

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: HOME TEAM REALTY

(Case No. 11799)

A hearing was held after due notice on July 11, 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 front yard setback requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of twenty-nine (29) feet from the sixty (60) feet front yard setback requirement for a proposed addition. This application pertains to certain real property located on the east side of Sussex Highway approximately 811 feet south of Sycamore Road. (911 Address: 30661 Sussex Highway, Laurel); said property being identified as Sussex County Tax Map Parcel Number 2-32-12.00-132.02.

1. The Board was given copies of the Application, a survey of the Property dated March 14, 2016, a portion of the tax map of the area, a letter of no opposition from Thomas Conway, an aerial photograph of the Property, and a letter of no opposition from Anthony M. LeCompte.
2. The Board found that the Office of Planning & Zoning received two (2) letters in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Isabelle Cissnaros was sworn in to testify about the Application.
4. The Board found that Ms. Cissnaros testified that she leases the Property from the Applicant and runs a Mexican Restaurant on the Property.
5. The Board found that Ms. Cissnaros testified that the existing structure was built within the regulations existing at the time it was constructed but the setback regulations have changed.
6. The Board found that Ms. Cissnaros testified that the proposed addition will be a vestibule and the vestibule can only be built in front of the building. The proposed addition cannot be built on the side due to the existing parking area and cannot be built to the rear of the building due to the existing kitchen and septic system. The interior cannot accommodate the addition without losing seating in the restaurant. As such, the front of the building is the only available location.
7. The Board found that Ms. Cissnaros testified that the vestibule will extend twelve (12) feet from the front door and will provide a more desirable entrance to the restaurant. The vestibule will be enclosed but will not be used for storage. The vestibule will measure 8 feet wide by 12 feet deep.
8. The Board found that Ms. Cissnaros testified that the existing entrance allows a significant amount of flies into the restaurant and makes it difficult to maintain comfortable temperatures in the restaurant.
9. The Board found that Ms. Cissnaros testified that the proposed addition will allow the small restaurant to provide a waiting area and safe entrance and exit from their small restaurant.
10. The Board found that Ms. Cissnaros testified that the vestibule will be used for wheelchair access to the restaurant as well. The restaurant currently has handicap access but the vestibule would need to be constructed large enough to also provide reasonable wheelchair access.

11. The Board found that Ms. Cissnaros testified that the vestibule would be placed over an existing sidewalk.
12. The Board found that Ms. Cissnaros testified that the current setback requirements cannot be met due to the location of the existing building.
13. The Board found that Ms. Cissnaros testified that there is a side entrance to the building on the north side but it is not used for customers.
14. The Board found that Ms. Cissnaros testified that a vestibule placed on the south side of the building would take up parking space if added to the building and would take up a significant amount of bar and seating space if placed inside the existing building.
15. The Board found that Ms. Cissnaros testified that the Property is unique due to the need for a safe place for customers and to comply with the Americans with Disabilities Act.
16. The Board found that Ms. Cissnaros testified that the variance is necessary to enable reasonable use of the Property.
17. The Board found that Ms. Cissnaros testified that the Applicant did not construct the building and that the difficulty was not created by the Applicant.
18. The Board found that Ms. Cissnaros testified that the variance will not alter the essential character of the neighborhood and the use will not be detrimental to the public welfare.
19. The Board found that Ms. Cissnaros testified that the neighbors support the Application.
20. The Board found that Ms. Cissnaros testified that the variance is the minimum to afford relief.
21. The Board found that Donald D'Aquila was sworn in and testified in opposition to the Application.
22. The Board found that Mr. D'Aquila testified that he owns a property two (2) parcels over from the Property which is approximately 100 feet away. He operates a car dealership on his property.
23. The Board found that Mr. D'Aquila testified that he believes the building is already compliant with the Americans with Disabilities Act as there is no curbing prohibiting access. He believes that the vestibule is not necessary to provide an ADA compliant entrance.
24. The Board found that Mr. D'Aquila testified that he believes the Applicant could install an Air Door to solve the problems the Applicant is having with flies and weather and the Air Door could be done without the need of a variance.
25. The Board found that Mr. D'Aquila testified that an Air Door or a vestibule built to the side of the building would solve the Applicant's problem.
26. The Board found that Mr. D'Aquila testified that the proposed vestibule is not necessary.
27. The Board found that Mr. D'Aquila testified that the side of the Property could be used to provide access without the need of a variance.
28. The Board found that Mr. D'Aquila testified that he believes the sixty (60) feet setback requirement should be met or it may set a precedent and the character of the neighborhood would be affected by the proposed addition.
29. The Board found that Mr. D'Aquila testified that the existing buildings are all in line along the neighboring properties.
30. The Board found that Mr. D'Aquila testified that new construction would have to be set back sixty (60) feet.
31. The Board found that Mr. D'Aquila testified that he feels the Applicant is creating the difficulty.
32. The Board found that Mr. D'Aquila testified that was denied a variance in the past that protruded into the front yard setback requirement.

33. The Board found that Ms. Cissnaros testified that the proposed addition cannot be built on either side of the building. There are also bathrooms on the interior that prohibit access from the side of the building.
34. The Board found that Ms. Cissnaros testified that building is quite old and the entrance door is not a thick door.
35. The Board found that Ms. Cissnaros testified that there is limited space within the restaurant and there are seats near the entrance.
36. The Board found that Ms. Cissnaros testified that she feels an Air Door would have an adverse effect on the patrons.
37. The Board found that no parties appeared in support of the Application.
38. The Board found that one (1) party appeared in opposition to the Application.
39. The Board tabled the discussion and vote on this application until August 1, 2016.
40. 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 Property is unique as it is a small, commercial lot and the building used for the restaurant was created prior to the enactment of the current front yard setback requirement. The Applicant seeks permission to install a small vestibule at the front of the restaurant to provide improved access to the building. Since the building was constructed prior to the current zoning regulations, the small addition cannot be constructed without a variance. It is clear to the Board that the lot's unique characteristics have created an exceptional practical difficulty for the Applicant who seeks to build a small vestibule 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 is a small, commercial lot and the building thereon was constructed prior to the current zoning regulations. The Applicant runs a restaurant and suffers from issues related to flies and temperature changes due to the small size of the restaurant and the lack of a vestibule. The Applicant seeks to build a small vestibule of a reasonable size to provide a buffer between the dining area and the outside 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 the Applicant to build a reasonably sized vestibule. The Board is convinced that the shape and location of the vestibule are also reasonable, which is confirmed when reviewing the survey provided by the Applicant.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the size of the lot or place the building on the lot; all of which limit the building envelope on the Property. The building envelope was further limited by change to the zoning requirements after the building was constructed. 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.
 - 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 new vestibule will have no effect on the character of the neighborhood. Notably, the vestibule is quite small and is a reasonable addition to the existing building. The Board weighed the concerns raised by the opposition but was not convinced that the vestibule 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 construct a reasonably sized vestibule on the Property. The Board is convinced that the Applicant has taken appropriate measures to limit the intrusion of these structures into the setback areas. The Board is also convinced that the Applicant explored locating the vestibule elsewhere on the Property but could only place it in the existing location due to the design of the existing building. The Board notes that the restaurant leases the building and did not construct it on the Property. The Board also agrees with the testimony of the Applicant that an Air Door would not alleviate their concerns. The evidence clearly demonstrates that tables for customers are currently located near the door and it is difficult to see how an Air Door, which will send air vertically at the entrance, would be a desirable feature for customers at those tables. The Air Door proposed by the opposition does not appear to be reasonable in this instance.

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. Norman Rickard, and Mr. Brent Workman. Mr. John Mills 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 October 4, 2016