

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ANDREW LEWANDOWSKI

(Case No. 11850)

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 side yard setback requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of fifteen (15) feet from the twenty (20) feet side yard setback requirement on the southeast side for a proposed storage facility and office. This application pertains to certain real property located on the west side of Nassau Road approximately 45 feet north of New Road (911 Address: 32172 Nassau Road, Lewes); said property being identified as Sussex County Tax Map Parcel Number 3-34-5.00-73.00.

1. The Board was given copies of the Application, a preliminary site plan of the Property dated August 24, 2016, a survey of the Property dated December 19, 2014, an aerial photograph of the Property, and a portion of the tax map.
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 Andrew Lewandowski and Ken Christenbury, P.E. of Axiom Engineering, LLC, were sworn in to testify about the Application. John Sergovic, Esquire, presented the case on behalf of the Applicant and submitted an exhibit booklet for the Board to review.
4. The Board found that Mr. Sergovic stated that the Property is zoned CR-1. The Property to the northwest is owned by the State of Delaware and is likely to never be developed residentially. The neighboring property is zoned AR-1 but it is the last property on the Route 1 side of Nassau Road that is zoned AR-1.
5. The Board found that Mr. Sergovic stated that the Property is narrow as it is approximately 84 feet wide in the front but narrows to 65 feet in the rear.
6. The Board found that Mr. Sergovic stated that the odd shape of the Property and the stormwater management areas limit the developable area of the lot.
7. The Board found that Mr. Sergovic stated that a detached garage was located less than two (2) feet from the southeast property line and has been removed.
8. The Board found that Mr. Sergovic stated that the Property is unique because it is a narrow lot for a commercial property. The Applicant acquired the Property after it was zoned CR-1 and the Applicant purchased the Property with the intent of building an adequate storage facility on the CR-1 zoned property.
9. The Board found that Mr. Sergovic stated that the Applicant's business already has a storage facility and office on Nassau Road and the business is expanding. The additional storage facility and office space is needed due to the growth of the Applicant's business.
10. The Board found that Mr. Sergovic stated that the adjoining properties are zoned AR-1 which increases the side yard setback requirement to twenty (20) feet.
11. The Board found that Mr. Sergovic stated that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
12. The Board found that Mr. Sergovic stated that the exceptional practical difficulty was not created by the Applicant.

13. The Board found that Mr. Sergovic stated that the proposed storage facility will be five (5) feet from the southeast side property line. If the building was placed on the other side of the Property, a similar variance would be needed there as well.
14. The Board found that Mr. Sergovic stated that the neighbor to the southeast consented to the proposed variance.
15. The Board found that Mr. Sergovic stated that the proposed storage facility will not alter the essential character of the neighborhood since the neighborhood is converting from residential to commercial in nature.
16. The Board found that Mr. Sergovic stated that the variance is the minimum variance necessary to afford relief.
17. The Board found that Mr. Lewandowski, under oath, affirmed the statements made by Mr. Sergovic.
18. The Board found that Mr. Christenbury testified that the Property is located near the Nassau Bridge and Route 1 in an area that is trending commercial. The only residential property owner in the area has consented to the Application.
19. The Board found that Mr. Christenbury testified that the garage on the Property was on the lot when the Applicant acquired the Property.
20. The Board found that Mr. Christenbury testified that the Property is unusually shaped.
21. The Board found that Mr. Christenbury testified that a drainage swale on the opposite side of the Property and the storm water management area to the rear of the Property also limit the available space on the Property to place the building. There will likely be an open swale on the north side of the Property to drain stormwater to the rear of the Property.
22. The Board found that Mr. Christenbury testified that the proposed storage area will consist of 2,800 square feet and the office space will consist of 1,200 square feet.
23. The Board found that Mr. Christenbury testified that the Property cannot accommodate a building that is 40 feet wide without a variance and that storage buildings are typically 40 feet wide. A narrower building would then require that the Applicant build a longer building but that would encroach into the stormwater management area.
24. The Board found that no parties appeared in support of or in opposition to the Application.
25. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board found credible, persuasive, and un rebutted, 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 as it is a narrow commercial lot with an odd shape located adjacent to properties zoned AR-1. The narrowness of the Property is compounded by the fact that the Property narrows further to the rear property line. The Property was created and developed prior to the Applicant's acquisition thereof. The narrowness of the Property has created an exceptional practical difficulty for the Applicant and this difficulty is exacerbated by the need to place a stormwater management area in the rear of the Property. The stormwater management area will consume a significant portion of the building envelope. These unique physical conditions have created an unusual and limited building envelope for the Applicant who seeks to place a storage building and office on the Property. Furthermore, the building envelope is reduced because the Property is located adjacent to AR-1 zoned lots which therefore require a larger setback area.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property was

developed many years ago and the Applicant seeks to remove an existing detached garage which encroaches into the setback area and replace the garage with a storage building and office for his business. The Applicant, however, is unable to make these improvements without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the storage and office building to be constructed on the Property. The Board is convinced that the shape and location of this building are reasonable, which is confirmed when reviewing the survey provided by the Applicant. The Board notes that the storage building is consistent with the normal sized storage buildings and a building of that size could not be placed on the Property without a variance. Even if the Applicant were to reduce the width of the building to fit the side yard setback requirements, the building would have to be lengthened, in which case it would encroach into the stormwater management area. The Applicant has demonstrated that his business is growing and the additional space is needed to accommodate this growth.


- c. The exceptional practical difficulty was not created by the Applicant. The Property was created and developed prior to the Applicant's purchase thereof and the Property is narrow; particularly towards the rear of the Property. The narrowness of the Property limits the building envelope of the lot and this building envelope is further limited by the stormwater management area that is needed. These unique physical conditions have resulted in a limited building envelope and have created the exceptional practical difficulty for the Applicant.
- 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. A detached garage was located on the Property for many years without a recorded complaint and the garage was located closer to the side property line than the proposed building. Notably, the Applicant has consulted with the neighbor to the southeast who would be most affected by the variance and the neighbor consents to the request. The Board notes that the area is trending commercial and the proposed use is consistent with the evolving character of the neighborhood. Furthermore, no evidence was presented which would indicate that the variance 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 build the reasonable storage and office building on the Property and that the Applicant has explored other avenues for placing the building on the Property.

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