

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DUTCH COUNTRY MARKET – SAM PETERSHEIM

(Case No. 12314)

A hearing was held after due notice on June 3, 2019. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. John Williamson, 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 Applicants are requesting a variance of 26.5 feet from the sixty (60) feet front yard setback requirement along Commercial Lane. This property is a through lot located on the northeast side of Trussum Pond Road and on the southwest side of Commercial Lane approximately 995 feet southeast of Sussex Highway (Route 13) (911 Address: 11233 Trussum Pond Road, Laurel); said property being identified as Sussex County Tax Map Parcel Number 3-32-1.00-102.05. After a public hearing, the Board made the following findings of fact.

1. The Board was given copies of the Application, a proposed site plan of the Property dated February 19, 2019, 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 one letter in support of and no correspondence in opposition to the Application.
3. The Board found that Sam Petersheim and Charles Dennig were sworn in to give testimony.
4. The Board found that Mr. Petersheim testified that the Property is a through lot but he considers Commercial Lane as the rear of the lot and that the sales area is located in the front yard adjacent to Route 113. The Applicant needs space for storage of inventory to the rear of the site closest to Commercial Lane.
5. The Board found that Mr. Petersheim testified that the Property originally consisted of two lots but has been consolidated into 1 lot.
6. The Board found that Mr. Petersheim testified that there are solar arrays on the Commercial Lane side of the lot.
7. The Board found that Mr. Petersheim testified that the Property is unique as it is a through lot.
8. The Board found that Mr. Petersheim testified that the Property cannot otherwise be developed for a warehouse of this size due to the placement of the driveway on Commercial Lane and the location of the retention pond, septic system, and solar panel.
9. The Board found that Mr. Petersheim testified that, if the building was located elsewhere on the Property, a tractor trailer would not be able to gain access for unloading furniture.
10. The Board found that Mr. Petersheim testified that the practical difficulty was not created by the Applicant.
11. The Board found that Mr. Petersheim testified that the variance will not affect the essential character of the neighborhood as it is a commercially zoned area.
12. The Board found that Mr. Petersheim testified that the variance requested is the minimum variance request to afford relief.

13. The Board found that Mr. Petersheim testified that the building will measure 50 feet by 80 feet and will be used for storage.
14. The Board found that Mr. Petersheim testified that the septic system is located in the middle of the lot.
15. The Board found that Mr. Petersheim testified that the solar panels cannot be blocked.
16. The Board found that Mr. Dennig testified that the driveway runs from Commercial Lane to Trussum Pond Road, so moving the driveway would not be possible.
17. The Board found that Mr. Dennig testified that there is approximately 10 – 15 feet from the property line to the edge of paving of Commercial Lane and there will be approximately 50 feet from the building to the edge of paving.
18. The Board found that one party appeared in support of and no parties appeared in opposition to the Application.
19. 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 variance 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 as it is a lot with road frontages on two roads and is subject to two front yard setback requirements. The lot is also improved by a septic system and retention ponds which are located near the middle of the lot. The septic system, in particular, is a large system and occupies a large portion of the building envelope. The Property is also developed by solar arrays which cannot be blocked from sunlight. These conditions greatly restrict the building envelope on the Property and it is clear to the Board that the lot's unique characteristics have created an exceptional practical difficulty for the Applicant who seeks to construct a reasonably sized storage building 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 is bordered on two sides by roads and has unique setback requirements. The lot has other conditions which further limit the building envelope as well. The Applicant seeks to construct a reasonably sized storage 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 the Applicant to construct a reasonably sized storage building on the Property. The Board is convinced that the shape and location of the storage building are also reasonable, which is confirmed when reviewing the survey provided by the Applicant. The Board also notes that the Applicant was constrained as to the location of the building due to the need for trucks to access the building to unload furniture and the location of the driveway.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the lot or enact the setback requirements which have limited the building envelope of the lot. 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.
 - 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 storage building will have no effect on the character of the neighborhood. The surrounding area is commercial in nature and the building is consistent with those uses. 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 construct a reasonably sized storage building on the Property that will enable trucks to access the building for loading and unloading purposes.

The Board granted the variance application finding that the variance application 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 of the motion to approve were Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. John Williamson, 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 June 18, 2019.