

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: LISA PRESTIPINO

(Case No. 12639)

A hearing was held after due notice on December 20, 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 variances from the side yard setback requirement for a proposed addition.

Findings of Fact

The Board found that the Applicant is requesting the following variances:

1. A variance of 10 feet from the twenty (20) feet side yard setback requirement on the southwest side for a proposed addition; and
2. A variance of 9.6 feet from the twenty (20) feet side yard setback requirement on the southwest side for a proposed addition.

This property is located at the northwest side of John J. Williams Highway (Route 24) approximately 0.32 miles southwest of Coastal Highway (Route 1) (911 Address: 18854 John J. Williams Highway, Rehoboth Beach) said property being identified as Sussex County Tax Map Parcel Number 334-12.00-89.00 ("the Property"). 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 August 20, 2018, the application for Case No. 12223, a proposed site plan dated October 13, 2021, findings of fact for Case No. 12223, photographs, a letter of support, 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 Lisa Prestipino and Freddy Bada were sworn in to testify about the Application. Mr. Bada is the Applicant's architect.
4. The Board found that Mr. Bada testified that the Property is unique as it is a small commercial lot consisting of approximately 20,000 square feet with a building that is over 40 years old. He noted the Property has been used for the Apple Electric business for over 20 years.
5. The Board found that Mr. Bada testified that the business is growing and the existing building is not big enough to support the current employees but the Applicant cannot afford to move its business.
6. The Board found that Mr. Bada testified that the addition will be a small two-story addition to accommodate 6-8 employees.
7. The Board found that Mr. Bada testified that the Board previously issued a variance for a warehouse.
8. The Board found that Mr. Bada testified that the State has taken some of the Property to widen John J. Williams Highway so this is the only area that could be developed.
9. The Board found that Mr. Bada testified that the addition will not alter the essential character of the neighborhood as there are a lot of commercially zoned properties in this area. He noted that a car dealership and hotel are being developed nearby.
10. The Board found that Mr. Bada testified that the exit will be to the rear of the addition with a small stoop and the addition will meet the rear yard setbacks.

11. The Board found that Mr. Bada testified that there is a natural buffer of trees between the subject property and the adjacent property.
12. The Board found that Ms. Prestipino testified that she bought the Property in 1999 and, at that time, she had four employees. According to Ms. Prestipino, Apple Electric now has 43 employees.
13. The Board found that Ms. Prestipino testified that she has made accommodations for off-site employee parking and that the business has adequate parking.
14. The Board found that Ms. Prestipino testified that there is commercially zoned property in the area which includes a dentist office, an undeveloped lot, and a lot owned by Tidewater Utilities.
15. The Board found that Ms. Prestipino testified that the adjacent lot is zoned AR-1 but is unlikely to be used for residential use.
16. The Board found that Ms. Prestipino testified that 6 employees will use the addition and the space will not accommodate new employees but will allow existing staff to spread out within the building.
17. The Board found that Ms. Prestipino testified that DelDOT took 5-6 feet of the front yard.
18. The Board found that Mr. Bada testified that the Applicant will have to still have to obtain all approvals from other agencies such as Fire Marshal, Conservation District, and DelDOT.
19. The Board found that no one appeared in support of or in opposition to the Application.
20. 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 for the variances.
 - a. The Property is unique due to its small building envelope and existing development. While the Property consists of slightly over 20,000 square feet, a significant portion of the Property is unbuildable due to the 60 feet front yard setback requirement from Route 24 and the 30 feet rear yard setback requirement from residential properties to the rear. The site is improved by a building, which has been on the Property for 40 years, and a warehouse. The Applicant intends to construct a small addition to the building to accommodate staff but, due to the limited building envelope, however, the Applicant is unable to construct the addition on the site without encroaching into the setback areas. The Property is also unique because DelDOT has taken a portion of the front yard for the Route 24 widening project and that taking has further limited the building envelope of the Property. Moreover, the Property is adjacent to lands zoned residential to the side yard but the adjacent lot is actually vacant and is adjacent to another commercial business. The Applicant reasonably believes that the lot to the southwest will not be used residentially. If that lot was zoned commercially, a lesser side yard setback would be required. The Board finds that the lot's unique conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to construct an addition 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 and limited buildable area. The Applicant seeks to construct a reasonable addition to the existing office 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 a reasonably sized addition to be constructed on the Property. The Board is convinced that the shape and location of the addition are also reasonable, which is confirmed when reviewing the survey provided by the Applicant. The Board notes that the addition will be used to provide additional office space for the Applicant's existing staff.

- 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.
- 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 addition will have no effect on the character of the neighborhood. The addition will be located off the existing office building and will be set back farther than would be required if the adjacent lot was zoned commercially. The adjacent lot is currently vacant and is not used residentially. The surrounding area is largely commercial in nature and the use is consistent with that use. There was no substantial evidence that the addition would somehow alter the essential character of the neighborhood. The Board notes that no letters in opposition or testimony in opposition were presented to the Board.
- 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 place the reasonably sized addition on the Property. The Board is convinced that the Applicant explored other options for the size, shape, and location of the addition but was constrained by the conditions of the lot.
- 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 the variance 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 the variance 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 February 21, 2022.