

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: BAR-SGR, LLC**

**(Case No. 12589)**

A public hearing was held after due notice on August 2, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson.

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 Applicant is requesting a variance of 14.9 feet from the sixty (60) feet front yard setback requirement for a proposed campground store. This application pertains to certain real property that is located on the north side of Holly Lake Road at the intersection of Holly Lake Road and John J. Williams Highway (Route 24) (911 Address: 32087 Holly Lake Road, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 2-34-17.00-20.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, an aerial photograph of the Property, property and deed information, a site plan of the Property, a survey of the Property, portions of the Zoning Code, photographs, 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 the Application.
3. The Board found that Kenneth Hopkins was sworn in to give testimony about the Application. Mackenzie Peet, Esquire, appeared on behalf of the Applicant and presented the Application.
4. The Board found that Ms. Peet stated that the Property is unique as it has split zoning, Agricultural Residential (AR-1) and General Commercial (C-1), and is subject to two front yard setbacks. She noted that the requested variance is on the C-1 portion of the Property and is subject to a restrictive 60-foot setback on both John J. Williams Highway and Holly Lake Road thereby minimizing the buildable lot area.
5. The Board found that Ms. Peet stated that the existing storage building on the Property was misplaced by the pole building contractor thereby creating a unique condition that limits the buildable area for the Applicant to make normal improvements to the Property.
6. The Board found that Ms. Peet stated that, because of the misplacement of the existing storage building, the Property cannot be developed in strict conformity with the Sussex County Zoning Code and that the variance is necessary for the reasonable use of the Property. She noted that a variance is necessary for the Applicant to make normal improvements to the Property.
7. The Board found that Ms. Peet stated that the Applicant is replacing its existing campground store.
8. The Board found that Ms. Peet stated that the exceptional practical difficulty was created by the pole building contractor as a result of the placement of the existing storage buildings.
9. The Board found that Ms. Peet stated that granting the variance will not alter the essential character of the neighborhood or the Holly Lake Campsite.

10. The Board found that Ms. Peet stated that the proposed location of the campground store improves the present conditions on the site because the existing campground store is located 12.5 feet from the existing right-of-way shown on the site plan and the proposed campground store will be located approximately 45.1 feet from the existing paving of the adjacent road.
11. The Board found that Ms. Peet stated that the requested variance is the minimum variance that will afford relief and represents the least modification possible of the regulation at issue.
12. The Board found that Ms. Peet stated that there is a dedicated 15 foot DeIDOT right-of-way on the front of the Property.
13. The Board found that Mr. Hopkins testified that the existing pole building was built during the summer of 2020 by Delmarva Pole Building and that there have been no complaints about the building.
14. The Board found that Mr. Hopkins testified that the pole building complies with the setback requirements but its placement created a problem when trying to build the new campground store.
15. The Board found that Mr. Hopkins testified that the site is served by septic and well.
16. The Board found that Mr. Hopkins testified that the proposed camp store will have a snack bar, registration office, a game room, and convenience store.
17. The Board found that Mr. Hopkins affirmed the statements made by Ms. Peet as true and correct.
18. The Board found that Tony Senn was sworn in to give testimony in support of the Application.
19. The Board found that Mr. Senn testified that he is the General Manager of BAR-SGR, Inc.
20. The Board found that Mr. Senn testified that the misplacement of the pole building caused the issue with setbacks.
21. The Board found that Mr. Senn testified that the plans for the store were drawn to meet the setbacks.
22. The Board found that Mr. Senn testified that the designation of the DeIDOT caused the need for a variance.
23. The Board found that one person appeared in support of and no one appeared in opposition to the Application.
24. 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 in size, shape, and development. The lot has an odd shape and borders on two roads. Due to its shape and split-zoning, the lot has an oddly shaped and limited building envelope. The Property has been used as a campground and the campground store needs to be replaced. A pole building was recently constructed on the Property to be used for storage but the building was misplaced by the contractor. As a result, the area where the campground store could be located is even further limited. The Property is also subject to a 15 foot right-of-way from DeIDOT that limits the depth of the lot. These conditions have created an unusually shaped and limited building envelope and these unique characteristics have created an exceptional practical difficulty and unnecessary hardship for the Applicant who seeks to construct a new campground store 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, shape, and development and the buildable area thereof is limited due to these conditions. The Applicant seeks to construct a proposed campground store on the lot but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that front yard variance is necessary to enable the reasonable use of the Property as the variance will allow the Applicant to make this reasonable improvement.
- d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicant. The Applicant did not create the unusual conditions of the Property. The lot has a unique shape and historical zoning. The preexisting conditions have resulted in a limited building envelope on the Property and the oddly shaped building envelope has created the exceptional practical difficulty and unnecessary hardship. The limited building envelope is further limited by the DeIDOT right-of-way and the error by Delmarva Pole Building when locating the pole building on the lot. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty and unnecessary hardship were not created by the Applicant but were created by the lot's unique characteristics and the placement of the pole building in error by the Applicant's builder.
- 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 have no effect on the character of the neighborhood. The variance will allow the Applicant to replace its campground store as proposed. There was no evidence that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The campground store will be placed substantially farther away from the front property line than the existing store and should be an improvement to the Property. The reduction in the degree of non-conformity should improve visibility along the adjacent road and will reduce the square footage of the buildings within the setback areas.
- f. The variance sought is the minimum variance necessary to afford relief and the variance requested represent the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to construct the reasonable improvement. The Board is convinced that the Applicant took measures to otherwise limit encroachments into the setback areas but was limited by the Property's unique conditions as aforesaid.
- 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 were Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the motion to approve 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 October 18, 2021