

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ELTON RAY BEAUCHAMP

(Case No. 11993)

A hearing was held after due notice on July 24, 2017. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, 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 twenty-five (25) feet from the twenty-five (25) feet front yard setback requirement for display of automobile sales. This application pertains to certain real property located at the west side of Sussex Highway (Route 13) approximately 1,154 feet south of Dorothy Road (911 Address: 34902 Sussex Highway, Delmar); said property being identified as Sussex County Tax Map Parcel Number 5-32-6.00-80.08 & 80.10.

1. The Board was given copies of the Application, a survey dated January 29, 1995, an aerial photograph of the Property, and a portion of the tax map of the area.
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 Elton Ray Beauchamp was sworn in to testify about the Application.
4. The Board found that Mr. Beauchamp testified that the Property is located along Route 113 and is used for automobile sales. The Property has been used for that purpose for over twenty (20) years.
5. The Board found that Mr. Beauchamp testified that the Property is shallow and has a septic system in the rear yard.
6. The Board found that Mr. Beauchamp testified that he has displayed vehicles in this area for years and there will be no change as the Property has been used this way for twenty (20) years.
7. The Board found that Mr. Beauchamp testified that there is no other area for automobile display for sales.
8. The Board found that Mr. Beauchamp testified that he owns rental properties on adjacent properties and the neighbor to the south does not object to the Application.
9. The Board found that Mr. Beauchamp testified that other car dealers in the area have cars placed a similar distance from the front property line.
10. The Board found that Mr. Beauchamp testified that the display does not obstruct views of the highway from cars entering and exiting the site.
11. The Board found that Mr. Beauchamp testified that he only has space to display thirty (30) cars and ten (10) of those cars are parked in the front.
12. The Board found that Mr. Beauchamp testified that the garage doors for the dealership are located in the front of the building and, if the setback was reduced to five (5) feet, a car would have to be moved every time a car is pulled into the garage.
13. The Board found that Mr. Beauchamp testified that he was unaware that the automobile display did not meet the Code.
14. The Board found that Mr. Beauchamp testified that he wants to have his cars displayed on the property line but he has no objection to being required to park his cars no closer than one (1) foot from the property line.
15. The Board found that Mr. Beauchamp testified that there is approximately fifty (50) feet from the front property line to the edge of paving of Route 113.

16. The Board found that Mr. Beauchamp testified that a portion of the Property is used for a cross-access easement for his neighbor to the north and he is unable to park vehicles in the easement area.
17. The Board found that no parties appeared in support of or in opposition to the Application.
18. 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 unique as it is a shallow lot adjacent to Route 113. The Property is approximately fifty (50) feet from the edge of paving of Route 113 and a portion of the Property serves as an access easement for a neighboring property to access Route 113. The access easement area limits the usable display area of the Property. The Applicant's business is served by a septic system, which is located in the rear of the Property. The Property, which is already shallow, is thus further limited in its developable area because of the location of the septic system. The Applicant, who has an automobile sales business, needs space in the front yard to display his vehicles because of these physical conditions. The Board is convinced that these unique physical conditions have created an exceptional practical difficulty for the Applicant.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The unique depth of the Property and the location of the easement area and septic system greatly limit the area where the Applicant can display vehicles. The Applicant seeks to continue displaying vehicles in the front yard setback area but is unable to do so without violating the Sussex County Zoning Code. 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 a reasonable number of cars in the front yard.
 - c. The exceptional practical difficulty was not created by the Applicant. The Property has an unusual depth and is subject to display limitations due to the easement area and septic system location. These conditions have greatly constrained the area where the Applicant can display vehicles on the Property and these unique physical conditions have created the exceptional practical difficulty for the Applicant.
 - 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 unrebutted testimony confirms that the Applicant has displayed vehicles on the Property in this fashion for many years. The Applicant testified that his neighbor to the north does not object to the Application and he owns adjacent property to the south. Despite notification to neighbors, no complaints were noted in the record about the display. 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. This lack of complaint is telling since the display has been used in this fashion for many years. If the display had some negative effect on the neighborhood, the Board would expect evidence of such to be submitted into the record.
 - e. The variance, as hereafter modified by the Board, is the minimum variance necessary to afford relief and the variance represents the least modification possible of the regulation at issue. The Applicant has demonstrated that

the variance as modified will allow the Applicant to reasonably display vehicles for sale on his lot. The Board is also convinced that the proposed display will allow the Applicant to reasonably access his existing garage.

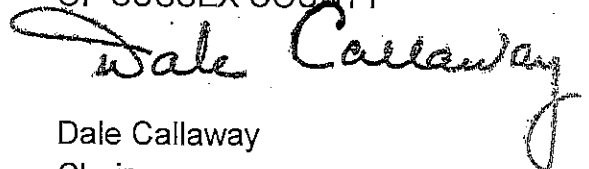
- f. The variance is conditioned on the Applicant displaying no more than ten (10) vehicles in the setback area.
- g. The Board has limited the variance to 24 feet rather than 25 feet as originally sought by the Applicant.

The Board granted the variance application as modified and with conditions finding that it met the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application, as modified, was approved with conditions. The Board Members in favor were Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application as modified with conditions.

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 September 19, 2017