

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: AUTOZONE NORTHEAST, LLC c/o CURTIS SIGLER

(Case No. 11869)

A hearing was held after due notice on November 7, 2016. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the combined corridor overlay zone buffer requirement.

Findings of Fact

The Board found that the Applicant was seeking a variance of 7.4 feet from the twenty (20) feet landscape buffer requirement. This application pertains to certain real property located on the northeast side of Coastal Highway (Route 1) approximately 0.21 miles south of Savannah Road (911 Address: 17649 Coastal Highway, Lewes); said property being identified as Sussex County Tax Map Parcel Number 3-34-6.00-4.01.

1. The Board was given copies of the Application, a portion of the tax map of the area, a survey of the Property dated September 15, 2016, a survey of the Property dated May 2, 2016, an aerial photograph of the Property.
2. The Board found that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application.
3. The Board found that Brian Conlon was sworn in to testify about the Application.
4. The Board found that Mr. Conlon testified that he is the engineer for Auto Zone and Auto Zone is proposing to construct a new facility on the Property. The Property is located along Coastal Highway (Route 1).
5. The Board found that Mr. Conlon testified that the Applicant seeks the variance to allow for parking within the landscape buffer area.
6. The Board found that Mr. Conlon testified that the Property is narrow and does not provide enough space for the proposed building and two (2) rows of parking along the front of the Property. The minimum parking requirement cannot be met without placing the parking spaces in the front landscape buffer area.
7. The Board found that Mr. Conlon testified that the proposed parking is consistent with the adjacent properties and will provide additional buffer area from the right-of-way line as compared with the adjacent properties.
8. The Board found that Mr. Conlon testified that the parking cannot be located in the side yard due to the loading and trash removal operations required for the site.
9. The Board found that Mr. Conlon testified that the Applicant looked at re-configuring the building but could not do so while still meeting all of the necessary parking and setback requirements.
10. The Board found that Mr. Conlon testified that the existing lot dimensions and configuration of the Property have significantly constrained the redevelopment of the site and were not created by the Applicant.
11. The Board found that Mr. Conlon testified that the Applicant has tried to limit the requested variances and, to the extent variances are unavoidable, the Applicant has explored ways to minimize the encroachments and mitigate the impact of the encroachments on neighbors and the zoning district.
12. The Board found that Mr. Conlon testified that the variance will not alter the essential character of the neighborhood as a majority of the properties in the area have parking within the buffer area.

13. The Board found that Mr. Conlon testified that the development will not be detrimental to the public welfare.
14. The Board found that Mr. Conlon testified that there is significant landscaping in the right-of-way area.
15. The Board found that Mr. Conlon testified that the variance is the minimum variance to afford relief.
16. The Board found that Mr. Conlon testified that the proposed store is slightly smaller than other stores the Applicant usually builds and the Applicant typically has 30 to 40 parking spaces available for its stores but this site will have slightly fewer spaces available.
17. The Board found that Mr. Conlon testified that the Property is angled and the angled property lines create an odd shaped property.
18. The Board found that Mr. Conlon testified that a propane tank and a well will be located on the site as well.
19. The Board found that no parties appeared in support of or in opposition to the Application.
20. 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 unique due to its unique size and shape. The Property is shaped like a parallelogram and is not very large. The Applicant proposes to construct an Auto Zone building which would be smaller than its normal building for this business but cannot construct the building while also meeting the parking requirements. The Applicant thus proposes a reasonable encroachment into the landscape buffer requirement so that it can place the required parking spaces on the Property. The unique characteristics of this Property limit the buildable area available to the Applicant and have created an exceptional practical difficulty for the Applicant who seeks to build a reasonably sized commercial building 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 has a unique size and shape the buildable area thereof is limited due to these unique characteristics. The Applicant seeks to build a reasonably sized commercial building but is unable to do so without violating the Sussex County Zoning Code because the Applicant is unable to fit the required parking spaces needed for the building on the site. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow a reasonably sized commercial building with the requisite number of parking spaces to be placed on the Property. The Board is convinced that the size, shape, and location of this building and the parking spaces are reasonable, which is confirmed when reviewing the surveys provided by the Applicant.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual size and shape of the Property. The unique lot size and shape has resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. The small building envelope is exacerbated by the fact that the Property is in the Highway Corridor Overlay Zone and is subject to additional landscape buffer requirements which otherwise limit the placement of the parking spaces. The unique characteristics of the Property are clear when reviewing the surveys. 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 parking spaces will have no effect on the character of the neighborhood. Evidence demonstrates that neighboring properties have spaces a similar distance from the right-of-way and the right-of-way area has landscaping. Additionally, the Applicant intends to place enhanced landscaping in the buffer area. 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 construct a reasonably sized commercial building with the requisite number of parking spaces on the Property. The Applicant has reduced the size of the commercial building and the number of spaces from its typical store in an effort to minimize the need for the variance. The Board finds that the Applicant has taken necessary steps to mitigate the impact of the variance on neighboring properties and the zoning district.

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, and Mr. Brent Workman. No Board Members voted against the Motion to approve the variance application. Mr. Norman Rickard did not participate in the discussion or vote on this 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 January 10, 2017