

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DESTINY, LLC

(Case No. 11954)

A hearing was held after due notice on May 1, 2017. 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 height requirement for a structure.

Findings of Fact

The Board found that the Applicant is seeking a variance of 4 feet and 10 1/8 inches from the forty-two (42) feet height setback requirement for a proposed hotel. This application pertains to certain real property located on the northeast side of Parsonage Road (Road 270-A) approximately 31 feet southeast of 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, aerial photographs of the Property, a portion of the tax map of the area, and a site plan dated July 8, 2016.
2. The Board found that the Office of Planning & Zoning received three (3) letters in support of the Application and received no correspondence in opposition to the Application.
3. The Board found that Mark Davidson, Bruce Moneta, Harry Keswani, and Dave Heatwole were sworn in to testify about the Application. David Hutt, Esquire, presented the case on behalf of the Applicant and submitted exhibits for the Board to review
4. The Board found that Mr. Hutt stated that the Property is located on Parsonage Road near Route 1. The Property is located near restaurants, multi-family dwellings, and businesses.
5. The Board found that Mr. Hutt stated that the lot consists of 1.3 acres and is zoned C-1 Commercial. Much of the nearby area is zoned commercial as well.
6. The Board found that Mr. Hutt stated that the proposed hotel will be close to retail, restaurants, grocery stores, and other businesses.
7. The Board found that Mr. Hutt stated that the lot is a unique "triangular" shape. The widest point of the Property is along Parsonage Road and the road frontage is 173 feet. The rear portion of the lot is not usable.
8. The Board found that Mr. Hutt stated that Mr. Keswani purchased the Property in 2011.
9. The Board found that Mr. Hutt stated that the Property is improved by the 15 room Airport Motel and a single-family dwelling.
10. The Board found that Mr. Hutt stated that, from 1937 to the 1990s, there was rapid development in commercial and multi-family uses within the surrounding area.
11. The Board found that Mr. Hutt stated that there are three story structures nearby.
12. The Board found that Mr. Hutt stated that a variance was requested on October 3, 2016, from the required number of parking spaces for the hotel.
13. The Board found that Mr. Hutt stated that the Applicant plans to demolish the Airport Motel and the dwelling and construct a 60 room Days Inn. The number of rooms for the hotel has not changed since the 2016 hearing.
14. The Board found that Mr. Hutt stated that the industry standard is for an 80 room hotel and the minimum number of rooms needed to make the hotel economically

- viable is 60 rooms. There will be no restaurant, conference room, or meeting centers with the hotel.
15. The Board found that Mr. Hutt stated that, at the 2016 hearing, Mr. Davidson testified that all setbacks and height requirements would be met but, since that time, changes to the proposed hotel had to be made to accommodate stormwater management on the Property.
 16. The Board found that Mr. Davidson testified that he is a land use planner with Pennoni & Associates.
 17. The Board found that Mr. Davidson testified that, when he previously testified before the Board about this project, the Applicant planned to recess the building into the ground to meet the height requirements.
 18. The Board found that Mr. Davidson testified that the minimum requirement for a fire apparatus and loading areas is a 14 feet clearance.
 19. The Board found that Mr. Davidson testified that, since the 2016 hearing, additional site engineering has been performed and it has been determined that the stormwater must be contained onsite in chambers under the parking lot. There will be no off-site drainage of the stormwater.
 20. The Board found that Mr. Davidson testified that the building needed to be raised to accommodate the stormwater management.
 21. The Board found that Mr. Davidson testified that a significant amount of engineering work has been completed since the 2016 hearing in an effort to avoid the height variance.
 22. The Board found that Mr. Davidson testified that the height of the individual floors is the minimum height allowable. The ideal height of the floors would be taller but the Applicant has reduced the height of the individual floors to minimize the need for the variance.
 23. The Board found that Mr. Davidson testified that the proposed lot has an irregular shape thus the hotel had to be designed in a non-traditional fashion.
 24. The Board found that Mr. Heatwole testified that he is an engineer on the project.
 25. The Board found that Mr. Heatwole testified that, initially, the stormwater management included a discharge plan but, after further engineering work was performed, it was discovered that there would be a high probability of flooding without the placement of the stormwater management system in chambers under the parking lot.
 26. The Board found that Mr. Heatwole testified that the Applicant is required by Sussex Conservation District regulations to contain stormwater from a 100 year storm on site.
 27. The Board found that Mr. Heatwole testified that underground storage stormwater management is the most costly system.
 28. The Board found that Mr. Heatwole testified that the soils testing uncovered that there is no discharge point and underground storage of the stormwater was the only option where it will hold stormwater from a 100 year storm event. The stormwater management chambers will be located underneath the proposed parking lot.
 29. The Board found that Mr. Heatwole testified that neighboring properties will benefit from the placement of the stormwater management system by reducing runoff from the Property to those properties.
 30. The Board found that Mr. Heatwole testified that the stormwater management will not be visible but manholes will be used to access the chambers for maintenance purposes.
 31. The Board found that Mr. Heatwole testified that the first floor of the proposed building will be shorter than the first floor of the Airport Motel and that the floors of the hotel were designed at the minimum allowable heights.
 32. The Board found that Mr. Heatwole affirmed the statements made by Mr. Hutt.
 33. The Board found that four (4) parties appeared in support of the Application.

34. The Board found that no parties appeared in opposition to the Application.
35. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board finds credible, persuasive, and unrebutted, 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 build a normally shaped hotel. As such, the hotel will consist of four floors to minimize the use of land. The Applicant has designed the hotel to meet all Fire Marshal, loading, and stormwater requirements. These requirements, however, restrict the Applicant from recessing the building so that the hotel would meet the height 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 by limiting the developable area of the Property. This difficulty was exacerbated by the aforementioned Fire Marshal, loading, and stormwater requirements.
 - 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 height 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. As such, the hotel was designed with limited rooms in a non-traditional format but needed to be 4 stories tall to accommodate the rooms. In designing the hotel, the Applicant discovered that the soils on the Property would not allow the hotel to be recessed while still meeting all stormwater management regulations. The Applicant cannot reduce the height of the structure due to the Fire Marshal and building code requirements. 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 meeting all the Fire Marshal, building code, and stormwater requirements. The Board finds that the height, size, and location of the hotel are reasonable. The Board also notes that the hotel will have fewer rooms than the industry standard for hotels in the area.
 - 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. Additionally, in redeveloping the Property with a new hotel, the Applicant discovered that the soils on the Property are not suitable for a discharge of the stormwater and an on-site stormwater management system was needed. This system precludes the Applicant from recessing the building to meet the height requirement. The Applicant is also limited by the Fire Marshal and building code regulations which require that the first floor of the building be a certain height.

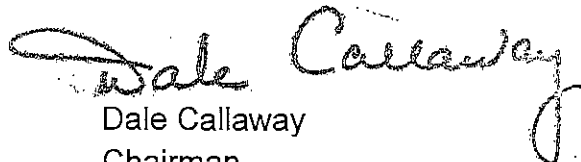
- d. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Property has been used for many years as a hotel and that use will continue. The Property is located in close proximity to the Route 1 commercial corridor and there are numerous commercial properties nearby, including other hotels. 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 make build a reasonably sized hotel on the Property and to meet all necessary Fire Marshal, building code, and stormwater regulations. The Board is convinced that the Applicant has explored other options to otherwise minimize the height variance, including the limiting of the height of each floor.

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 of the Motion were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board members 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 May 16, 2017