

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: SAHEB, LLC

(Case No. 11753)

A hearing was held after due notice on April 18, 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 a variance from the front yard setback requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of twenty (20) feet from the sixty (60) feet front yard setback requirement for a proposed addition. This application pertains to certain real property located on the west side of Concord Road approximately 10 feet south of Concord Pond Road (911 Address: 10680 Concord Road, Seaford); said property being identified as Sussex County Tax Map Parcel Number 1-32-2.00-324.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, a survey of nearby property dated November 20, 2003, drawings of the proposed store, and a preliminary site plan dated November 3, 2015.
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 Synnjay Patel and Chris Walter were sworn in to testify about the Application. Michael McGroerty, Esquire, presented the case on behalf of the Applicant and submitted pictures for the Board to review.
4. The Board found that Mr. McGroerty stated that the Property is only 149.25 feet deep. The existing building is non-conforming and pre-dated the establishment of the setback requirements, which, according to Mr. McGroerty, creates a unique situation.
5. The Board found that Mr. McGroerty stated that the building cannot be operated reasonably and safely in today's market because of its size and the proposed addition is needed for additional storage for the existing liquor store.
6. The Board found that Mr. McGroerty stated that the Applicant cannot build to the east of the building due to a lack of space and the Applicant cannot build to the rear because the area is needed for storm water management.
7. The Board found that Mr. McGroerty stated that a house on a nearby property (Lot 326) is located very close to the road.
8. The Board found that Mr. McGroerty stated that the proposed front yard setback is consistent with the neighborhood as there are numerous properties closer to the front property lines.
9. The Board found that Mr. McGroerty stated that the variance will not alter the essential character of the neighborhood and the variance will not adversely affect the development or use of neighboring and adjacent properties.
10. The Board found that Mr. McGroerty stated that the addition will likely improve the values of properties in the area.
11. The Board found that Mr. McGroerty stated that the addition will not extend any further than the existing building into the front yard.
12. The Board found that Mr. Walter testified that he is the builder on the project.
13. The Board found that Mr. Walter testified that the proposed development is the only reasonable way to develop the Property.

14. The Board found that Mr. Walter testified that the location of the septic system and the parking requirements limit the buildable area. He believes that it is impossible to build the addition within the building envelope.
15. The Board found that Mr. Walter testified that the storm water management area will be located on the southwest and southeast side of the Property and the septic is in the rear of the Property.
16. The Board found that Mr. Walter testified that the existing building is approximately 1,524 square feet in size and the addition to the building will be approximately 3,385 square feet in size. There will be 26 parking spaces on the Property.
17. The Board found that Mr. Walter testified that the size of the addition is needed for the reasonable use of the Property.
18. The Board found that Mr. Walter testified that the existing entrance was installed two (2) years ago and the Applicant will have to work with the Delaware Department of Transportation ("DelDOT") regarding the entrance permits for the Property.
19. The Board found that Mr. Walter testified that the Applicant must submit a site plan for review to the Planning & Zoning Office and other agencies for review.
20. The Board found that Mr. Patel, under oath, affirmed the statements made by Mr. McGroerty.
21. The Board found that Mr. Patel testified that he has not created any of the difficulty associated with the Property and that he did not place the building on the Property.
22. The Board found that Mr. McGroerty stated that the proposed size of the addition is needed to accommodate the cooler storage needed for the business and a smaller building will not allow enough space for the coolers.
23. The Board found that Mr. McGroerty stated that there will be adequate parking available and the display area for auto sales will be removed.
24. The Board found that Mr. McGroerty stated that the building was designed to minimize the need for a variance.
25. The Board found that Mr. McGroerty stated that an adjacent neighbor on the east side has requested the Applicant to put up a fence, and the Applicant has agreed to install the fence.
26. The Board found that Mr. McGroerty stated that there is no road behind the building.
27. The Board found that Mr. McGroerty stated that a previous owner dedicated 5 feet of the front yard to DelDOT.
28. The Board found that no parties appeared in support of or in opposition to the Application.
29. The case was tabled until May 2, 2016, at which time the Board discussed and voted on the Application.
30. 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 failed to meet the standards for granting a variance. The findings below further support the Board's decision to deny the Application.
 - a. The Board was not convinced that there was some unique physical condition related to the Property which has created an exceptional practical difficulty. The Property is a lot nearly rectangular in shape with no unique features which limit its development. The Property is developed by a liquor store business and automobile sales display area as shown on the survey. No evidence was presented demonstrating that the Property has some unique, natural feature which has created an exceptional practical difficulty for the Applicant. Rather, the difficulty, if any, appears

to be entirely self-created by the Applicant's desire to exceed the setback requirements set forth in the Sussex County Zoning Code.

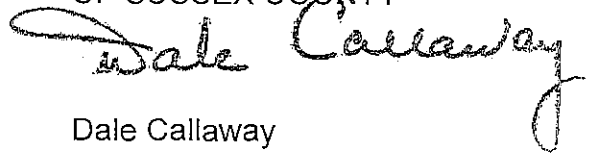
- b. The Board finds that the variance is not necessary for the reasonable use of the Property. The Property is already developed with a liquor store business and the Applicant seeks to expand its business by adding an addition consisting of 3,385 square feet to the existing building. Notably, the existing building consists of only 1,527 square feet so the addition is more than two times larger than the current building and would substantially encroach into the front yard setback area. In arguing that the variance is needed to enable reasonable use of the Property, the Applicant stated that the additional space is needed to accommodate large coolers associated with its liquor business. The Board was unconvinced, however, that an addition of this size was necessary. Assuming *arguendo* that an addition of this size was needed, the Applicant did not convince the Board that it could not otherwise develop the Property in strict conformity with the Sussex County Zoning Code. Specifically, the Board was not convinced that alternate designs which would construct the addition within the building envelope were adequately considered. More importantly, though, the Board was not convinced that an addition which would more than triple the size of the store was necessary. Rather, since the Property is already being used as a liquor store, it is clear to the Board that the Property is already being reasonably used without the need for the requested variance. As such, the variance is denied.
- c. The exceptional practical difficulty was created by the Applicant. As previously discussed, there are no unique conditions to the Property which have otherwise created an exceptional practical difficulty. Rather, the difficulty, if any, appears to be entirely self-created by the Applicant's desire to exceed the setback requirements set forth in the Sussex County Zoning Code. The Applicant can clearly use the Property without the need for the requested variance.
- d. The Board has concerns about the impact of the addition on the ability of cars to safely travel to and from the site. The curbing from the nearby roadway would appear to make it difficult to access the parking lot on the west side of the building. If an addition was built in compliance with the Code, the parking lot would be much more accessible because a greater portion of the front yard would be available. Further complicating the parking problems associated with the addition is the fact that deliveries would be made at the front of the store where there is very little room due to the encroachment of the building into the front yard setback area. The result of this addition would likely result in a congested and unsafe parking lot. It is difficult to see how such a congested parking lot would not then create traffic problems on the adjacent roadway thereby potentially altering the essential character of the neighborhood.
- e. Since the variance is not necessary to enable the reasonable use of the Property, the Board also finds that the variance requested is not the minimum variance necessary to afford relief. Furthermore, the Board finds that no variance is necessary to afford relief since the Property is already developed.

The Board denied the variance application finding that it failed to meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was denied. 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 deny the variance application. Mr. Norman Rickard did not participate in the vote on this application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY

A handwritten signature in cursive script that reads "Dale Callaway". The signature is written in dark ink and is positioned to the left of the printed name and title.

Dale Callaway
Chairman

Date June 21, 2016.