

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ASHBURN HOMES

(Case No. 12360)

A hearing was held after due notice on September 9, 2019. The Board members present were: Mr. Jeffrey Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the front yard setback requirements for existing and proposed structures and from the Combined Highway Corridor Overlay Zone requirements.

Findings of Fact

The Board found that the Applicant seeks a variance from the Combined Highway Corridor Overlay Zone which requires a 20 feet wide forested landscape buffer. The Applicant seeks a variance of 20 feet from the 20 feet wide forested landscape buffer requirement except in the following areas where the buffer requirement will be met:

- The northeastern corner of the property measuring 11 feet deep by 18.5 feet wide
- The curved area in the center of the front of the property as shown on the site plan measuring approximately 7 feet wide by 18 feet deep
- The southeastern corner of the property measuring 18 feet deep by 5.5 feet wide

No front yard variance was needed as the proposed building will comply with the front yard setback requirement. This application pertains to certain real property located on the west side of Coastal Highway (Route 1) approximately 413 feet north of Phillips Street (911 Address: 20238 Coastal Highway, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-19.00-156.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a site plan of the Property dated July 30, 2019, a revised site plan of the Property dated August 2, 2019, a letter from Kenneth Christenbury, a deed to the Property, photographs, elevation renderings, 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 and one letter in opposition to the Application.
3. The Board found that Ken Christenbury and Jordan Ashburn were sworn in to give testimony about the Application.
4. The Board found that Mr. Christenbury testified that there is currently a seafood takeout restaurant on the Property with pavement around the building. The Applicant wants to develop the lot with a sales and design center for its business.
5. The Board found that Mr. Christenbury testified that the lot is unique because it is only 125 feet deep by 100 feet wide.
6. The Board found that Mr. Christenbury testified that the parking spaces currently do not meet County Zoning Code.
7. The Board found that Mr. Christenbury testified that updating the building to comply with the Zoning Code for the required parking would not allow room for the 20 feet landscaped buffer.

8. The Board found that Mr. Christenbury testified that the exceptional practical difficulty was not created by the Applicant as the lot was created in the 1940s.
9. The Board found that Mr. Christenbury testified that the Applicant will provide some mature trees on either side of the lot but cannot develop without the relief from the required buffer.
10. The Board found that Mr. Christenbury testified that the variance will not alter the essential character of the neighborhood as most of the neighboring properties do not have any significant landscaping on the front.
11. The Board found that Mr. Christenbury testified that only 2 properties nearby have the buffer. One of those lots is a residential lot and the other lot is twice as deep as the other properties along Route 1 in the neighborhood.
12. The Board found that Mr. Christenbury testified that neighboring properties have parking in the front yard.
13. The Board found that Mr. Christenbury testified that the lot is shallow.
14. The Board found that Mr. Christenbury testified that the building cannot be moved back farther on the property as the space in the rear will allow for a loading zone and dumpsters.
15. The Board found that Mr. Christenbury testified that the curved area at the center of the front of property could be planted with low shrubs measuring 3 feet tall or less. This area measures approximately 7 feet by 18 feet.
16. The Board found that no one 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 for a 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 small and shallow lot measuring only 125 feet deep. The lot, which was created prior to the enactment of the Sussex County Zoning Ordinance, offers limited area for development while still meeting all requirements of the Code. The unique conditions of the Property have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to place a new commercial building on the Property but cannot do so in compliance with the Sussex County Zoning Code. Rather, additional room is needed in the front of the Property to allow for parking as required by the Code. The building itself, however, will meet the Code requirements.
 - b. The unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code.
 - c. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant proposes to place a new commercial building but is unable to do so while meeting both the parking and landscape buffer requirements. Due to the shallowness of the lot, the Applicant would be unable to develop the Property without this variance. The variance is thus necessary to enable reasonable use of the Property.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. The Applicant did not create the size of the lot. Rather, the lot was created prior to the enactment of the Sussex County Zoning Code by a prior owner. This building envelope is limited due to its size and shallowness. The unique conditions of the Property an exceptional practical difficulty and unnecessary hardship for the Applicant who seeks to reasonably develop the Property with a new commercial building.

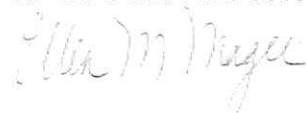
- e. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the variance will not have a negative impact on the neighborhood. The Property currently does not meet the buffer requirement and there were no complaints noted in the record about the existing development of the Property. Furthermore, the proposed development of the Property is consistent with the development of other neighboring properties which have parking within the landscape buffer area. The Board also notes that the proposed development should be an improvement to the Property over its existing development as some new landscaped areas are proposed and the Property will be developed with a new building. 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.
- f. 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 place a new commercial building on the Property while meeting the parking and setback requirements. The Applicant proposes to landscape certain portions of the Property where it can do so and these areas demonstrate that the Applicant has taken steps to minimize the need for the variance. Nevertheless, it is clear to the Board that the variance is needed to allow the Applicant to reasonably develop this property. The Board also notes that the building cannot be moved farther to the rear yard as portions of the rear of the Property are needed for loading, access, and dumpsters.
- g. The condition or situation of the Property and the intended use of the Property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.

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 of the Motion to approve were Mr. Jeffrey Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Dr. Kevin Carson did not participate in the discussion or vote on this application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



Ellen M. Magee
Chair

If the use is not established within two (2) years from the date below the application becomes void.

Date November 19, 2019