

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: HARRY KESWANI

(Case No. 11849)

A hearing was held after due notice on October 3, 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 minimum off-street parking space for a hotel requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of fifteen (15) parking spaces from the required ninety-three (93) parking spaces for the proposed hotel. This application pertains to certain real property located on the northeast corner of Parsonage Road and Coastal Highway (Route 1) (911 Address: 35863 Parsonage Road, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-13.00-5.00.

1. The Board was given copies of the Application, a site plan for the proposed construction of a Days Inn on the Property dated July 8, 2016, an aerial photograph of the Property, and a portion of the tax map.
2. The Board found that the Office of Planning & Zoning received one (1) letter of opposition and no correspondence in support of the Application.
3. The Board found that Harry Keswani and Mark Davidson were sworn in to testify about the Application. Mr. Davidson submitted exhibits for the Board to review including copies of the deed to the Property, a survey of the Property dated November 11, 2010, parking space studies, and various maps and photographs of the Property.
4. The Board found that Mr. Davidson testified that the Property is the site of the existing Airport Motel which houses fifteen (15) rooms. A dwelling is also located on the Property. The Airport Hotel was built in the early 1970s.
5. The Board found that Mr. Davidson testified that the Applicant purchased the Property in 2011 and seeks to construct a new Days Inn hotel on the Property. The existing motel and dwelling will be removed.
6. The Board found that Mr. Davidson testified that the Property is zoned commercial and is located just off of Route 1.
7. The Board found that Mr. Davidson testified that the Sussex County Code requires 1.5 spaces per hotel room and 1 space per 3 employees.
8. The Board found that Mr. Davidson testified that there will be seventy-eight (78) spaces available for the proposed sixty (60) rooms and three (3) of those parking spaces will be dedicated to the employees. The Applicant intends to have a maximum of nine (9) employees at a time. There will be four (4) handicapped spaces.
9. The Board found that Mr. Davidson testified that the proposed hotel will be smaller than most hotels along the Route 1 corridor. Most of the other hotels along Route 1 have at least eighty (80) rooms.
10. The Board found that Mr. Davidson testified that the hotel industry standard for parking is one (1) space per room and other hotels in the area have fewer parking spaces than the Sussex County Code requires.

11. The Board found that Mr. Davidson testified that the Property is triangularly shaped and consists of 1.32 acres. The Property is wide at the front yard and narrows to a point in the rear yard.
12. The Board found that Mr. Davidson testified that the shape of the Property has created a unique situation for the Applicant in designing the hotel and in arranging for parking for the hotel.
13. The Board found that Mr. Davidson testified that the rear of the Property is unusable because it is too narrow. There is also a dedicated easement to the neighboring property at the rear of the Property.
14. The Board found that Mr. Davidson testified that the Property cannot otherwise be developed.
15. The Board found that Mr. Davidson testified that the Applicant intends to replace the Airport Hotel with a Days Inn. The hotel will be located in the front of the Property and will consist of four (4) stories. The proposed building meets setback requirements and the State Fire Marshal requirements.
16. The Board found that Mr. Davidson testified that the proposed hotel is also odd in shape to meet the setback requirements.
17. The Board found that Mr. Davidson testified that the Applicant has met with the Delaware Department of Transportation ("DelDOT") to arrange for the access to and from the site.
18. The Board found that Mr. Davidson testified that the Applicant had to meet stormwater regulations, Fire Marshal regulations, and DelDOT regulations as well and those regulations further limited the area available for parking.
19. The Board found that Mr. Davidson testified that the variance will not alter the essential character of the neighborhood because there is already an existing motel on the site. A restaurant, diner, and other commercial uses are located nearby. Multi-family housing is also located on neighboring properties.
20. The Board found that Mr. Davidson testified that there have not been previous complaints made about the Property.
21. The Board found that Mr. Davidson testified that the Property is surrounded by privacy fencing and that fencing will remain.
22. The Board found that Mr. Davidson testified that the proposed hotel will not exceed the forty-two (42) foot maximum height requirement.
23. The Board found that Mr. Davidson testified that the Applicant explored having fewer rooms in the hotel but determined that new hotel would not be economically viable with fewer rooms.
24. The Board found that Mr. Davidson testified that the proposed hotel is strictly for lodging only. There will be no restaurant, conference rooms, or banquet rooms.
25. The Board found that no parties appeared in support of or in opposition to the Application.
26. 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 clearly unique due to its triangular shape. The Property is approximately 173 feet wide in the front and narrows to a point in the rear. The odd shape of the Property renders a significant portion of the rear yard unbuildable. The Property was created and developed by a prior owner and currently houses the Airport Motel and a dwelling. The Applicant seeks to demolish those structures and to place a new Days Inn on the Property. The unique shape of the Property, however, has created an exceptional practical difficulty for the Applicant as the Applicant is unable to meet the parking requirements for the proposed hotel. The Board notes that the Fire Marshal, DelDOT, and stormwater requirements also limit the building

envelope for the Property and the Applicant has tried to balance these requirements with the parking requirements. Ultimately, the exceptional narrowness of the rear of the Property due to its triangular shape has created an exceptional practical difficulty for the Applicant.

- b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Airport Hotel was constructed in the early 1970s and the Applicant seeks to remove the hotel and replace it with a new hotel on the site. The new hotel will meet all setback requirements but the Applicant is unable to meet the parking requirements as well without violating the Sussex County Zoning Code. The unusual shape of the Property and the narrowness of the rear yard render that portion of the Property unusable; even for the parking of vehicles. The Board is convinced that the variance is thus necessary to enable the reasonable use of the Property as the variance will allow the Applicant to construct the hotel as proposed while still providing 1.25 parking spaces per room. The Board is convinced that the requested reduction in the parking space requirements is reasonable and that the proposed plan provides adequate parking for the hotel. The Board notes that the average number of parking spaces per room is actually greater than other hotels along the Route 1 corridor and that the hotel will provide no restaurant, conference room, or event planning services which could otherwise increase the need for additional parking spaces.
- c. The exceptional practical difficulty was not created by the Applicant. The Property was created and developed by a prior owner as a hotel and the Property has an unusual shape. The Board notes that the rear yard is particularly narrow which greatly limits the usable area of that portion of the lot. The Applicant did not create the size and shape of the lot. Rather, those conditions pre-existed the Applicant's acquisition of the Property. These unique physical conditions have resulted in a limited building envelope and have created the exceptional practical difficulty for the Applicant. Likewise, the use of the Property as a hotel predated the Applicant's acquisition thereof.
- 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 Property has been used for many years as a hotel and that use will continue. The Property is located in close proximity to the Route 1 commercial corridor and there are numerous commercial properties nearby, including other hotels. The opposition expressed concerns about the possibility of patrons to the hotel parking on neighboring properties but the Board finds those concerns to be unsubstantiated. There was no evidence presented that other hotels in the area, which have fewer spaces per room, have experienced similar parking problems. Rather, the unrebutted evidence presented by the Applicant indicates that the proposed number of parking spaces per room for this hotel will be greater than the number of spaces per room for other hotels in the area. Furthermore, the hotel will be smaller than those hotels and will not have a restaurant, conference room, or event planning space which could result in the need for more parking spaces. Instead, the hotel will be used strictly for lodging. Notably, the Board received no opposition from neighboring commercial property owners or tenants whose parking spaces would likely be used for overflow parking should the unlikely event that the hotel needed additional parking come to pass.

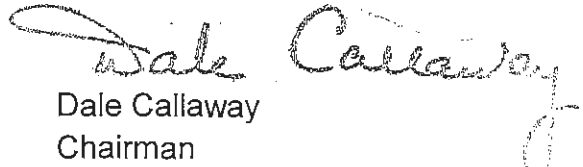
- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to make build a reasonably sized hotel on the Property and to have adequate parking for the hotel.

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 Member 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 December 13, 2016