

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: COASTAL STATION DEVELOPMENT CO., LLC

(Case No. 12003)

A hearing was held after due notice on August 7, 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 special use exception to allow multi-family dwellings and structures of mixed commercial and residential use and for variances from the building length for a multi-family dwelling.

Findings of Fact

The Board found that the Applicant is requesting variances of 250 feet and 195 feet from the building length requirement of 165 feet for a multi-family dwelling and a special use exception for multi-family and mixed use in a split zone C-1 and CR-1 district. This application pertains to certain real property located on the northeast corner of Coastal Highway (Route 1) and Holland Glade Road (Route 271) (911 Address: 19791 Coastal Highway, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-13.00-325.08. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, an aerial photograph of the Property, a portion of the tax map of the area, a site plan dated May 31, 2017, and copies of minutes for Case No. 9049.
2. The Board found that the Office of Planning and Zoning received eighty-six (86) letters in opposition to the Application, one (1) letter of concern, one (1) letter from the Delaware Department of Transportation ("DeIDOT"), and no letters in support of the Application.
3. The Board found that Mike Riemann and Christopher Duke were sworn in to testify about the Application. John Tracey, Esquire, presented the case on behalf of the Applicant and submitted exhibits for the Board to review.
4. The Board found that Mr. Tracey stated that the Property consists of approximately 10.2 acres and is located east of Route 1 and south of Holland Glade Road. The Property is split-zoned with the front portion being zoned C-1 and the rear portion being zoned CR-1. Approximately 75% of the Property is zoned C-1.
5. The Board found that Mr. Tracey stated that the Property is being developed in two (2) phases. The first phase pertains to the front portion of the Property which is approved for a Royal Farms gas station and an Iron Hill brew pub, which should open in 2018. The second phase of the development pertains to the rear portion of the Property and is a mixed-use development which is the subject of the Application. The development will consist of approximately 36,000 square feet of commercial space and 96 residential units.
6. The Board found that Mr. Tracey stated that the Property will be accessed from Route 1 and two accesses on Holland Glade Road.
7. The Board found that Mr. Tracey stated that the Property is in the Level 2 Investment Area where DeIDOT anticipates growth and the area is designated in the Sussex County Comprehensive Plan as an area for more intensive development.
8. The Board found that Mr. Tracey stated that the mixed-use project allows for reduction of vehicular trips and for improved pedestrian pathways between residential and commercial uses.

9. The Board found that Mr. Tracey stated that there is an increased demand for smaller units.
10. The Board found that Mr. Tracey stated that the first floor will be mixed-use and the second and third floors will be used residentially.
11. The Board found that Mr. Tracey stated that the development will incorporate pedestrian sky bridges and will include a plaza area and parking underneath the building for approximately 110 vehicles.
12. The Board found that Mr. Tracey stated that mixed-use is a permitted use in the C-1 zoning district and no special use exception is needed for the C-1 portion of the Property. The rear portion of the building, however, needs the special use exception permit since it is on the portion of the Property zoned CR-1.
13. The Board found that Mr. Tracey stated that the use will not substantially adversely affect the uses of neighboring and adjacent properties.
14. The Board found that Mr. Tracey stated that Tanger Outlets are located to the north of the Property and mixed residential and commercial uses are located nearby. The State of Delaware owns lands nearby lands which are not available for development. The Junction & Breakwater Trail is located nearby and the Applicant is open to connecting to the trail.
15. The Board found that Mr. Tracey stated that there is dense development nearby.
16. The Board found that Mr. Tracey stated that DeIDOT constructed a "Hawk signal" along Route 1 to allow for pedestrians to cross Route 1 near the Property. The Applicant supports the installation of a traffic signal at the intersection of Holland Glade Road and Route 1.
17. The Board found that Mr. Tracey stated that DeIDOT conducted a traffic study in 2012 for a prior proposal on the Property.
18. The Board found that Mr. Tracey stated that the Applicant proposes that a double, left-hand turn signal from Route 1 onto Holland Glade Road would be beneficial. The traffic signal would include a protected right-hand turn from Holland Glade Road onto Route 1.
19. The Board found that Mr. Tracey stated that the number of vehicular trips generated by a mixed-use proposal is less than the number of vehicular trips generated by commercial uses otherwise permitted by the existing zoning classification. The figures for vehicular trips come from the International Traffic Engineers Manual used by DeIDOT and traffic engineers.
20. The Board found that Mr. Duke testified that the Applicant's traffic counts have been submitted to DeIDOT for review and comment. DeIDOT determines the traffic study area.
21. The Board found that Mr. Duke testified that the traffic signal will provide vehicles along Holland Glade Road better access to northbound Route 1 and vehicles along southbound Route 1 with better access to Holland Glade Road. According to Mr. Duke, DeIDOT pushed for the traffic signal to reduce U-turns along Route 1.
22. The Board found that Mr. Tracey stated that the proposed traffic signal will reduce the need for unnecessary U-turns along Route 1 and the traffic signal will improve the area. The Applicant believes that a traffic signal will be required for the development and will advocate for the signal.
23. The Board found that Mr. Tracey stated that the only underground storage tanks on the Property are related to the Royal Farms which is already under development and has been approved.
24. The Board found that Mr. Tracey stated that the development is consistent with the development along Route 1 and that mixed-use developments have been encouraged in the comprehensive plan process.
25. The Board found that Mr. Tracey stated that the building length limit was designed as an anti-monotony statute to avoid barrack-style buildings.

26. The Board found that Mr. Tracey stated that the size of the variance is exaggerated because of the pedestrian skywalks which connect the three buildings and the Applicant is not seeking a variance as a result of density. Rather, the proposed design allows the Applicant to keep the bulk of the development in the center of the Property and to provide better screening of parking areas.
27. The Board found that Mr. Tracey stated that the Applicant is not seeking variances from the height, setback, buffer, or parking requirements.
28. The Board found that Mr. Tracey stated that the many of the commercial buildings on nearby properties are larger buildings – some of which are over 600 feet long and the character of the community calls for larger buildings. Commercial buildings can be longer than 165 feet.
29. The Board found that Mr. Tracey stated that the Property is a corner lot which has larger setback areas and that the Property is narrow.
30. The Board found that Mr. Reimann testified that the Applicant proposes to construct a multi-modal path along Holland Glade Road measuring ten (10) feet wide. The Applicant is open to constructing a pedestrian pathway connecting the multi-modal path to the Junction & Breakwater trail on nearby state lands. The Applicant has reached out to the State about connecting to the trail.
31. The Board found that Mr. Duke testified that there are approved developments in the neighborhood which have not yet been constructed but the Applicant has included those developments in their traffic counts.
32. The Board found that Mr. Tracey stated that DeIDOT reviews all traffic counts and studies. The ITE manual has certain traffic counts for certain uses and the Applicant must then take into account traffic related to existing uses in the neighborhood. DeIDOT has certain “warrants” that are “tripped” by traffic counts and the Applicant is confident that, with the proposed development, the warrants will be tripped.
33. The Board found that Mr. Tracey stated that the Applicant has incorporated in its design traffic improvements which will likely be required by the DeIDOT warrant.
34. The Board found that Mr. Tracey stated that the Applicant would be required to pay for the traffic signal and DeIDOT requires developers to enter into traffic signal agreements which obligate the developers to pay their fair share of the cost of traffic signals.
35. The Board found that Mr. Tracey stated that he is unaware if other developers along Holland Glade Road have entered into traffic signal agreements but, regardless, the Applicant will likely be the lead party in any traffic signal agreement. The Applicant anticipates that it will have to bear the cost of the traffic signal.
36. The Board found that Mr. Reimann testified that the traffic signal will also improve the safety of the pedestrian crossing along Route 1.
37. The Board found that Mr. Reimann testified that the commercial space consists of approximately 36,000 square feet.
38. The Board found that Mr. Reimann testified that the Applicant will have to take the project to the Planning & Zoning Commission and regulatory agencies for site plan review.
39. The Board found that Mr. Reimann testified that the storm water management will be handled through an underground system and the Property has an excellent recharge. The soils in the area are suitable for such a system and other nearby commercial businesses have similar systems. The storm water management system is subject to DNREC review.
40. The Board found that Mr. Tracey stated that the rear of the Property was zoned CR-1 in 2004 and the C-1 zoning district was closed prior to the rezoning of CR-1. If the entire property was zoned C-1, no special use exception would be necessary.
41. The Board found that Mr. Tracey stated that the commercial space could be used for offices.

42. The Board found that Mr. Tracey stated that the special use exception is only needed as it pertains to the portion of Building C which is east of the C-1 / CR-1 zoning line. If the buildings were used solely for uses otherwise permitted in a CR-1 district – and not for multi-family use – the building length restriction would not apply.
43. The Board found that Mr. Reimann testified that that nearby commercial buildings and the church exceed 165 feet in building length.
44. The Board found that Mr. Duke and Mr. Reimann affirmed the statements made by Mr. Tracey as true and correct.
45. The Board found that John Still, Rev. Victoria Starnes, Rita Dascenzo, Kathy Pizzadili, Michael Polovina, and James Robert Powers were sworn in to testify in opposition to the Application. Ms. Dascenzo submitted a letter to the Board to review.
46. The Board found that Mr. Still testified that he is concerned about the density in the area. He rides his bike in the area and is concerned about the bike travel on Holland Glade Road.
47. The Board found that Mr. Still testified that the intersection of Route 1 and Holland Glade Road is a poor intersection and the traffic along Route 1 will only get worse. He believes a better solution to the traffic problems is the creation of a road along the rear of the nearby outlets and K-Mart.
48. The Board found that Mr. Still testified that there are wellheads in the area.
49. The Board found that Mr. Still testified that nearby developments are high density projects.
50. The Board found that Mr. Still testified that the Applicant is legally entitled to develop the Property but he questions whether mixed-use is appropriate.
51. The Board found that Rev. Starnes testified that she is the reverend at Epworth United Methodist Church which is located along Holland Glade Road and is near the site. The church has a community skate park, a boys & girls club, a daycare, a soup kitchen, and a concert venue. The church is a busy place and has 500 worshippers each week. Due to this traffic, the church has vehicles in and out of the parking lot frequently.
52. The Board found that Rev. Starnes testified that traffic along Holland Glade Road is a problem and traffic in Rehoboth has worsened greatly. She believes that the density is a problem.
53. The Board found that Ms. Dascenzo testified that she lives in Canal Point and has lived in Rehoboth since 1995. She is concerned about the overdevelopment of the Rehoboth Beach area because there are traffic problems and crime has increased.
54. The Board found that Ms. Dascenzo testified that the area is already busy and congested without this development. Holland Glade Road is already used by numerous developments, the church, the outlets, a ball park, and the Seaside Jewish Community. A senior center is also proposed to be constructed in the area.
55. The Board found that Ms. Dascenzo testified that Holland Glade Road is the only road in and out of the area and that traffic is becoming a year-round problem.
56. The Board found that Ms. Pizzadili testified that residents of the proposed development will want to go to Rehoboth and will increase traffic to Rehoboth and that traffic into Rehoboth is a problem. She is concerned about the traffic.
57. The Board found that Mr. Polovina testified that the nearby roads other than Route 1 are two lane roads and he is concerned about the traffic.
58. The Board found that Mr. Powers testified that he opposes the Application and that traffic in the area is horrendous.
59. The Board found that Mr. Reimann testified that Phase 1 of the project will include an access to Holland Glade Road.
60. The Board found that Mr. Tracey stated that the 2012 traffic impact study was conducted for a development proposed by a prior owner and that the Applicant is

currently in the traffic impact study process. Additional reports will be prepared as part of that process; though a traffic impact study is not required for a special use exception.

61. The Board found that Mr. Duke testified that, in traffic engineering, a traffic grade of an "F" means that the intersection failed and that the installation of the signal will significantly improve traffic conditions at that intersection.
62. The Board found that Mr. Duke testified that the traffic numbers are preliminary at this time and the Applicant is waiting for feedback from DelDOT but he is confident that a traffic signal with two left-hand turn lanes will be warranted at this site.
63. The Board found that Mr. Duke testified that the other permitted uses on the Property will generate much more traffic than the traffic generated by the proposed use.
64. The Board found that Mr. Tracey stated that the traffic signal would provide a solution to the traffic problems and that the Property could be used for a hotel, grocery store, or other uses.
65. The Board found that no parties appeared in support of the Application.
66. The Board found that sixteen (16) parties appeared in opposition to the Application.
67. The Board tabled the Application until September 18, 2017, at which time the Board discussed and voted on the Application.
68. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered, the Board determined that the application met the standards for granting a special use exception because the proposed mixed-use of commercial and residential structures will not substantially affect adversely the uses of neighboring and adjacent properties. The findings below further support the Board's decision to approve the Application.
 - a. Applicant proposes to use a portion of a 10.2 acre parcel for mixed residential and commercial use. The Applicant proposes to construct 3 buildings which will consist of 96 residential units and 36,000 square feet of commercial space. The Property is split-zoned and a special use exception is only needed for the rear portion of the Property which is zoned CR-1. No special use exception is needed for the front property of the Property which is zoned C-1 because a mixed use is a permitted use in that zone. The front portion of the Property is under development for a gas station and brewpub. Portions of the mixed-use buildings are also located in the C-1 portion of the Property.
 - b. The area near the Property consists of different uses. To the north of the Property across Holland Glade Road are the Tanger Outlets Seaside. To the south of the Property along Route 1 are the Outback Steakhouse, CVS Pharmacy, and Rehoboth Crossing residential community. To the east along Holland Glade Road are state owned lands, including the Junction & Breakwater bike trail, and the Epworth United Methodist Church. Other residential communities, a little league park, and a community center are located east of the site along Holland Glade Road. Businesses such as the Tanger Outlets Bayside, an Exxon gas station, and County Bank are located to the west of the site across Route 1.
 - c. Aesthetics:
 - i. The Applicant presented evidence to show that the development will have an attractive appearance. The site will be landscaped and parking will be available underneath the buildings.
 - ii. There should be no substantial adverse effect on the adjacent and neighboring properties from the aesthetics or physical impact of the mixed-use building.
 - d. Property Values:

- i. Some members of the opposition mentioned that they believe the mixed-use buildings would negatively affect property values in the area. The opposition, however, presented no expert testimony, reports, or studies from a realtor or appraiser to support this argument. This concern appears to be speculative and unsupported by substantial evidence.
- e. Noise:
 - i. One member of the opposition questioned the noise emanating from the site. This concern appears to be speculative and there was no substantial evidence presented which demonstrates that mixed use buildings would increase the noise pollution in the area more than other permitted uses on the Property.
- f. Emissions:
 - i. There was no substantial evidence that there would be additional pollutants or negative environmental emissions from the mixed-use buildings. Members of the opposition presented evidence of nearby wellheads but did not providing convincing evidence that the existence of residential units on the Property would substantially affect adversely those wellheads.
 - ii. Concerns were raised about the effect of the gas station on the area but the gas station is a permitted use on the Property and is not the subject of the Application.
- g. Traffic:
 - i. The opposition expressed traffic and safety concerns related to the mixed-use buildings.
 - ii. Holland Glade Road is a road used by numerous residential communities in the area and is also used by persons attending the Epworth United Methodist Church and a ball park. The main exit from Holland Glade Road is onto Route 1. There is currently no traffic signal at that intersection.
 - iii. The Applicant has presented documentation from traffic counts based on generally accepted traffic engineering standards which indicate that the existing intersection is failing. The Applicant also demonstrated that, as part of the proposed development, DeIDOT will likely require the installation of a traffic signal at the intersection and that the traffic signal would significantly improve the traffic conditions at this intersection. DeIDOT has jurisdiction over the traffic impact of the site and a traffic impact study will be ordered. The Applicant will be required to make improvements based on the results of that study.
 - iv. The opposition argued that the proposed development would worsen the traffic along Holland Glade Road and, while it is clear that the traffic would increase at this intersection if Coastal Station is developed, the Property, by virtue of its existing zoning classification could be developed for other, more intensive uses without a special use exception which would likely have a larger traffic impact on the area. For example, if the Property was developed as a supermarket rather than as Coastal Station, the traffic would more than triple. By comparison, the proposed mixed-use, on the other hand, reduces the potential impact at this intersection.
 - v. No evidence was presented by the opposition which proved convincing that the mixed-use buildings would produce any more traffic than another permitted use within the CR-1 district. It is noted that uses such as a bank, restaurant, offices, car washes, hotels,

indoor amusement and theaters, grocery stores, and home improvement stores are permitted in a CR-1 zone and no special use exception would be needed for those uses.

- vi. The Board also notes that the mixed-use character of the site should also provide the residents of those buildings with an opportunity to patronize the other businesses on the site and thereby reduce the traffic impact from the residential units. Meanwhile, the commercial buildings on the site would be available for residents along Holland Glade Road to use without having to go to Route 1.
 - vii. It is also important to note that the other properties along Holland Glade Road have resulted in heavy traffic at the Holland Glade Road / Route 1 intersection. There are many residential properties which use Holland Glade Road. The ballpark, community center, and church likely all contribute to the traffic as well. The church, in particular, has many activities which result in increased vehicular use of Holland Glade Road. As previously noted, it appears clear that the proposed development will help this problem by likely resulting in a new traffic signal and other improvements which should benefit the neighborhood.
 - viii. Ultimately, it is not convincing that the mixed-use building will have a substantial adverse effect on traffic in the area.
 - h. The approval of the special use exception is conditioned on the Applicant entering into a traffic signal agreement with DeIDOT for the installation of a traffic signal at the Holland Glade Road / Route 1 intersection.
69. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, the Board determined that the application for variances failed to meet the standards for granting a variance. The findings below further support the Board's decision to deny the Application.
- a. The Applicant seeks variances from the building length requirement for proposed mixed use commercial and residential buildings connected by walkways.
 - b. The Applicant failed to demonstrate that there are unique physical circumstances or conditions, or exceptional topographical or other physical conditions peculiar to the Property, and that an exceptional practical difficulty is due to such conditions, and not to circumstances or conditions generally created by the Zoning Code. The Property is a parcel consisting of approximately 10.2 acres. The Property has significant road frontage and does not appear to have a shape which would not otherwise be conducive to the proposed use. The Board was not convinced that there were any topographical or other physical conditions which would limit the development of the Property in such a way as to create an exceptional practical difficulty for the Applicant. Rather, the difference appears to be related to the Applicant's preferred design of the site.
 - c. The Applicant failed to demonstrate that there is no possibility that the Property can be developed in strict conformity with the provisions of the Sussex County Zoning Code and that the authorization of a variance is therefore necessary to enable the reasonable use of the Property. The Property is already being developed for a gas station and a brewpub and there is no need for a variance related to those uses. To the extent the Property is proposed to be used as for mixed-use buildings as well, the Board also finds that the Property could be reasonably used for such use within the confines of the building length restrictions found in the Sussex County Zoning Code. The need for the variance appears to be the result of

the Applicant's design preferences rather than some unique physical condition related to the Property.

- d. The Applicant failed to demonstrate that an exceptional practical difficulty has not been self-created. When the difficulty results from the applicant's preferred use of the land and not the particular features of the Property, the hardship the applicant suffers is self-created. In this case, there are no particular features of the Property which have created the difficulty. The Board was not convinced that the variance request was the product of a *need*. Instead, the variance request appears to be the product of a *want* as the owner seeks to build the mixed-use buildings as proposed for purposes of convenience and profit, and / or caprice.
- e. Since the variances are not necessary to enable reasonable use of the Property, the variances requested are not the minimum variances necessary to afford relief. Rather, no variances are needed because the Property can be developed in compliance with the Sussex County Zoning Code.

The Board granted the special use exception application with conditions finding that it met the standards for granting a special use exception but the Board denied the variance application finding that the Applicant has failed to meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the special use exception application 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 Members voted against the Motion to approve the special use exception application with conditions.

Upon motion duly made and seconded, the variance application was denied. The Board Members in favor of the motion to deny were Mr. Dale Callaway, Ms. Ellen Magee, and Mr. Norman Rickard. Mr. John Mills and Mr. Brent Workman voted against the Motion to deny 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 November 21, 2017