

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JEFF-KAT, LLC

(Case No. 12435)

A hearing was held after due notice on June 15, 2020. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, and Mr. John Williamson.

Nature of the Proceedings

This is an application for variances from the side yard and rear yard setback requirements for a proposed structure.

Findings of Fact

The Board found that the Applicant is requesting a variance of 6.0 feet from the twenty (20) feet side yard setback requirement on the west side and a variance of 16.0 feet from the thirty (30) feet rear yard setback requirement for a proposed storage building. The Property is located on the east side of Kings Highway (Route 9) approximately 0.35 miles northeast of Gills Neck Road (911 Address: 1007 Kings Highway, Lewes) said property being identified as Sussex County Tax Map Parcel Number: 3-35-8.00-39.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a letter from Clifford Mumford, a survey of the Property dated January 2020, 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 or in opposition to the Application.
3. The Board found that Ring Lardner and Jeff Hamer were sworn in to give testimony about the Application. Mr. Lardner is an engineer for the Applicant and Mr. Hamer owns the Big Oyster Brewery.
4. The Board found that Mr. Lardner testified that the Property is used for the Big Oyster Brewery.
5. The Board found that Mr. Lardner testified that Lane Builders is located to the south and west of the site, a church is located to the north and west of the site, and the Mitchell Farm is located to the east of the site.
6. The Board found that Mr. Lardner testified that the Mitchell Farm submitted applications to rezone its property and the proposal would result in the creation of a road parallel to the shared property line with the Applicant. If the Mitchell Farm application is approved, different rear yard setbacks for the Applicant's property would apply.
7. The Board found that Mr. Lardner testified that the Applicant purchased the rear of the lot and rezoned it from AR-1 to C-3 in May 2019.
8. The Board found that Mr. Lardner testified that the Property has an unusual, T shape and has two separate zonings on the same parcel.
9. The Board found that Mr. Lardner testified that there is a rectangular bump out the becomes unbuildable without a variance and the Property cannot otherwise be developed.
10. The Board found that Mr. Lardner testified that the Applicant did not create lot. Rather, the lot was created by Mitchell Farms.

11. The Board found that Mr. Lardner testified that the Applicant is trying to make it workable for his business.
12. The Board found that Mr. Lardner testified that, if the variances are approved, the proposed storage building will be aligned directly behind the Lane Builders workshop. The building will be a similar size as the workshop.
13. The Board found that Mr. Lardner testified that the variances will not alter the essential character of the neighborhood as there are commercial uses nearby.
14. The Board found that Mr. Lardner testified that the variances requested are the minimum variance requests to afford relief.
15. The Board found that Mr. Lardner testified that, if the adjacent property was zoned commercial, the setbacks would be reduced to 5 feet but the adjacent property is zoned AR-1 even though it functions as a commercial property for Lane Builders.
16. The Board found that Mr. Hamer testified that additional storage for kegs and cans is needed for his growing business. Those items are currently stored off-site.
17. The Board found that Mr. Hamer testified that the business has grown quickly and on-site storage will help manage the growth.
18. The Board found that Mr. Hamer testified that he has a great relationship with the church and the church is selling one acre to the Applicant for parking.
19. The Board found that Mr. Hamer testified that the building will be 2 stories tall.
20. The Board found that Mr. Hamer testified that he cannot use a smaller building because he needs the space for pallets and deliveries.
21. The Board found that Mr. Hamer testified that the location is perfect for the warehouse as it will allow for an alley around the building.
22. The Board found that Mr. Hamer testified that this portion of the lot could not be used for parking due to its shape.
23. The Board found that Mr. Lardner testified that the building will be approximately 25 feet tall.
24. The Board found that Mr. Lardner testified that Mitchell Farms supports the request.
25. The Board found that no one appeared in support of or opposition to the Application.
26. 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 as it is an oddly shaped lot with a "T" shape and is split-zoned. The front portion of the lot is zoned C-1 and the rear portion is zoned C-3. While neighboring properties are used or are proposed to be used commercially, those lots are zoned AR-1 and, as a result, the Property is subject to greater setbacks. The unique shape of the lot has created a significant portion thereof that is largely unbuildable which is exacerbated by the zoning of neighboring parcels. The lot's unique conditions limit the buildable area available to the Applicant and have created an unnecessary hardship and an exceptional practical difficulty for the Applicant who seeks to construct a reasonable storage building on the lot.
 - 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 lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique size and the buildable area thereof is limited due to the shape of the lot. The Applicant seeks to construct a reasonable storage building 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 a reasonable storage building to be constructed 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.

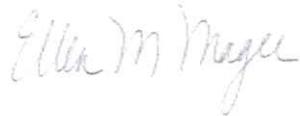
- d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. The Applicant did not create the unusual shape of the Property. Rather the shape was created by a prior owner. The unique shape of the Property is clear when reviewing the survey. The Board is convinced that the unnecessary hardship and exceptional practical difficulty were not created by the Applicant but was created by the lot's unique characteristics. The area where the storage building will be located would be difficult to use for other uses, such as parking, due to the size and shape of the area.
- e. 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 storage building will have no effect on the character of the neighborhood. The storage building will be located in a bump-out of the Property near a warehouse on neighboring lands for a different business. A neighbor has indicated to the Applicant that it has no objection to the request. There was no evidence submitted into the record that the variances would somehow affect the neighborhood or alter the essential character of the neighborhood. Rather, the storage building appears to be a natural expansion of the Applicant's existing business and is consistent with the neighborhood.
- f. The variances are the minimum variances necessary to afford relief and the variances represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances will allow the Applicant to construct a storage building on the Property. The building will be located to allow for an alley around the building to and is large enough to meet the Applicant's needs while being consistent with similar structures in the neighborhood.
- 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 Dr. Kevin Carson, Mr. Jeffrey Chorman, Ms. Ellen Magee, and Mr. John Williamson. No Board Member voted against the Motion to approve the variance application. Mr. Brent Workman 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 August 4, 2020.