

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ANITA BRESLIN

(Case No. 11958)

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 buffer requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance from the buffer requirement to replace tall shrubs and trees with a turf buffer. This application pertains to certain real property located approximately 2,000 feet south of Nine Foot Road on the southbound side of U.S. Route 113 (911 Address: 32602 DuPont Boulevard, Dagsboro); said property being identified as Sussex County Tax Map Parcel Number 2-33-16.00-26.00.

1. The Board was given copies of the Application, a site plan of the proposed addition, a site plan of the Property dated March 1, 2017, 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 Thomas Rudloff and Robert Palmer were sworn in and testified requesting a variance from the buffer requirement to replace tall shrubs and trees with a turf buffer. Exhibits were submitted into the record for the Board to review.
4. The Board found that Mr. Rudloff testified that he is the owner of the company which sells and services boats. In 1986, he started his own business. In 1999, he established Rudy Marine.
5. The Board found that Mr. Rudloff testified that his business located at the Boat Hole outgrew the leased property in two years and that convinced him to expand his business at a different property.
6. The Board found that Mr. Rudloff testified that the Property is located along Route 113. Boats will be sold, shown, and serviced on the Property.
7. The Board found that Mr. Rudloff testified that the business will create jobs on this Property.
8. The Board found that Mr. Rudloff testified that the amount of trees required for a buffer will block views of the boat display and effect the creation of jobs. He proposes to have a grass buffer between the business and Route 113.
9. The Board found that Mr. Rudloff testified that neighboring businesses on Route 113 have grass buffers.
10. The Board found that Mr. Rudloff testified that the business is also far from the edge of paving of Route 113. The Property is already difficult to see due to the gap and the landscape buffer will limit the ability for customers to see the boats on the Property.
11. The Board found that Mr. Palmer testified that that the Property is being reasonably used as a boat sales facility.
12. The Board found that Mr. Palmer testified that the Property is unique.
13. The Board found that Mr. Palmer testified that Route 113 is 200 feet wide but was constructed on the easterly side of the right-of-way. There is 87 feet from the edge of the travel lanes of Route 113 to the front property line. The boats cannot

displayed within 25 feet of the front property line so the boat displays will actually be 112 feet from the highway.

14. The Board found that Mr. Palmer testified that the front portion of the Property is zoned C-1 and the rear of the Property is zoned AR-1.
15. The Board found that Mr. Palmer testified that the Applicant proposes to have turf in the landscape buffer. Other businesses along Route 113 use turf in their landscape buffer areas. Other boat and car dealerships in Sussex County use turf as well so that customers can see their inventory.
16. The Board found that Mr. Palmer testified that the buffer requirement would further limit the visibility of Mr. Rudloff's boats.
17. The Board found that Mr. Palmer testified that the character of the neighborhood is that there is no buffer.
18. The Board found that Mr. Palmer testified that, if the Property was located along the easterly side of Route 113, the business would have a much greater visibility.
19. The Board found that Mr. Palmer testified that the Applicant's likelihood of success would decrease due to a lack of visibility and the variance is necessary for the reasonable use of the Property.
20. The Board found that Mr. Palmer testified that the exceptional practical difficulty was not created by the Applicant.
21. The Board found that Mr. Palmer testified that the variance will not alter the character of the neighborhood.
22. The Board found that Mr. Palmer testified that there is a difference in the size of the right of way from the east side to the west side of Route 113. Properties located on the East side of Route 113 are easier to see from Route 113.
23. The Board found that Mr. Palmer testified that the buffer requirements would further block the views of the Property from Route 113.
24. The Board found that Mr. Palmer testified that the Applicant is proposing to have only grass in the landscape buffer. The site plan shows some landscaping in the buffer zone but the Applicant proposes having no landscaping in the buffer area.
25. The Board found that Mr. Rudloff testified that landscaping along the north and south part of the buffer area would block the views of the boats.
26. The Board found that four (4) parties appeared in support of the Application.
27. The Board found that no parties appeared in opposition to the Application.
28. 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 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 as it is a large, split-zoned property located along Route 113. The Applicant intends to use the Property for a boat sales and service facility. As part of his business, the Applicant displays boats for sale and needs the boats to be visible by passersby. One of the unique characteristics of the Property is that it is located a significant distance from the edge of paving on Route 113. In fact, there is a gap of 87 feet between the edge of paving and the front property line. Additionally, the boats cannot be displayed within 25 feet of the front property line; thereby leaving 112 feet from the edge of paving and the front property line. The Applicant's business and boats are likely difficult to see due to this significant gap and the landscape buffer requirement only further limits the ability of passersby to see the business. The Board finds that these unique physical conditions have created an exceptional practical difficulty for the Applicant and that the variance from the landscape buffer requirement is needed.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The landscape

buffer requirement would greatly limit any visibility of the Applicant's business and the business is dependent upon high visibility of the boats displayed on the Property. Since the Property is so far away from Route 113, the Property already suffers from poor visibility and the landscape buffer requirement only exacerbates this problem. As such, the Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the Applicant to display his boats in a reasonable manner so that they may be seen by passersby. The Board is convinced that any landscaping in this buffer area would pose greatly visibility concerns for the Applicant due in great part to the significant gap between the boat display area and Route 113.

- c. The exceptional practical difficulty was not created by the Applicant. The significant gap between the boat display area and Route 113 has created the exceptional practical difficulty. If Route 113 were constructed closer to the Applicant's side of the highway, the Property would be afforded greater visibility. As it stands, however, the Property is difficult to see from Route 113 and the landscape buffer requirement only exacerbates that problem. Without relief from the landscape buffer requirement, it is difficult to see how the Applicant could successfully operate a boat sales business as his products would be incredibly difficult, if not impossible, to see.
- 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 proposed variance from the landscape buffer will result in a front yard that is covered in turf rather than large deciduous trees and shrubs. As testified by the Applicant, there are other businesses along Route 113 which have a similar turf buffer and other boat dealerships in Sussex County have a similar buffer as well. 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 develop the Property for a boat sales and service business and to provide adequate visibility of the products being sold.

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

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.