

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY
IN RE: KJR HOLDINGS, LLC**

(Case No. 12150)

A hearing was held after due notice on June 4, 2018. The Board members present were: Mr. Dale Callaway, Mr. Bruce Mears, Ms. Ellen Magee, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the rear yard setback for a proposed structure.

Findings of Fact

The Board found that the Applicant is seeking a variance of 4.2 feet from the twenty (20) feet rear yard setback requirement for a proposed addition. This application pertains to certain real property located on the north side of John J. Williams Highway (Route 24), approximately 933 feet east of Gravel Hill Road (Route 30). (911 Address: 29920 John J. Williams Highway, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 2-34-32.00-38.00.

1. The Board was given copies of the Application, minutes from Case No. 11680, photographs, drawings of the proposed addition, a survey and site plan of the Property dated February 27, 2018, 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 Kelly Racz was sworn in to testify about the Application.
4. The Board found that Mr. Racz testified that the Applicant purchased the Property in June 2015 and obtained 2 variances for the existing structures.
5. The Board found that Mr. Racz testified that the Property is commercially zoned and the area is commercially zoned.
6. The Board found that Mr. Racz testified that the Property has an odd and irregular shape.
7. The Board found that Mr. Racz testified that the business is growing and there is a need for additional storage for inventory. The proposed addition is an enclosure measuring 20 feet by 20 feet and will be located to the rear of the building.
8. The Board found that Mr. Racz testified that neighboring property owners have no problems with the proposal.
9. The Board found that Mr. Racz testified that the proposed addition cannot be seen from the road.
10. The Board found that Mr. Racz testified that there is no other location where the addition could be placed because gates to the dumpster are located nearby and a septic field is also located behind the building.
11. The Board found that Mr. Racz testified that the entrance to his business is in the center of the building.
12. The Board found that Mr. Racz testified that the building was built in 1971.
13. The Board found that no parties appeared in support of or in opposition to the Application.
14. 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 un rebutted, 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.

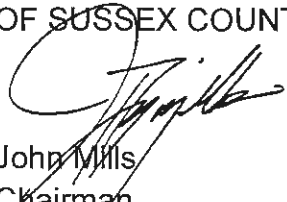
- a. The Property is unique due to its unusual shape which is clearly evident when reviewing the survey provided by the Applicant. The rear property line is irregularly shaped as the center of the rear property line is significantly closer to the front yard property line than the eastern and western sides of the rear property line. This shape greatly reduces the building envelope on the Property and has created an exceptional practical difficulty for the Applicant who seeks to expand an existing commercial building on the lot. The building envelope is further reduced by the location of the septic system.
- b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique shape and the buildable area thereof is limited due to its shape. The Applicant seeks to build a small addition to a commercial building of a reasonable size 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 a reasonably sized commercial addition to be constructed on the Property. The Board is convinced that the shape and location of this addition are also reasonable, which is confirmed when reviewing the survey and pictures provided by the Applicant. Furthermore, the Property is so uniquely shaped that it would be impossible to place a reasonably sized commercial addition on the Property within the building envelope.
- c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual shape of the Property which has resulted in a limited building envelope on the Property. The unusual building envelope has created the exceptional practical difficulty. Furthermore, the building was placed on the Property by a prior owner and has been in its present location since approximately 1971. Additions to the existing building are, thus, challenging. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created the lot's unique characteristics and by the placement of the building thereon by the prior owner. The Board also notes that the septic system further limits the buildable area of the lot.
- 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 Board is convinced that the addition will have no effect on the character of the neighborhood. The addition is a small addition and the area is a commercial area. No complaints were noted in the record about the proposed location of the addition. 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 build a reasonably sized addition on the Property. The addition is small and could not otherwise be located on the site.

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, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



John Mills
Chairman

If the use is not established within two (2) years from the date below the application becomes void.

Date August 7, 2018