

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: REHI, LLC

(Case No. 11897)

A hearing was held after due notice on December 19, 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 requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 1.85 feet from the sixty (60) feet front yard setback requirement for a canopy on an existing building. This application pertains to certain real property located on the south side of Savannah Road approximately 564 feet west of Old Orchard Road (911 Address: None Available); said property being identified as Sussex County Tax Map Parcel Number 3-34-6.00-17.00.

1. The Board was given copies of the Application, a site plan dated November 2, 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 no correspondence in support of or in opposition to the Application.
3. The Board found that Bob MacLeish, Jr., and Nick Caggiano were sworn in to testify about the Application. They submitted drawings and plans of the building to the Board to review.
4. The Board found that Mr. MacLeish testified that the building is part of a development which has frontage along Savannah Road and a portion of the building encroaches into the setback area.
5. The Board found that Mr. MacLeish testified that the plans were engineered by the D.C. Group, which is no longer in business. The Applicant also retained the services of an architect to design the building.
6. The Board found that Mr. MacLeish testified that the encroaching portion of the building is an architectural element with a canopy.
7. The Board found that Mr. MacLeish testified that this parcel was subject to a cross access easement imposed by the Delaware Department of Transportation ("DelDOT") and this created a unique shape to the Property. The Property also has two (2) front yard setback requirements which also makes the Property unique.
8. The Board found that Mr. MacLeish testified that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
9. The Board found that Mr. MacLeish testified that the Applicant relied on his architect and engineer to design plans in conformity with the Code.
10. The Board found that Mr. MacLeish testified that the canopy will provide signage for the building.
11. The Board found that Mr. MacLeish testified that the difficulty was not created by the Applicant.
12. The Board found that Mr. MacLeish testified that the cross access easement limited the building envelope of the Property and the areas where the building could be placed.
13. The Board found that Mr. MacLeish testified that construction of the building began in 2016 and the Applicant was notified of the potential encroachment after the building was largely completed. The encroachment was not discovered until October 2016 when the Office of Planning and Zoning notified the Applicant.

14. The Board found that Mr. MacLeish testified that the variance will not alter the character of the neighborhood and the encroachment does not impede development of neighboring and adjacent properties.
15. The Board found that Mr. MacLeish testified that the encroaching portion of the building is simply a covered walkway and the canopy is similar to other canopies and signs in the area.
16. The Board found that Mr. MacLeish testified that the variance requested is the minimum variance necessary to afford relief.
17. The Board found that Mr. MacLeish testified that the Applicant plans no further addition to the canopy and the variance will allow the structure to remain as constructed.
18. The Board found that Mr. MacLeish testified that the building must also be 60 feet from the other side of the Property.
19. The Board found that Mr. MacLeish testified that, if the sign was a stand-alone sign, it could be placed closer to the front yard property line.
20. The Board found that no parties appeared in support of or in opposition to the Application.
21. 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 shape and the location of an access easement required by DelDOT. The access easement has posed a particular problem for the Applicant because the existence of that easement has created dual front yard setback requirements of 60 feet. These setback requirements thereby greatly limit the building envelope on the Property. The Board notes that the Property's unique shape also limits the developable area of the Property. As shown on the site plan and the tax map, the Property has a very unique shape; particularly on the south side of the lot. The Board finds that the unique physical conditions of the Property have created an exceptional practical difficulty for the Applicant who simply seeks to retain the existing canopy on the lot. This exceptional practical difficulty was exacerbated by the Applicant's reliance upon professional engineers and architects to design the building to meet all applicable zoning requirements only to later find out that the canopy attached to the building did not meet those requirements
 - 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 existing canopy encroaches into the front yard setback area by slightly over 1 foot but the Applicant is unable to retain the canopy in compliance with the Sussex County Zoning Code. The canopy is used as a covered walkway and signage for businesses which will use the building. The building meets the setback requirements but the canopy, which is integral to the architectural design of the facility, encroaches into the setback area. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow a reasonably sized canopy to remain on the Property. The Board is convinced that the shape and location of this canopy are reasonable, which is confirmed when reviewing the survey provided by the Applicant.
 - c. The exceptional practical difficulty was not created by the Applicant. The Property has a unique shape which is clearly evident from the survey and tax map and the Property has an additional front yard setback requirement due to the DelDOT access easement. These conditions have created a

limited building envelope for the Applicant and the unique situation and physical conditions of the Property have created the exceptional practical difficulty for the Applicant. Furthermore, the Applicant relied, to his detriment, on engineers and architects to design the building in compliance with the Code only to later find out, after the building was constructed, that the building did not comply with the Code.

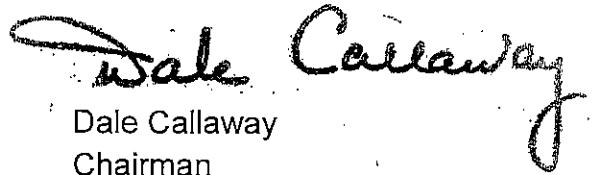
- d. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the canopy will have no effect on the character of the neighborhood. The canopy only encroaches slightly into the setback area and is similar to other canopies in the 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 retain the canopy on the Property. No additions to the canopy are proposed.

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 2/7/17