

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: SEQUANCE PROPERTIES, LLC

(Case No. 12558)

A hearing was held after due notice on May 17, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicant is requesting a variance of 4.7 feet from the five (5) feet side yard setback requirement on the northwest side for an existing building and a variance of 4.5 feet from the five (5) feet side yard setback requirement on the northwest side for a proposed addition and an existing concrete pad. This property is located on the southwest side of Coastal Highway (Route 1) approximately 397 feet southeast of Sea Air Avenue (911 Address: 19724 Coastal Highway, Rehoboth Beach) said property being identified as Sussex County Tax Map Parcel Number 3-34-13.00-319.01. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey of the Property dated September 6, 2016, construction drawings dated March 11, 2021, a letter of opposition with exhibits, 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 Richard Lowrance was sworn in to testify about the Application.
4. The Board found that Mr. Lowrance, who is a representative of the Applicant, testified that the Applicant owns the Property and leases it to the Touch of Italy restaurant.
5. The Board found that Mr. Lowrance testified that, due to changes in the business from Covid-19, Touch of Italy needs to expand the kitchen to accommodate the increase in the takeout portion of the business and the additional area is needed for preparation and packaging.
6. The Board found that Mr. Lowrance testified that this is an older building adjacent to Outlet Liquors. He believes that the building was built in the 1960s.
7. The Board found that Mr. Lowrance testified that the Outlet Liquors building is approximately 3 inches from the side property line and the Touch of Italy building is approximately 6 inches from the side property line.
8. The Board found that Mr. Lowrance testified that the existing building and concrete pad extend beyond the current side setback.
9. The Board found that Mr. Lowrance testified that, due to the current configuration of the parking and loading area and County parking requirements, the project cannot expand in another area.
10. The Board found that Mr. Lowrance testified that the Applicant did not create the exceptional practical difficulty as the Property had the current configuration when purchased by the Applicant in July 2020.
11. The Board found that Mr. Lowrance testified that the proposed expansion will be constructed in an area that is already a utilitarian area for both businesses.
12. The Board found that Mr. Lowrance testified that the addition will be located towards the rear of the Property, will not be visible from the front of the Property, and will not alter the essential character of the neighborhood.

13. The Board found that Mr. Lowrance testified that the Property is zoned general commercial with other businesses such as Outlet Liquors, Nage Restaurant, and Hickman's Meat Market nearby.
14. The Board found that Mr. Lowrance testified that the addition will not reduce parking.
15. The Board found that Mr. Lowrance testified that this is the minimum to afford relief as the existing building is 0.5 feet and 0.3 feet from the side property line.
16. The Board found that Mr. Lowrance testified that parking is a premium on the site and this will not take up any parking.
17. The Board found that Mr. Lowrance testified that utilities and grease traps limit where the addition can be located as well.
18. The Board found that Mr. Lowrance testified that other neighbors do not oppose the request.
19. The Board found that Mr. Lowrance testified that there is a manufactured home park to the rear and it is separated by a fence. He believes that the addition will have no aesthetic change to the park.
20. The Board found that Mr. Lowrance testified that the two storage units will be removed and the cooler will be pushed to the edge of the shed.
21. The Board found that Mr. Lowrance testified that he is aware of parking issues but the parking issues go both ways and that Nage and Touch of Italy have an agreement with the Outlet Liquors owner so that their employees can park there.
22. The Board found that Mr. Lowrance testified that the restaurant has a capacity of 114 persons but the expansion is just for the kitchen to allow for more take-out business.
23. The Board found that Mr. Lowrance testified that the variances are needed due to the configuration of the building.
24. The Board found that Mr. Lowrance testified that the smaller block building on the northwest side of the Property has been removed.
25. The Board found that Mr. Lowrance testified that there is no access to Ocean View Avenue.
26. The Board found that Mr. Lowrance testified that the proposal will improve access to that side of the Property.
27. The Board found that no one appeared in support of or in opposition to the Application.
28. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered, 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 for the variance.
 - a. The Property is unique due to its shape and development. The Property is a narrow but long commercial property improved by commercial buildings that have been located on the site for many years. The building, which is the subject of the Application, has been on the site since the 1960s and needs a reasonable and small addition to accommodate upgrades to kitchen and storage areas. As part of this upgrade, the Applicant will be removing existing sheds on the site. The developable area is limited due to the location of the existing building and the location of utilities, grease trap, and parking. These conditions have created a limited building envelope and these conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to retain an existing building and make a small addition thereto on the site.
 - 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 unique physical characteristics and the buildable area thereof is limited due to

those characteristics. The Applicant seeks to retain an existing building and make a small addition thereto on the lot 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 this reasonably sized building to remain and for a small addition to be constructed on the lot. The Board is convinced that the shape and location of the structures are also reasonable, which is confirmed when reviewing the survey provided by the Applicant. The Board notes that the addition will be used for storage and additional kitchen space for the restaurant on the site.

- d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. As previously stated, the Property has unique conditions and these conditions have resulted in a limited building envelope on the Property. These conditions have created the unnecessary hardship and exceptional practical difficulty. Moreover, the Applicant only recently purchased the Property with the building in its present location.
- 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 structures will have no effect on the character of the neighborhood. The existing concrete building has been on the site for many years and the addition will take up an area that is used for sheds and a loading dock. The Board was not convinced by the opposition that the variances would somehow alter the essential character of the neighborhood. The Board notes that the area is commercial in nature and no parking spaces would be lost due to the addition. Moreover, the addition will not increase the seating capacity of the restaurant.
- f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulation at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain an existing building and make a small addition thereto on the Property. The size of the addition is only 360 square feet and is reasonable. The Applicant was constrained by the existing building as to the location of the possible addition.
- 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.
- h. This approval is subject to the following conditions:
 - i. The two existing sheds / storage units located in the northwest corner of the Property shall be removed.

The Board granted the variance application with conditions 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 with conditions. The Board Members in favor of the Motion to approve the variance with conditions were Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the Motion to approve the variance application. Mr. Travis Hastings did not participate in the discussion or vote on this application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



John Williamson
Chair

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

Date August 2, 2024