

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: BI-RITE AUTO SALES, INC.

(Case No. 12268)

A hearing was held after due notice on February 4, 2019. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front yard setback requirement for existing and proposed structures.

Findings of Fact

The Board found that the Applicant is seeking a variance of 5.3 feet from the sixty (60) feet front yard setback requirement from Brickyard Road for a proposed commercial building. This application pertains to certain real property located on the west side of Sussex Highway (Route 13) and east side of Brickyard Road approximately 518 feet south of Concord Road (911 Address: 24770 Sussex Highway, Seaford); said property being identified as Sussex County Tax Map Parcel Number 1-32-1.00-19.01.

1. The Board was given copies of the Application, a deed to the Property, a survey of the Property dated September 11, 2018, building permits, property record information, a letter and an email from Michael Smith, Esquire, 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 the Application or in opposition to the Application.
3. The Board found that Jack Mullins was sworn in to testify about the Application. Blake Carey, Esquire presented the Application on behalf of the Applicant.
4. The Board found that Mr. Carey stated that the Applicant proposes to construct an addition to its existing commercial building on the Property. The addition will shadow the existing building.
5. The Board found that Mr. Carey stated that the Property is unique as it is pie-shaped and has a limited building envelope.
6. The Board found that Mr. Carey stated that the Property cannot otherwise be developed without the variance due to its shape and the Applicant did not cause this issue as the Applicant purchased the Property in its current shape. The building was located on the lot at that time as well.
7. The Board found that Mr. Carey stated that the Property is served by private sewer to the east and a well in the western corner. There is a drain field for the septic system on the lot.
8. The Board found that Mr. Carey stated that the Property has a long history of being used as a car dealership.
9. The Board found that Mr. Carey stated that the variance will not alter the essential character of the neighborhood or be detrimental to the public welfare as this is a commercial area.
10. The Board found that Mr. Carey stated that the Applicant has improved the Property.
11. The Board found that Mr. Carey stated that the variance requested is the minimum variance to allow a building to shadow the existing building.
12. The Board found that Mr. Mullins affirmed the statements made by Mr. Carey as true and correct.
13. The Board found that Mr. Mullins testified that the addition will be used for a shop area to work on cars.

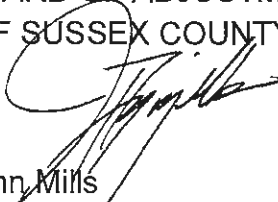
14. The Board found that Mr. Mullins testified that his neighbor has no issues with the request.
15. The Board found that one person appeared in support of and no one appeared in opposition to the Application.
16. Based on the findings above and the testimony and evidence presented at the public hearing 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 Brickyard Road and Sussex Highway. As a commercial property, the lot is subject to 60 feet setback requirements from both Brickyard Road and Sussex 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. The site is further restricted due to the placement of the septic system and drain field. 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 a reasonably sized addition within the front property line setback areas in a manner consistent with the existing construction on the Property. The Board is convinced that the shape and location of the addition 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 as well as the location of the septic system. 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. The Board also notes that the addition is in line with the existing building which has been on the Property for years.
 - 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 make a reasonable addition to the existing building on the Property. The addition will be used for a shop area and represents a reasonable growth of the Applicant's business.

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. 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 19, 2019