

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DERRICKSON & NEAL INVESTMENTS, LLC

(Case No. 12229)

A hearing was held after due notice on November 19, 2018. 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 variances from the rear yard setback requirement for existing structures.

Findings of Fact

The Board found that the Applicant is seeking a variance of 20.3 feet from the thirty (30) feet rear yard setback requirement for an existing building, a variance of 20 feet from the thirty (30) feet rear yard setback requirement for an existing building, a variance of 20.3 feet from the thirty (30) feet rear yard setback requirement for an existing pole building, a variance of 21.5 feet from the thirty (30) feet rear yard setback requirement for an existing pole building, and a variance of 3.3 feet from the five (5) feet rear yard setback requirement for an existing shed. This application pertains to certain real property located on the northwest side of John J. Williams Highway (Route 24), approximately 323 feet west of Coastal Highway (Route 1) (911 Address: 18744 John J. Williams Highway (Route 24), Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-12.00-90.01.

1. The Board was given copies of the Application, minutes for Case No. 3310, a building permit application, a certificate of compliance, a survey of the Property dated July 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 J.D. Neal was sworn in to testify about the Application. Stephen Ellis, Esquire, was present on behalf of the Applicant, presented the Application. Mr. Ellis submitted a survey, property deed, and certificate of formation of LLC to the Board.
4. The Board found that Mr. Ellis stated that the Property is used as a lumber yard off Route 24 and has been used as a lumber yard since 1982-3. The Neal family has operated the lumber yard since the mid-1980s.
5. The Board found that Mr. Ellis stated that the Applicant previously obtained a variance in 1987 for the building to be used for storage of lumber materials. The Applicant believed it was in compliance with the Code as a certificate of compliance was issued but an updated survey later showed these encroachments.
6. The Board found that Mr. Ellis stated that there has been no change in the use of the Property since the mid-1980s and there have been no complaints from neighbors about the structures.
7. The Board found that Mr. Ellis stated that the Property is unique because when built in the 1987 the Applicant received variances for the buildings but, with more modern technology, the new survey shows that the building does not meet the variances granted in 1987.
8. The Board found that Mr. Ellis stated that there is no other way to develop the Property without the variances unless the buildings were moved.
9. The Board found that Mr. Ellis stated that the variances will not affect the essential character of the neighborhood as the buildings have been there since the mid-1980s.

10. The Board found that Mr. Ellis stated that the variances requested are the minimum variances necessary to afford relief.
11. The Board found that Mr. Neal affirmed the statements made by Mr. Ellis as true and correct.
12. The Board found that Mr. Ellis stated that the shed can be moved into compliance and that no variance is needed for that structure.
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 for the variances for the building and pole building 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 history and building envelope. The Property has been used as a lumber yard for over 30 years and the existing pole building and storage building encroach into the rear yard setback area. These structures have been on the Property since the 1980s and the Applicant previously received a variance for the building only to later find out that the building slightly encroached farther into the setback area than previously allowed. The Property is unique because it is located along Route 24 and has large front yard setbacks yet is adjacent to residential property thereby resulting in large rear yard setback as well. These conditions restrict the building envelope. The Property is also encumbered by an access easement benefiting adjacent lands. The Board finds that the lot's unique conditions have created an exceptional practical difficulty for the Applicant who seeks to retain existing structures on the lot.
 - 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 and limited buildable area. The Applicant seeks to retain its building and a pole building 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 these reasonably sized structures to remain on the Property. The Board is convinced that the shape and location of the building and pole building are also reasonable, which is confirmed when reviewing the survey provided by the Applicant. The Board notes that the building and pole building are used to store the Applicant's equipment and materials related to its business.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual building envelope of the Property and the small building envelope has created the exceptional practical difficulty. 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 by the lot's unique characteristics. The Board also notes that the Applicant reasonably believed that the building complied with the setback requirements because a certificate of compliance was issued.
 - d. The variances 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 building and the pole building will have no effect on the character of the neighborhood. Those structures are located to the rear of the Property and have been on the Property for over 30 years. There was no evidence that the location of those structures in the rear yard setback

area would somehow affect the neighborhood and no evidence was presented that the variances would somehow alter the essential character of the neighborhood. The lack of opposition is telling since the structures have been on the Property for many years.

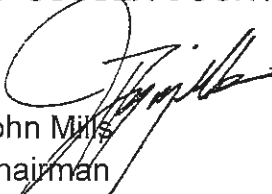
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain a reasonably sized building and pole building on the Property. No additions or modifications to those structures are proposed.
15. 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 variance application for the shed failed to meet the standards for granting a variance. The findings below further support the Board's decision to deny the Application.
- a. One of the elements for granting a variance is that the Applicants must demonstrate that the Property cannot be developed in strict conformity with the Sussex County Zoning Code and that the variance is necessary to enable the reasonable use of the Property. It is clear from the record, however, that the shed can be moved into compliance with the Code. Accordingly, since the shed can be moved into compliance, no variance is necessary for that structure. Since no variance is needed as noted above, the Applicant has failed to meet this element and the variance for the shed must be denied.
 - b. Additionally, the Applicant must demonstrate that the requested variance for the shed represents the minimum variance necessary to afford relief. Since no variance is actually needed in order for the Applicant to retain the shed on the Property, it is clear to the Board that the Applicant has failed to meet this element as well and that the variance request for the shed must be denied.

The Board granted the variance application for the building and pole building finding that it met the standards for granting a variance and the Board denied the variance application for the shed finding that it failed to meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was approved in part and denied in part. The Board Members in favor of the motion to approve the variance application for the building and pole building and to deny the variance application for the shed 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 for the building and pole building and to deny the variance application for the shed.

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 January 29, 2019.