

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

**IN RE: WADE, LLC**

**(Case No. 12418)**

A hearing was held after due notice on March 2, 2020. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front yard and the corner front yard setback requirements for proposed structures.

Findings of Fact

The Board found that the Applicant is seeking a variance of 7 feet from the sixty (60) feet front yard setback requirement from Birch Road for a proposed addition, a variance of 9 feet from the sixty (60) feet front yard setback requirement from Birch Road for a proposed addition, a variance of 8 feet from the fifteen (15) feet corner front yard setback requirement from South Street for a proposed external staircase, and variances of five (5) feet from the fifteen (15) feet corner front yard setback along South Street for proposed HVAC units. This application pertains to certain real property located on the northeast corner of Birch Road and South Street approximately 55 feet east of Old Landing Road (911 Address: 35603 South Street, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-13.00-150.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a letter from the Applicant's engineer, an aerial photograph of the Property, drawings of the proposed addition, a survey of the Property dated November 2019, a site plan of the proposed addition, 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 Zac Crouch was sworn in to give testimony about the Application.
4. The Board found that Mr. Crouch testified that the building is currently a one and a half story office building formerly used as a bar stool business and the Applicant recently purchased the Property.
5. The Board found that Mr. Crouch testified that the original plan was to restore the original building but the building would not meet current County and ADA requirements. The Applicant now intends to remove and replace the existing office on site with a three story addition.
6. The Board found that Mr. Crouch testified that the State Fire Marshal requires two egress accesses from the office building thereby necessitating the request for the steps on the side of the building. The building will have an interior staircase and elevator as well.
7. The Board found that Mr. Crouch testified that the addition will consist of 1,500 square feet and, if the Applicant constructed a second interior staircase, the Applicant would lose 400 square feet of usable space in the addition.
8. The Board found that Mr. Crouch testified that, to make the building feasible, the structures will encroach into setbacks.
9. The Board found that Mr. Crouch testified that the existing building encroaches into setbacks and the new building will encroach less than the existing building.

10. The Board found that Mr. Crouch testified that the Property is unique as the drive lane around the building is one way and the Applicant is trying to utilize the existing building.
11. The Board found that Mr. Crouch testified that the Applicant looked at putting the stairs on the other side of the building but, due to restrictions per fire code, the only place to put the stairs was on the South Street side which creates the need for a variance.
12. The Board found that Mr. Crouch testified that the exceptional practical difficulty was not caused by the Applicant but by the age of the building and the need to make it ADA compliant.
13. The Board found that Mr. Crouch testified that renovating the existing building will not alter the essential character of the neighborhood.
14. The Board found that Mr. Crouch testified that the building will otherwise meet stormwater, DeIDOT, and Fire Marshal regulations.
15. The Board found that Mr. Crouch testified that the requests are the minimum variances needed for the structures and the new addition will encroach less than the existing building.
16. The Board found that Mr. Crouch testified that there is approximately 10 feet from the property line to the edge of South Street.
17. The Board found that Mr. Crouch testified that the building has been on the site for a long time and that the Applicant has received no complaints about the building.
18. The Board found that no one appeared in support of or in opposition to the Application.
19. 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 shape and historical use. The Property was previously developed with a warehouse and office by a prior owner and the office building needs to be replaced. The Property has accesses onto 2 roads and a significant portion of the Property is limited due to the location of the drive aisle for the parking lot. The lot has a limited building envelope due to these conditions and the building envelope is further constrained by Fire Marshal requirements regarding access to the building. These conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to redevelop the Property as noted.
  - 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 Property and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to construct an addition, stairs, and HVAC units on the lot but is unable to do so while complying with the Sussex County Zoning Code. The Board is thus convinced that the variances are necessary to enable the reasonable use of the Property as the variance will allow the Applicant to construct an addition, stairs, and HVAC units on the lot. The Board is convinced that the size, shape, and location of the structures are reasonable. The Board also notes that the addition encroaches less into the front yard setback area than the existing building.
  - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. As discussed above, the Property has unique conditions which have limited the Applicant's ability to reasonably develop the Property. The Applicant did not create the unique conditions of the lot or construct the original warehouse and office. The Board was convinced

that the Applicant has not created the exceptional practical difficulty and unnecessary hardship. Furthermore, the Board is convinced that the Applicant did not come to the Property with an illegal use in mind. Rather, the Applicant is limited by the physical conditions of the Property and the prior development thereof and the Applicant needs the variances in order to reasonably develop the Property as proposed and to construct an addition, stairs, and HVAC units.

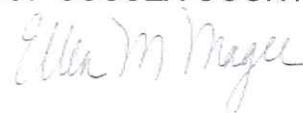
- e. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the variances will have no effect on the character of the neighborhood. The variances will allow the Applicant to construct an addition, stairs, and HVAC units as proposed. No neighbors appeared in opposition to the request and the addition will encroach less into the front yard setback area than the existing building. The Board also notes that there is a large gap between the edge of paving of the road and the corner front property line so the Property appears larger than it actually is. Lastly, the Board finds that no evidence was presented which demonstrate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to construct an addition, stairs, and HVAC units on the Property. The Board notes that the addition will encroach less into the front yard setback area than the existing building. The Board finds that the Applicant took reasonable measures to otherwise limit encroachments into the setback area but was constrained by the Property's unique conditions and other regulations.
- 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, Ms. Ellen Magee, Mr. Brent Workman, and Mr. John Williamson. No Board Member voted against the motion to approve 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 May 5, 2020.