

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

**IN RE: SCHELL BROTHERS**

**(Case No. 12736)**

A public hearing was held after due notice on September 12, 2022. The Board members present were: Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

This is an application for variances from the front yard setback requirement for existing structures.

Findings of Fact

The Board found that the Applicants are requesting the following variances:

1. A variance of 9.7 feet from the sixty (60) feet front yard setback requirement for the Italiante building;
2. A variance of 7.7 feet from the sixty (60) feet front yard setback requirement for the grocery building;
3. A variance of 10 feet from the sixty (60) feet front yard setback requirement for the theater building;
4. A variance of 7.7 feet from the sixty (60) feet front yard setback requirement for the Schell Brothers workshop building;
5. A variance of 10 feet from the sixty (60) feet front yard setback requirement for the reindeer building;
6. A variance of 9.9 feet from the sixty (60) feet front yard setback requirement for the Grand Victorian building;
7. A variance of 11 feet from the sixty (60) feet front yard setback requirement the town hall building; and
8. A variance of 10.9 feet from the sixty (60) feet front yard setback requirement for the playhouse building.

This application pertains to certain real property located on the northwest side of Tanger Boulevard approximately 0.10 miles from Coastal Highway (911 Address: 36645 Tanger Boulevard, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 334-13.00-325.52 & 325.53 ("the Property"). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, aerial photographs of the Property, a site plan of the Property dated September 2021, 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 Alyssa Titus was sworn in to give testimony about the Application.
4. The Board found that Ms. Titus testified that the Applicant seeks variances for their leased property for a Christmas Village which is free to residents.
5. The Board found that Ms. Titus testified that they had over 100,000 persons in attendance last year and that the Christmas Village is a neighbor to the Tanger Outlets, who is also the landlords for the Property. She noted that the landlord and



other tenants support the Application as they saw a large influx in business because of the Christmas Village. According to Ms. Titus, the Applicant has received letters from a number of business surrounding them that indicated their thanks for the additional business that was generated by them.

6. The Board found that Ms. Titus testified that they have no residential neighbors and that the land behind them is a Delaware State Park where the Applicant currently has an agreement for overflow parking.
7. The Board found that Ms. Titus testified that the Applicant has renewed its lease and are looking to extend it even further.
8. The Board found that Ms. Titus testified that the Christmas Vilalge is a totally free event to the community and their company has invested a lot of money in this project to bring happiness to Sussex County.
9. The Board found that Ms. Titus testified that she does not believe this would adversely affect any of the neighbors.
10. The Board found that Ms. Titus testified that these are all tiny structures that were created off site and are actually playhouses for children.
11. The Board found that Ms. Titus testified that, if this is permitted, they will likely do seasonal events when it is not Christmas such as Easter and Halloween events that would also be free to the public.
12. The Board found that Ms. Titus testified that the structures are on site now and that they formerly used to transport the structures off site when not in use but they were unaware that they needed additional approvals prior when conducting these events at both the Lewes Ferry Terminal and Hudson Fields.
13. The Board found that Ms. Titus testified that last year it was brought to their attention by the obtaining Fire Marshal approval and creating a stormwater management system with Sussex Conservation District that they needed to obtain approvals from Sussex County as well.
14. The Board found that Ms. Titus testified that the Applicant uses Clean Delaware to handle wastewater on site.
15. The Board found that Ms. Titus testified that there are trees, shrubbery, and fence at the entrance to the Christmas Village and they bring in live Christmas trees in order to create the maze. The trees are not permanent.
16. The Board found that Ms. Titus testified that that there is a permanent fence around the entire village.
17. The Board found that Ms. Titus testified that there have been no complaints about the Christmas Village.
18. The Board found that Ms. Titus testified that the structures are movable but the Applicant would prefer to leave the structures in place as there are pavers around them and it is expensive to have them moved. In addition, the structures can be damaged when moved.
19. The Board found that Ms. Titus testified that Tanger loves having them as it has increased traffic to their stores drastically and Tanger is seeking to have one at their Nashville location.
20. The Board found that Ms. Titus testified that the layout of the buildings are placed in such a manner to allow for flow of traffic.
21. The Board found that Ms. Titus testified that it can become crowded and they rearranged some dead ends to make it more functional for traffic reasons.
22. The Board found that Ms. Titus testified that they are building an access way to reach the rear of the village which was only accessible by a U-turn.
23. The Board found that Ms. Titus testified that they are placing the line for the roller rink inside of the rink this year which will help alleviate foot traffic concerns, which will help with the flow of the site.
24. The Board found that Ms. Titus testified that Tanger Boulevard is a wrap around road to give access to the rear stores of the Tanger Outlets. She noted that Tanger



Boulevard is a private road maintained by Tanger Outlets. and that their volunteers are the only ones parked in the area of Tanger Boulevard while the Christmas Village is in operation.

25. The Board found that Ms. Titus testified that there is a parking lot and stormwater management between Tanger Boulevard and their property. They also have a new stormwater management system that drains from the entire property.
26. The Board found that Ms. Titus testified that the structures are at least 50 feet off the property line.
27. The Board found that Ms. Titus testified that Tanger Boulevard is not regularly traveled but it used as an easement to the properties.
28. The Board found that Ms. Titus testified that people will park and be shuttled in by one (1) of their eight (8) trolleys and the Applicant has an agreement with the church for additional parking.
29. The Board found that Ms. Titus testified that the Applicant has two (2) lots which each have four (4) buildings located on them.
30. The Board found that Ms. Titus testified that there is no entrance to the Village from Holland Glade Road though you can access the Outlets from Holland Glade Road. She noted that, during the festival, they block off Holland Glade access and the only access to the Village is over a footbridge by use of the trolleys.
31. The Board found that Ms. Titus testified that a hotel is being built to the left of Lot 2 and the parking lot will be completely separate from their parking.
32. The Board found that Joni Von Vorys was sworn in to give testimony about the Application.
33. The Board found that Ms. Von Vorys testified that Schellville is a great family venue and it is created for children but adults love it too.
34. The Board found that Ms. Von Vorys testified that the Christmas Village is to enjoy the Christmas holiday and spirit and there are a variety of small playhouses for children to enjoy. She noted that they have a shopping center, market, and airport where kids can go and play with toys and that it is a free event to take children to see Santa and enjoy the holidays.
35. The Board found that one person appeared in support of and no one appeared in opposition to the Application.
36. 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 due to its size, topography, and setback requirements. The Property is located behind the existing Tanger Outlets adjacent to a road that is lightly used yet is subject to a 60 foot setback requirement from that road. The Property has a shallow depth from Tanger Boulevard and there is a large gap from the edge of the property line to the actual road of Tanger Boulevard. In fact, there is a drainage area and parking between the front property line and Tanger Boulevard. The Property is also subject to a 60 foot setback requirement from Holland Glade Road even though the Property has no direct vehicular access to Holland Glade Road. As a result, the building envelope is quite limited. The Board also notes that there is a stormwater facility within the building envelope thereby further limiting the developable area. The unique characteristics of this Property have created a limited building envelope and have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to use the Property for a Christmas Village housing various playhouses and related structures that are within the setback area.



- 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 playhouses and related structures on the lot 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 these reasonable structures to remain on the lot. The Board is convinced that the shape and location of these structures are also reasonable, which is confirmed when reviewing the survey provided by the Applicant. The Board notes that these structures are small in nature as well.
- 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 structures will have no effect on the character of the neighborhood. No substantial evidence that the structures would somehow alter the essential character of the neighborhood was presented to the Board. The structures are small in size and have been on the Property for approximately one year without complaint. The Applicant credibly testified that it received compliments from neighboring tenants and the landlord for the positive impact the Christmas Village had on the neighboring properties. There is also a gap between the edge of paving of Tanger Boulevard and the front property line thereby minimizing the impact of the front yard encroachments. The Board notes that there are parking and stormwater areas between the road and the structures.
- 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 the reasonably sized structures on the Property. The Board is convinced that the Applicant explored other options for the size, shape, and location of the structures 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 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 Application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY



Jeffrey Chorman  
Chair

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

Date November 7, 2022.