

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY
IN RE: KEY PROPERTIES GROUP, LLC / COUNTRY LIFE HOMES, INC.
(Case No. 11883)

A hearing was held after due notice on November 21, 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 front yard setback and combined corridor overlay zone buffer requirements.

Findings of Fact

The Board found that the Applicant is seeking a variance of 27.26 feet from the sixty (60) feet front yard setback requirement for an existing building and a variance of ten (10) feet from the twenty (20) feet combined corridor overlay zone buffer requirement. This application pertains to certain real property located on the east side of Coastal Highway (Route 1) approximately 251 feet north of Bay Crossing Boulevard (911 Address: 18315 & 18327 Coastal Highway, Lewes); said property being identified as Sussex County Tax Map Parcel Number 3-34-6.00-74.00 & 75.00.

1. The Board was given copies of the Application, a restaurant development site plan dated October 21, 2016, aerial photographs 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 Carlton Savage was sworn in to testify about the Application.
4. The Board found that Mr. Savage testified that he is the design engineer for the project.
5. The Board found that Mr. Savage testified that the Property consists of two (2) lots and there is an existing dwelling and office building on the properties.
6. The Board found that Mr. Savage testified that the Applicant plans to renovate the existing office building and convert it to a restaurant. Additions to the building will be made to the rear and the existing dwelling will be demolished. There are no changes being made to the front of the building or property.
7. The Board found that Mr. Savage testified that a restaurant is a permitted use in a C-1 zoning district.
8. The Board found that Mr. Savage testified that the development will reduce the number of entrances to the site from three entrances to one entrance.
9. The Board found that Mr. Savage testified that the Property is unique because the building existed prior to the adoption of the ordinance creating the Combined Highway Corridor Overlay Zone.
10. The Board found that Mr. Savage testified that the Property is oddly shaped as it is only 160 feet deep but is 239 feet wide.
11. The Board found that Mr. Savage testified that the shallowness of the lot leaves very few options for development.
12. The Board found that Mr. Savage testified that the Property cannot be developed in strict conformity with the Sussex County Zoning Code. Approximately 28 feet of the existing building would have to be demolished to bring the Property into compliance.
13. The Board found that Mr. Savage testified that the reduction of the buffer requirement will provide enough space for parking, drive aisles, and landscaping.

14. The Board found that Mr. Savage testified that the exceptional practical difficulty was not created by the Applicant.
15. The Board found that Mr. Savage testified that parking currently exists within the twenty (20) feet buffer zone.
16. The Board found that Mr. Savage testified that the existing character of the neighborhood consists of commercial businesses.
17. The Board found that Mr. Savage testified that the variances will not alter the character of the neighborhood. There are other structures to the north and south of the Property with similar setbacks.
18. The Board found that Mr. Savage testified that there will be ten (10) feet of landscaping in the buffer area.
19. The Board found that Mr. Savage testified that the variances requested are the minimum variances necessary to afford relief.
20. The Board found that Mr. Savage testified that reducing the buffer zone allows the Applicant to meet the required parking and drive aisles for the proposed use.
21. The Board found that Mr. Savage testified that the Delaware Department of Transportation ("DelDOT") has expanded the right-of-way over the years, including the expansion of sidewalks in the area.
22. The Board found that no parties appeared in support of or in opposition to the Application.
23. 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 because it is an oddly shaped commercial property in the Combined Corridor Overlay Zone. The Property is wide but shallow. The shallowness of the Property has posed a particular challenge for the Applicant, who seeks to redevelop the Property. The Applicant seeks to demolish an existing dwelling, which also encroaches into the front yard setback area, and to expand the existing office building towards the rear yard in order to use the Property for a restaurant. A restaurant is a permitted use in this zoning district. The shallowness of the Property has created an exceptional practical difficulty for the Applicant because the Property is not deep enough to accommodate the parking and drive aisles necessary for the proposed restaurant. Similarly, the unique conditions of the Property have posed a challenge for the Applicant who seeks to retain the existing office building in its location while expanding within the rear yard setback area. The office building encroaches into the front yard setback area and will not further encroach into the front yard setback area. Undisputed testimony also indicates that, over the years, DelDOT has taken additional right-of-way areas in the front yard, thereby reducing the size of the front yard. The Board finds that the unique physical conditions of the Property have created an exceptional practical difficulty for the Applicant who seeks to redevelop the Property.
 - b. Due to the uniqueness of the Property and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to redevelop the Property by removing an existing dwelling and to expand an existing office building within the setback areas in order to convert the office building to a restaurant. The building, however, already encroaches into the front yard setback area and, due to the unique conditions of the Property, the Applicant cannot meet the necessary parking requirements while also meeting the buffer zone requirements. 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 redevelop the Property into a restaurant. The Board is convinced that the shape and location of this restaurant are reasonable, which is confirmed when reviewing the survey provided by the Applicant. The Board notes that the Applicant will also demolish an existing dwelling and reduce the number of entrances on the Property as part of the redevelopment.

- c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not place the existing office building on the Property. Rather, that building has been on the Property for many years and its location predates the enactment of the Combined Corridor Overlay Zone ordinance. The Applicant also did not create the odd depth of the Property, which has created a small building envelope. This small building envelope was further limited by the takings by DelDOT for additional right-of-way space along Route 1. These conditions have limited the space where the Applicant can place parking and drive aisles for the proposed restaurant. Notably, the parking spaces cannot fit within the building envelope even though another structure on the Property will be demolished. The unique situation and physical conditions of the Property have created the exceptional practical difficulty for the Applicant.
- d. The variances 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 office building will encroach no further into the front yard setback area than it already does and the other structure on the Property (which also encroaches into the front yard setback area) will be demolished. The un rebutted testimony confirms that other commercial businesses in the area are similarly situated from Route 1 and that the proposed redevelopment will be consistent with those properties. The Board is also convinced that encroachment into the buffer zone will not alter the character of the neighborhood. Parking already exists in the buffer zone and, while the Applicant plans to have parking spaces in the buffer zone, the Applicant will plant ten (10) feet of landscaping in the front yard. This landscaping will be an improvement for the Property. The Board also notes that the proposed redevelopment will reduce the number of entrances from the Property to Route 1. Furthermore, no evidence was presented which would indicate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain an existing office building and to redevelop the Property for a restaurant. The building will encroach no farther into the front yard setback than the existing building does and the Applicant will plant as much landscaping in the buffer zone as possible while still meeting the parking requirements for the site.

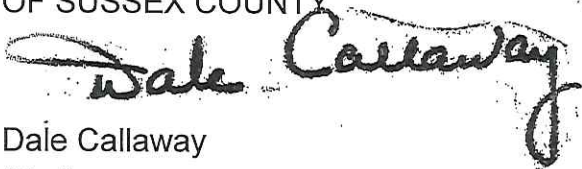
The Board granted the variance application finding that it met the standards for granting a variance.

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 2/7/2017