

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: WILLARD HAYES

(Case No. 11800)

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 (20) feet from the minimum twenty-five (25) feet setback requirement car sales display. This application pertains to certain real property located on the east side of Sussex Highway approximately 0.7 miles south of Iron Hill Road. (911 Address: 36959 Sussex Highway, Delmar); said property being identified as Sussex County Tax Map Parcel Number 5-32-20.00-97.01.

1. The Board was given copies of the Application, pictures of the Property and the surrounding area, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of or in opposition to the Application.
3. The Board found that Willard Hayes was sworn in to testify about the Application.
4. The Board found that Mr. Hayes testified that he has owned to the Property since 2003 and he would like to display the vehicles at his property line.
5. The Board found that Mr. Hayes testified that approximately eight (8) other dealerships in the area are not in compliance with the setback requirement.
6. The Board found that Mr. Hayes testified that he shares an entrance with the neighbors and that the Property is unique due to the shared entrance with adjacent business.
7. The Board found that Mr. Hayes testified that the trees and other nuisances were placed to block the view of his property and cause obstruction and the entrance cannot be seen by passing traffic which creates a hazard.
8. The Board found that Mr. Hayes testified that the State already has a fifty (50) feet setback from the road and the additional twenty-five (25) feet setback creates a hardship.
9. The Board found that Mr. Hayes testified that car displays are attractions to people passing by and that, when the cars are hard to see, it can create a traffic hazard. Without proper braking distance, the cars miss the entrance and then park along the side of the road or pull off and back up to the entrance.
10. The Board found that Mr. Hayes testified that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
11. The Board found that Mr. Hayes testified that the variance will not alter the essential character of the neighborhood.
12. The Board found that Mr. Hayes testified that the difficulty has been created by the Applicant.
13. The Board found that Mr. Hayes testified that the variance requested is the minimum variance to afford relief.
14. The Board found that Mr. Hayes testified that he has one wall sign on the building. He had a ground sign but it was damaged in a storm. The ground sign is difficult to see due to the obstructions of the neighboring property.

15. The Board found that Mr. Hayes testified that the neighbor also has a car dealership as well as a tree business and the neighbor lives on their property.
16. The Board found that Mr. Hayes testified that the setback requirement adversely affects his business and creates a danger.
17. The Board found that Mr. Hayes testified that he was approved for a temporary sales trailer in the past. He has since removed the sales trailer and constructed a permanent office.
18. The Board found that Mr. Hayes testified that there are billboards are on neighboring properties.
19. The Board found that Mr. Hayes testified that he can display up to 100 vehicles on the Property in compliance with the Sussex County Zoning Code.
20. The Board found that Mr. Hayes testified that he has twelve (12) employees and parking spaces for each employee.
21. The Board found that Mr. Hayes testified that he parks approximately 20 to 25 vehicles in the front of the Property.
22. The Board found that Mr. Hayes testified that renovations, such as clearing of trees in the rear yard, would have to be made to the Property to accommodate that number of vehicles.
23. The Board found that Mr. Hayes testified that the septic system is in the rear of the Property.
24. The Board found that Mr. Hayes testified that the need for the variance is not caused by a lack of space available on the Property – rather the issue is due to the obstruction on the neighboring property.
25. The Board found that Mr. Hayes testified that the neighbor's trees and bushes block the view of his property.
26. The Board found that Mr. Hayes testified that the neighbor is also in violation with the Sussex County Zoning Code.
27. The Board found that William Toadvine, Thomas Feret, and Donald D'Aquila were sworn in and testified in support of the Application.
28. The Board found that Mr. Toadvine testified that he is the operations manager at Dreamcars.
29. The Board found that Mr. Toadvine testified that the relationship with the neighbors has worsened over the years. The neighbor parks van near the driveway and blocks the view of the Applicant's property and the obstructions have created a hazard for customers of Dreamcars.
30. The Board found that Mr. Toadvine testified that the neighbor has completely obstructed a portion of the driveway.
31. The Board found that Mr. Toadvine testified that he believes the visibility issue will cause a serious accident sooner rather than later. There is no turning lane to enter the properties.
32. The Board found that Mr. Toadvine testified that Dreamcars advertises on an adjacent billboard so that customers can see the location prior to passing it.
33. The Board found that Mr. Toadvine testified that there are numerous violations in the area.
34. The Board found that Mr. Toadvine testified that the Planning and Zoning department has been to the Applicant's property twice a month.
35. The Board found that Mr. Toadvine testified that there are no parking signs along the Property but traffic stops just past the no parking area.
36. The Board found that Mr. Toadvine testified that he believes the variance will benefit the area and will enable customers to better see the Property and access it safely.
37. The Board found that Mr. Toadvine testified that the variance is necessary to enable reasonable use of the Property.

38. The Board found that Mr. Feret testified that he works for the Delaware Department of Transportation ("DelDOT").
39. The Board found that Mr. Feret testified that the neighbor has put a ditch in the area and planted bamboo. There is 25 to 30 feet of bamboo on the neighboring property and bamboo cannot be removed at ground level. The asphalt has prevented the bamboo from reaching the highway.
40. The Board found that Mr. Feret testified that the neighbor has removed a portion of the asphalt and curbing has been removed by the neighbor, which allow the bamboo additional room to grow.
41. The Board found that Mr. Feret testified that a large vehicle is also parked to block the Applicant's property.
42. The Board found that Mr. D'Aquila testified that he is also in the auto dealership business and cars take up a lot of space.
43. The Board found that Mr. D'Aquila testified that the front yard setback requirement for sales display creates an extreme difficulty in the sales business.
44. The Board found that Mr. D'Aquila testified that the variance is necessary to enable reasonable use and the variance does not alter the character of the neighborhood.
45. The Board found that Mr. D'Aquila testified that numerous businesses in Sussex County are in violation of this zoning requirement and that other variances have been granted for sales displays for this same reason.
46. The Board found that Kelly Hales, Reese Hales, and Ray Wisniewski were sworn in and testified in opposition to the Application. Ms. Hales submitted pictures to the Board to review.
47. The Board found that Kelly Hales testified that the Applicant always has a lot of cars on the Property and she has counted 81 cars on the Property. There are also tires stored on the Property. Some of the tires are stored in large trucks and other tires are located around the trucks.
48. The Board found that Kelly Hales testified that the cars are always parked up to the property line and that cars are parked in the front yard of the Property in violation of the Sussex County Zoning Code.
49. The Board found that Kelly Hales testified that they had approval from the State to extend their driveway by fifteen (15) feet.
50. The Board found that Kelly Hales testified that she has not removed the blacktop but she planted bamboo and erected a fence after obtaining a building permit. The bamboo is located along the fence.
51. The Board found that Kelly Hales testified that the Applicant has too many cars on his property and there is no room for customers to pull into and turn around to exit the Property safely. The Applicant's customers have to back out of the Property onto the highway. She has an issue with cars backing out onto the highway.
52. The Board found that Kelly Hales testified that there are no parking signs posted but it makes no difference.
53. The Board found that Kelly Hales testified that their access is blocked at times and she blocks her entrance to keep the Applicant's patrons off of her property and to prevent blocking her access. Delaware State Police have been called to keep people from blocking the access and parking on the side of the road.
54. The Board found that Kelly Hales testified that the Applicant's property is not unique. The Property consists of 1 acre and there is a holding tank on the Property which only takes up a small portion of the lot.
55. The Board found that Kelly Hales testified that the Property can be otherwise developed.
56. The Board found that Kelly Hales testified that the variance will allow the Applicant to increase inventory and not address the parking issue.
57. The Board found that Kelly Hales testified that the Applicant is creating the safety issue.

58. The Board found that Mr. Wisniewski testified that the Applicant has too many cars on the Property and there is not enough room for patrons to maneuver safely. The vehicles that park along the highway create a hazard and block his view of the traffic on the highway.
59. The Board found that Mr. Wisniewski testified that, if the Applicant is granted a variance, he feels the Applicant will use the area to increase the inventory.
60. The Board found that Reese Hales testified he has, on numerous occasions, had to find someone to move cars that block him from entering and exiting his property. This problem happens multiple times a day and has been an ongoing problem for years.
61. The Board found that Reese Hales testified that the issue is not the sales display. Rather, the issue is that there is a lack of adequate parking for customers.
62. The Board found that Reese Hales testified that there is a business nearby which is blocked by significantly more trees and that business is not affected.
63. The Board found that Mr. Hayes testified that he disagrees that there is no room on his property for traffic to turn around.
64. The Board found that Mr. Hayes testified that cars park along the highway when they miss the entrance to the business.
65. The Board found that Mr. Hayes testified that they have approximately 15 parking spaces available for customers and he addresses parking issues immediately.
66. The Board found that Mr. Hayes testified that he parks cars up to the property line and is in violation of the Sussex County Zoning Code.
67. The Board found that Mr. Hayes testified that visibility is the issue and, if he is unable to park in the setback area, his business will be difficult to see.
68. The Board found that Mr. Hayes testified that the neighbor has planted trees with intent to block his property.
69. The Board found that Mr. Hayes testified that he believes the lack of visibility has hurt his business and the obstructions on the neighboring property have created the problem.
70. The Board found that Mr. Hayes testified that the visibility problem will worsen without the variance.
71. The Board found that six (6) parties appeared in support of the Application.
72. The Board found that three (3) parties appeared in opposition to the Application.
73. The Board voted to leave the record open for the limited purpose of allowing the opposition to provide video of the Property and for the Applicant to provide written responses thereto.
74. On September 12, 2016, the Board discussed the video, photographs, and the written comments, which the Board had previously reviewed.
75. 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 reasonably sized commercial lot used as an automobile sales lot. The Applicant is seeking the variance so that he can park his cars up to the front yard property line and, thus, in the setback area in violation of the Sussex County Zoning Code. The Applicant claims that he needs to park his cars in the location because the business is not visible to passersby. He attributes the lack of visibility to the obstructions placed on his neighbor's property. The Board notes, however, that the Applicant has numerous feather signs which direct business to the Property and a billboard on an adjacent property which also directs traffic to the site. The issue with the site appears to have less to do with a unique physical

condition related to the site or, even, the effect of development on adjacent property. Rather, the issue appears to be due to the Applicant's overdevelopment of the Property. The video, photographs, and testimony submitted by the opposition clearly demonstrate that the Applicant has little room on the Property for customers to easily navigate the lot. This overdevelopment (particularly of the front of the parcel) has caused customers to park on the shoulder and even back out onto the heavily traveled Route 13 thereby creating a dangerous situation for travelers and customers alike. The Board was simply unconvinced that the Property has some unique, natural feature which has created an exceptional practical difficulty for the Applicant. The Property is large enough to be developed as an automobile dealership without a variance and appears to have been used for this purpose for quite some time. Conversely, 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 by placing automobiles in the setback area rather than in the building envelope. Mr. Hayes even admitted that he has created the exceptional practical difficulty.

- b. The Applicant failed to convince the Board that the Property could not be developed in strict conformity with the Sussex County Zoning Code. Likewise, the Board was not convinced that the variance was necessary to enable the reasonable use of the Property. The Property is a commercial lot used for an automobile dealership and the Applicant operated the business for some time without the need for a variance. He now seeks approval to park vehicles in the front setback area. The Applicant argues that he needs to park cars in this area for visibility but, the Board is not convinced that the Property cannot be seen without this variance. As previously noted, there is signage and other means of visibility of the Property without having to violate the setback requirement. The Property also has significant frontage on a busy thoroughfare. While the amount of visibility may not be as desirable as the Applicant wants, the Board was not persuaded that the business could not be reasonably used without the need for the variance. The Applicant cites a dispute with his neighbors with whom he shares a driveway and claims that their actions have caused the visibility issues. This dispute, however, appears to be centered around the Applicant's overdevelopment of the Property by placing too many cars thereon without providing adequate space for customer and employee parking and the display of inventory. The Applicant's visitors and invitees have then blocked the neighbors from accessing the shared driveway. From the evidence presented by the opposition, it is clear to the Board that this problem exists even when the Applicant parks his cars in the setback area. According to Reese Hales, this problem has existed for years and is not a new phenomenon. The Board finds the testimony and evidence submitted by the opposition persuasive. Clearly, the persistent problem of accessing one's property has angered the neighbors and increased the level of acrimony between the parties. Most likely, the issues with the neighbors could have been avoided had the Applicant reasonably developed his property and provided adequate space for vehicles to park rather than squeezing so many vehicles into a tight space. The lack of space for a vehicle to safely maneuver on the Property is quite remarkable. Nevertheless, the Board is not the appropriate body to adjudicate this neighborly dispute. As this matter pertains to the standards for granting a variance, the Board finds that the Property can be developed in strict

conformity with the Sussex County Zoning Code and that the variance is not necessary to enable reasonable use of the Property.

- c. The Board finds that the Applicant is creating his own exceptional practical difficulty by proposing to place automobiles in the setback area in clear violation of the Sussex County Zoning Code. The Applicant's decision to place vehicles in this location is the reason for the need for a variance and has nothing to do with the size, shape, or condition of the Property. There is no unusual condition to the Property which has created this difficulty. As such, the Board was not convinced that the variance request was the product of a *need*. Instead, the variance request appears to be the product of a *want* as the Applicant seeks to place the vehicles as proposed for purposes of convenience, profit, and / or caprice. Since the Applicant can comply with the Sussex County Zoning Code, the need for the variance is something created by the Applicant's wants rather than an unusual physical condition relating to the Property. The Applicant has thus created his own exceptional practical difficulty.
- d. The variance will alter the essential character of the neighborhood. The Applicant has placed vehicles in the setback area to the detriment of his neighbors. The evidence submitted by the opposition clearly shows a staggering number of cars on the Property. The overdevelopment of the Property has created problems with parking on and off the Property and thereby blocked the neighbors' access to the driveway. While the variance, if granted, would allow the Applicant additional space to park the vehicles, it appears as though the Applicant already uses this space yet the problems with the neighbor persist. If anything, the additional space has simply allowed the Applicant to further increase the inventory of vehicles and exacerbate an existing problem. It is, thus, difficult for the Board to see how the granting of this 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 also expresses great concern about the parking and access to and from Route 13 by the Applicant's visitors and invitees.
- 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 Applicant can display vehicles in compliance with the Sussex County Zoning Code.

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 of the Motion to Deny the Application were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Member voted against the Motion to Deny the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY

Dale Callaway
Dale Callaway
Chairman

Date November 9, 2016