

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: LOVE CREEK DEVELOPMENT, LLC

(Case No. 12042)

A hearing was held after due notice on October 16, 2017. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a special use exception for a waiver from or reduction of the loading space requirement.

Findings of Fact

The Board found that the Applicant is requesting a special use exception for a waiver from or reduction of the loading space requirement. This application pertains to certain real property located on the southeast side of John Williams Highway (Route 24), approximately 1,678 feet northeast of Camp Arrowhead Road (911 Address: 33833 Boat Hole Boulevard, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-7.00-108.00. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a portion of the tax map of the area, and a site plan dated April 25, 2017.
2. The Board found that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application.
3. The Board found that Alan Hill was sworn in and testified regarding the Application.
4. The Board found that Mr. Hill testified that Love Creek is a proposed community consisting of a condominium complex, restaurant, and parking areas. The restaurant will sit on approximately 1.8 acres.
5. The Board found that Mr. Hill testified that the Applicant seeks relief from the loading space requirement so as to allow for additional parking.
6. The Board found that Mr. Hill testified that the restaurant will be a facility used for lunch and dinner and deliveries will be made during the morning hours.
7. The Board found that Mr. Hill testified that that the loading area measures 12 feet by 40 feet and would be used for box trucks and smaller delivery vehicles but the elimination of the loading area will provide 5 additional parking spaces.
8. The Board found that Mr. Hill testified that there are 113 parking spaces for the restaurant which exceeds the parking space requirement.
9. The Board found that Mr. Hill testified that no tractor trailers will deliver to the site.
10. The Board found that Mr. Hill testified that the layout of the parking lot would make it difficult for a tractor trailer to navigate.
11. The Board found that Mr. Hill testified that a tractor trailer cannot access the site but a fire truck would be able to access the building.
12. The Board found that Mr. Hill testified that the site meets the Fire Marshal requirements.
13. The Board found that Mr. Hill testified that there is no need for a tractor trailer to access a restaurant of this size.
14. The Board found that Mr. Hill testified that there is no tenant for the restaurant at this time.
15. The Board found that Mr. Hill testified that trucks will not be able to access the condominium portion of the development because that area is gated.
16. The Board found that Mr. Hill testified that the restaurant will be a public restaurant.

17. The Board found that Mr. Hill testified that the project has preliminary plan approval from the Planning & Zoning Commission and the Applicant seeks a waiver of the loading requirement under Section 115-88(B)(4).
18. The Board found that Mr. Hill testified that the restaurant will have less than 10,000 square feet of floor area. The restaurant will only consist of 1 floor.
19. The Board found that Mr. Hill testified that the Applicant could meet the loading space requirement but the Applicant would lose some parking and the use of the space for parking rather than loading would be a better use of the site.
20. The Board found that Mr. Hill testified that the Applicant lost some potential parking spaces due to the boat ramp and tidal areas of the Property.
21. The Board found that Mr. Hill testified that the restaurant could not be moved to allow for loading space behind the building because the restaurant would be too close to the boat ramp and more parking spaces would be eliminated.
22. The Board found that Mr. Hill testified that the proposed location of the restaurant is a safe distance from the boat ramp.
23. The Board found that Mr. Hill testified that the loading area, if required, would be located to the left side of the building.
24. The Board found that Mr. Hill testified that boat slips are owned by the condominium unit owners and there are no additional parking spaces needed for the boat slips. There is no parking for the boat trailers.
25. The Board found that Nancy Guerin was sworn in to testify about the Application. Ms. Guerin had questions about the Application and the development.
26. The Board found that Deborah Harris was sworn in and testified in opposition of the Application.
27. The Board found that Ms. Harris testified that she keeps her boat at the marina and that the area where the restaurant is proposed to be located floods. She believes that the restaurant should be on stilts.
28. The Board found that no parties appeared in support of the Application.
29. The Board found that one (1) party appeared in opposition to the Application.
30. The Board tabled its discussion on the Application until November 6, 2017, at which time the Board discussed and voted on the Application.
31. 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 Applicant failed to demonstrate that construction of existing buildings, problems of access, or size of the lot make it impractical for the Applicant to meet the provisions of the loading space requirements.
 - a. The Applicant is in the process of developing the site and seeks the reduction of the loading space requirements in order to place additional parking spaces near the proposed restaurant. The proposed site plan indicates, however, that the site already has more parking than is required under the Code. Elimination of the loading area to provide for even more additional parking appears unnecessary.
 - b. The Board has concerns that the elimination of the loading space requirement will create problems of access for trucks making deliveries to the restaurant as well as for cars attempting to access the site while deliveries are being made. If there is no loading area, trucks making deliveries will have to find other areas near the restaurant to park and will likely park in areas not designed for loading and unloading. If deliveries are made when cars are parked near the restaurant, it may be difficult, if not impossible, for those deliveries to be made without blocking other vehicles during the loading and unloading process. The Sussex County Code provides for the loading space requirement as a means to allow for safe deliveries while also providing persons who are parked at a site to have safe

vehicular access. The Applicant's proposal, however, threatens to create a problem where one could, and should, be avoided.

- c. The Applicant testified that the restaurant would only be opened for lunch and dinner and that all deliveries would be made in the morning but the Applicant also admitted that there is no current tenant for the restaurant. Even assuming, *arguendo*, that the tenant would restrict its hours of operation to lunch and dinner, there is no guarantee that the deliveries would be made only during the restaurant's "off-hours." The Board finds the Applicant's expectations as to the hours of operation and the hours of deliveries to be wishful thinking and not practical. The Applicant's responses to the Board's concerns about this issue did not convince the Board otherwise.
 - d. There was no testimony or evidence in the record which convinced the Board that that existing buildings, problems of access or size of the lot make it impractical for the Applicant to provide this loading space requirement. In fact, the Applicant has identified an area near the restaurant where the loading space could be located. This space is both convenient to the restaurant while still providing enough space for the Applicant to meet the parking space requirements. The loading space area does not hinder access to the restaurant as there are spaces directly in front of the restaurant which will not be blocked by the loading space. The lot consists of 1.8 acres and is large enough to accommodate a restaurant with parking and loading space. Rather, the lack of a loading space requirement appears to simply be a design feature preferred by the Applicant.
32. The Board also determined that the application failed the standards for granting a special use exception because the reduction of the loading space requirement will substantially affect adversely the uses of neighboring and adjacent properties. The findings below further support the Board's decision to deny the Application.
- a. The Property is a large parcel used for a restaurant and parking. The site is adjacent to a boat marina, boat ramp, and condominium community. The parking lot is also used for persons at the adjacent boat marina.
 - b. As noted in Paragraph 31 above, the waiver of the loading space requirement threatens the maneuverability of vehicles on the site because trucks making deliveries will not have a place to park while loading and unloading deliveries. If there is no loading area, those trucks will have to find other areas near the restaurant to park and will likely park in drive aisles or in parking spaces. If deliveries are made when cars are parked near the restaurant, it may be difficult, if not impossible, for those deliveries to be made without blocking other vehicles during the loading and unloading process. Since the parking lot is also used by users of the boat slips at the adjacent marina, it is entirely possible that persons seeking to enter or leave the site will be blocked by the delivery trucks. The Board notes that there is only one vehicular access point to the site and the blockage of any access point by delivery trucks greatly threatens the usability of the boat ramp and marina; both of which will likely be used by adjacent condominium owners as well. As such, the removal of the loading space requirements will substantially affect adversely the uses of neighboring and adjacent properties.

The Board denied the special use exception application finding that it failed to meet the standards for granting a special use exception and the requirements under Sussex County Zoning Code §115-88(B)(4).

Decision of the Board

Upon motion duly made and seconded, the special use exception application was denied. The Board Members in favor of the motion to deny were Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman. No Board Members voted against the Motion to deny the special use exception 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 January 9, 2018.