testified that the proposed waterslide is in the worst possible location as the area where the slide is proposed to be located is surrounded by residential properties.
51. The Board found that Mr. Powell testified the noise generated from the waterslide will negatively impact the surrounding properties.
52. The Board found that Mr. Powell testified that a commercial building of forty-two (42) feet tall would not be objectionable because it would not have the noise impact.
53. The Board found that Mr. Powell testified that he lives approximately 1,000 feet from the park and can hear noise from the park. He believes that the noise will carry further due to the height of the slides and that the noise will hurt the property values.
54. The Board found that Mr. Powell testified that he has lived in the area for twenty-five (25) years. He likes the park and feels it is well run.
55. The Board found that Mr. Powell testified that he is concerned about the impact of the slides on the storm water management pond.
56. The Board found that Mr. Powell testified that he would still be opposed if the waterslide met the forty-two (42) foot height requirement.
57. The Board found that Mr. Hutt stated that the Applicant will meet with the Sussex Conservation District in regards to the changes to the storm water management pond.
58. The Board found that Mr. Hutt stated that the existing go-kart track was located the same distance from the property line as the proposed slides.
59. The Board found that Mr. T. William Lingo testified that he is willing to plant additional Leland Cypress trees along the property line.
60. The Board found that Mr. Hutt stated that the existing layout of the park and overall functionality of the park make it difficult to locate the proposed waterslide elsewhere on the Property.
61. The Board found that no parties appeared in support of the Application.
62. The Board found that five (5) parties appeared in opposition to the Application.
63. The Board tabled the case until February 29, 2016, at which time the Board discussed and voted on the Application.
64. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, 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 situation is unique as the Property is used as an amusement park with waterslides and has been used as an amusement park since 1974. This use pre-dates changes in the Sussex County Zoning Code and involves structures which are higher than ordinary structures. The Applicant seeks to make improvements to the park by constructing new waterslides on the Property and those improvements must be of a certain height in order to meet the recommended safety guidelines set by the manufacturer. The topography of the Property does not allow for portions of the slides to be built underground so the slides must be constructed completely above ground. The Property's history and physical limitations are unique and have created an exceptional practical difficulty for the Applicant.
  - b. Due to the uniqueness of the lot and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property is used as an amusement park and has been used in this fashion for over 40 years. The Applicant has removed go-kart tracks from the

Property. The go-karts resulted in complaints from neighbors about the noise associated with that use. In order to reasonably utilize this space in a manner consistent with the park, the Applicant proposes to construct the waterslides with a canopy in this area but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the waterslides are the large attractions to the park and the Applicant seeks to construct the slides in a manner consistent with other slides already on the Property. Likewise, the canopy at the top of the waterslides is needed to provide proper railings, shade, and other safety features commonly found with waterslides. Naturally, the canopy must be higher than the top of the waterslides in order to meet its functionality. The testimony from the engineer and the correspondence from the waterslide manufacturer convince the Board that the waterslides need to exceed the height requirements set forth in the Sussex County Zoning Code in order to be reasonably and safely used as a thrill ride in the park. The variances are, thus, necessary for the Applicant to reasonably use this space.

- c. The exceptional practical difficulty was not created by the Applicant. The waterpark is a pre-existing and non-conforming use and the Sussex County Zoning Code contains no language authorizing any change in the rides located in a pre-existing, non-conforming amusement park. The Applicant did not create the waterpark and the Zoning Code does not allow an amusement park owner to regularly modernize the slides in the park without a variance. The ability to replace rides within the park is also limited by the waterslide manufacturer requirements that the slides be no less than 47 feet tall. This situation is quite unique and has created an exceptional practical difficulty for the Applicant. Furthermore, the topography of the Property does not allow for the slides to go underground to thereby alleviate the need for the waterslides to exceed 42 feet.
- 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 waterslides and canopy will have no effect on the character of the neighborhood. The Property has been used for over 40 years as an amusement park with waterslides being a main feature. The proposed slides will be no taller than waterslides already on the Property and are consistent with the uses of the park. The Board also notes that the park is only open for a limited time of the year. The opposition complained about the effect on property values, noise, and views. The Board, however, finds that these arguments were not convincing. The Property has been used for an amusement park for decades and is part of the character of the neighborhood. The installation of the proposed waterslides and canopy is in keeping with that use. The Applicant presented testimony from a real estate appraiser who opined that the waterslides would have no adverse effect on property values and no expert testimony or documentation was presented by the opposition which convinced the Board otherwise. The opposition complained about the noise from the proposed waterslide but admitted that the go-kart tracks were loud. Again, the Property is used as an amusement park and certain noises are expected due to that use. There was no evidence presented by the opposition which persuaded the Board that, assuming *arguendo*, the waterslides and canopy were able to be built without a height variance, the noise associated with the taller waterslides would be any worse than a waterslide which met the height requirement or the prior go-kart tracks.

The opposition also argued that the waterslide would provide riders with a chance to peer into outdoor showers on neighboring properties. The Applicant's engineer, however, convinced the Board that it is not possible for a rider to peer into those showers. Furthermore, the Applicant will plant trees along the buffer of neighboring properties to provide additional visual buffering. Lastly, the opposition expressed concerns about the effect of the waterslides on the Property's storm water management. The Applicant will be required to meet with the Sussex Conservation District and to comply with its rules and regulations on storm water management. Ultimately, the Board found that the waterslides and canopy will not alter the character of the neighborhood.

- 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 construct reasonably sized waterslides and a canopy on the Property. The Applicant has consulted with the waterslide manufacturer and the proposed waterslides are the minimum height necessary to be safely used while still meeting the goal of the amusement park. The Board is convinced that the Applicant has attempted to minimize the need for the variance.
65. The Board has conditioned its approval on the stipulation that the Applicant plant fast growing trees such as Leland Cypresses on the inside of the fence along the southeast and southwest sections of the Property that border the residential properties to create a buffer.

The Board granted the variance application with conditions finding that it met the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application with conditions was approved. The Board Members in favor of the Motion were Mr. Jeff Hudson, Mr. John Mills, and Mr. Brent Workman. Mr. Dale Callaway and Mr. Norman Rickard voted against the Motion to approve the variance application with conditions.

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 5, 2016.