

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: BB & POPS, LLC

(Case No. 12237)

A hearing was held after due notice on December 10, 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 a variance from the front yard setback requirement for a proposed structure.

Findings of Fact

The Board found that the Applicant is seeking a variance of 55 feet from the sixty (60) feet front yard setback requirement for a proposed structure. This application pertains to certain real property located on the east side of Sussex Highway (Route 13), approximately 624 feet south of Seashore Highway (Route 404) (911 Address: 18761 Sussex Highway, Bridgeville); said property being identified as Sussex County Tax Map Parcel Number 1-31-15.00-24.03.

1. The Board was given copies of the Application, a letter from Kenneth Christenbury, email correspondence with Beth Rosebrooks of DeIDOT, site plans, a deed to the Property, an easement agreement, a water easement plan dated October 26, 2001, a survey of the Property dated September 20, 2018, a subdivision plan dated April 24, 2001, aerial photographs 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 the Application or in opposition to the Application.
3. The Board found that Ken Christenbury was sworn in to give testimony. Richard Berl, Esquire, presented the Application on behalf of the Applicants and he submitted exhibit booklets to the Board.
4. The Board found that Mr. Berl stated that the Property, which is triangularly shaped, consists of 3.9 acres in size but only 0.85 acre is buildable due to many factors.
5. The Board found that Mr. Christenbury testified that the travel lane of Route 404 used to be adjacent to the Property but the travel lane was moved and, at one point, there is over 200 feet between the property line and the edge of pavement. The area located between this property and Route 404 is owned by DeIDOT and is used for stormwater management. The Applicant has reached out to DeIDOT to try to purchase the adjoining property and was informed that it is not for sale.
6. The Board found that Mr. Berl stated that the part of the Property adjacent to Route 404 is considered the front yard and the longest property line is along Route 404.
7. The Board found that Mr. Berl stated that part of the Property is considered wetlands. The Property also has a Tidewater well and surrounding safe zones. Tidewater has 4 wells on the lot taking up approximately 13,000 square feet and the wellhead protection ordinance creates a safe zone around the wells and takes up area outside the Tidewater easement area.
8. The Board found that Mr. Christenbury testified that the Tidewater facility was operational when the wellhead protection ordinance was adopted but, had the ordinance been in effect when the Tidewater easement was granted, the easement area would have needed to be larger. He believes that there are limited development options due to the wellhead area.
9. The Board found that Mr. Christenbury testified that there is a tax ditch taking about 80 feet.

10. The Board found that Mr. Christenbury testified that part of the Property is used as an access road. The Applicant will use the access road for access to the Property because it doubts that DeIDOT will grant direct access to Route 404 from the site.
11. The Board found that Mr. Berl stated that the Property is unique due to its arrowhead shape and encumbrances and that the Property cannot be developed without this variance because the buildable area is reduced by the setbacks, the Tidewater well and safe zone, tax ditch, and easements.
12. The Board found that Mr. Berl stated that the area is a commercial area. There is a Sonic and McDonald's located nearby. The Applicant will likely use the site for a mini-storage facility.
13. The Board found that Mr. Berl stated that the exceptional practical difficulty was not created by the Applicant but by the uniqueness of the Property.
14. The Board found that Mr. Berl stated that the variance will not alter the essential character of the neighborhood as it is mostly commercial
15. The Board found that Mr. Berl stated that the variance requested is a minimal variance to make this a viable property
16. The Board found that Mr. Berl stated that the 5 feet setback would be similar to other commercial setbacks in the area.
17. The Board found that Mr. Christenbury affirmed the statements by Mr. Berl as true and correct.
18. The Board found that Mike Svaby was sworn in to give testimony about the Application. Mr. Svaby testified that he represents the State of Delaware and the State of Delaware who owns the adjacent property has no objection to the Application.
19. The Board found that one person appeared in support of and no one appeared in opposition to the Application.
20. 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 due to its odd shape, physical conditions, and proximity to Route 404. The front yard of the Property is considered to be the portion of the Property adjacent to Route 404 and the setback from that property line is 60 feet. The longest property line on the Property is along Route 404 and this setback requirement takes up a large part of the Property. The other side of the Property is burdened by an easement with Tidewater for wells and portions outside of the easement area are unbuildable due to the wellhead protection ordinance. The Property is also burdened by wetlands, a tax ditch, and an access road easement. Due to these conditions, much of the Property cannot be developed. Based on the Applicant's calculations, only .85 acres of the site is available for building even though the site consists of 3.9 acres. These conditions greatly limit the buildable area of the Property; particularly with regard to construction in the front of the lot. These unique 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 Applicant seeks to develop the Property for commercial uses 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 build structures within the front property line setback area in a manner consistent with other commercial

properties in the area. The Board is convinced that the shape and location of the structures are reasonable.

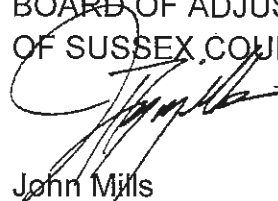
- c. The exceptional practical difficulty was not created by the Applicant. The owner of the Property only recently acquired the site and the Property is burdened by the easement, wetlands, tax ditch, access easement, and wellhead protection areas. The Property also has a unique shape. These unique conditions have created an exceptionally limited building envelope – particularly when considering the size of the Property as compared to the amount of buildable area. It is thus clear to the Board that these conditions have created the exceptional practical difficulty for the Applicant who seeks to develop the Property and that the exceptional practical difficulty was not created by 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 Board is convinced that the reduction of the front yard setback requirement will have no effect on the character of the neighborhood. There was no evidence of any impact on neighboring properties and the neighbor most affected by the variance (DeIDOT) has indicated no objection to the request. The Board also notes that the record indicates a significant gap between the front property line and the edge of paving of Route 404. As such, the encroachments into the front yard setback area is likely less noticeable than if the edge of paving matched the front property line. The Board also notes that, based on the Applicant's testimony, the site will likely be accessed from the access road and not directly from Route 404.
- 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 reasonably develop the Property in a manner consistent with neighboring properties.

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 February 5, 2019.