

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: ASHTON GROUP, LTD**

**(Case No. 12249)**

A hearing was held after due notice on January 7, 2019. 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 front yard setback requirement for a proposed and existing structures.

Findings of Fact

The Board found that the Applicant is seeking the following variances: 1) a variance of 52 feet from the sixty (60) feet front yard setback requirement from Route 1 for the proposed porch on the west side of building; 2) a variance of 30.2 feet from the sixty (60) feet front yard setback requirement from Oyster House Road for the proposed porch on the west side of building; 3) a variance of 24 feet from the sixty (60) feet front yard setback requirement from Oyster House Road for proposed steps on west side of building; 4) a variance of 27 feet from the sixty (60) feet front yard setback requirement from Route 1 for proposed steps on west side of building; 5) a variance of 16 feet from the sixty (60) feet front yard setback requirement from Oyster House Road for steps on north side of building; 6) a variance of 50.9 feet from the sixty (60) feet front yard setback requirement from Route 1 for the proposed addition on the east side of the building; 7) a variance of 4.1 feet from the sixty (60) feet front yard setback requirement from Oyster House Road for the proposed addition on the east side of the building; 8) a variance of 51.9 feet from the sixty (60) feet front yard setback requirement from Route 1 for the proposed addition on the west side of building; 9) a variance of 26 feet from the sixty (60) feet front yard setback requirement from Oyster House Road for the proposed addition on the west side of building; 10) a variance of 22.6 feet from the sixty (60) feet front yard setback requirement from Oyster House Road for the existing building; 11) a variance of 51.7 feet from the sixty (60) feet front yard setback requirement from Route 1 for the existing building; 12) a variance of 56 feet from the sixty (60) feet front yard setback requirement from Route 1 for the HVAC system; and 13) a variance of 51.1 feet from the sixty (60) feet front yard setback requirement from Route 1 for the existing building and proposed addition. This application pertains to certain real property that is a through lot located on the south side of Oyster House Road and northeast side of Coastal Highway (Route 1) (911 Address: 37458 Oyster House Road, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-19.08-31.00.

1. The Board was given copies of the Application, a deed to the Property, a survey of the Property dated November 2, 2018, photographs of the Property, schematics of the building and addition, 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 Joseph Ashton and Nicole Bailey Ashton were sworn in to give testimony. Mr. and Mrs. Ashton are owners of Ashton Group, Ltd. Tim Willard, Esquire, presented the Application on behalf of the Applicant and he submitted a copy of the survey of the Property to the Board.

4. The Board found that Mr. Willard stated that the Applicant operates a landscaping business with 5 employees and seeks to add a modest extension to its offices to make additional space for employees.
5. The Board found that Mr. Willard stated that the Applicant purchased the Property a couple of years ago. The deed included with the application indicates that the Property was acquired in June 2017. The Board previously granted a variance for the previous owner to build a pergola. According to Mr. Ashton, the pergola has since been removed.
6. The Board found that Mr. Willard stated that the Property is very unique in shape and fronts on 3 roads. The Property is also zoned General Commercial.
7. The Board found that Mr. Willard stated that the proposed addition will measure 1,054 square feet. The addition towards the connecting road will have an addition, porch, and steps. There will be an extension added to the other side of the building as well.
8. The Board found that Mr. Willard stated that the preexisting dwelling was constructed in the setback areas by a prior owner.
9. The Board found that Mr. Willard stated that the variances are necessary to enable reasonable use of the Property.
10. The Board found that Mr. Willard stated that the business has some clients but it is not a retail establishment. The property has 9 parking spaces and meets the Code requirements.
11. The Board found that Mr. Willard stated that the Property cannot be otherwise developed because of the C-1 setbacks of 60 feet from Oyster House Road and Coastal Highway.
12. The Board found that Mr. Willard stated that the exceptional practical difficulty was not caused by the Applicant because the Property was developed in this fashion when purchased.
13. The Board found that Mr. Willard stated that the variances will not alter the essential character of the neighborhood as there are commercial buildings in this area such as a bike shop, Big Fish Grill, and office space.
14. The Board found that Mr. Willard stated that the Applicant is building a very modest addition to give it more room to run its business and is asking for minimal variances.
15. The Board found that Mr. Ashton affirmed the statements made by Mr. Willard as true and correct.
16. The Board found that no parties appeared in support of or in opposition to the Application.
17. 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 odd shape and proximity to Oyster House Road and Coastal Highway. As a commercial property, the lot is subject to 60 feet setback requirements from both Oyster House Road and Coastal Highway. As a result, much of the site is outside the building envelope thereby leaving little space for structures and reasonable growth of the Applicant's business. Due to these conditions, much of the Property cannot be developed. These unique conditions, which are clear on the survey, 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 variances are necessary to enable the reasonable use of the

Property as the variances will allow the Applicant to build structures within the front property line setback areas 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.

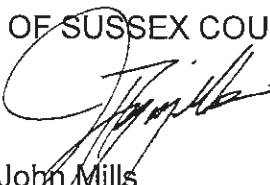
- c. The exceptional practical difficulty was not created by the Applicant. The owner of the Property only recently acquired the site and the Property was already developed with the existing building at that time. The Applicant now seeks to make reasonable additions to the building to accommodate its business. The Property also has a unique shape and is greatly limited by the setback requirements on both sides of the lot. 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 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 reduction of the front yard setback requirements will have no effect on the character of the neighborhood. There was no evidence of any impact on neighboring properties. The Board also notes that the record indicates a significant gap between the front property line and the edge of paving of Coastal Highway. As such, the encroachments into the front yard setback area along Coastal Highway are likely less noticeable than if the edge of paving matched the front property line.
- 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 make reasonable additions to the existing building on the Property.

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 March 5, 2019.