

**TOWN OF SELBYVILLE
BOARD OF ADJUSTMENT
MINUTES
February 21, 2024**

Chairman/Mayor Duncan called the Board of Adjustment Hearing to order at 5 o'clock pm. Member/Town Solicitor Mary Schrider-Fox and Councilmember Chris Snader were also in attendance. Also in attendance was Town Administrator Stacey Long as Secretary of the Board and Town Building Inspector Tony Merollini.

The meeting was properly advertised 15 days in advance in a publication of general circulation.

Visitors in attendance were the applicant, Bruce Hrebik. No other visitors were in attendance.

First item on the agenda is approval of the minutes from January 17, 2024. Motion to approve the minutes was made by Member/Town Solicitor Mary Schrider-Fox. Councilman Snader seconded the motion and was carried by all.

The second item on the agenda is a request to construct 2 additional warehouses for storage located at 9 Mason Drive, TMP# 533-16.00-135.00. Due to the layout of the existing building, the 2 additional buildings will encroach on the front, side, and rear yard setbacks.

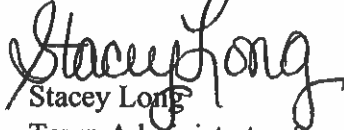
The finding of facts and decision of the Board of Adjustment is attached hereto.

There were no letters received on the application in favor of or in opposition of the requested variance.

Member/Town Solicitor Mary Schrider-Fox made a motion to approve the variance as requested. The motion was seconded by Councilman Snader and carried by all.

There being no further business, Member/Town Solicitor Mary Schrider-Fox made a motion to adjourn the hearing. The motion was seconded by Councilmember Snader and carried by all.

Respectfully submitted,


Stacey Long

Town Administrator &
Secretary of the Board of Adjustment

**BEFORE THE BOARD OF ADJUSTMENT
OF THE TOWN OF SELBYVILLE**

IN RE: :
 :
APPLICATION OF : **DECISION**
 :
BRUCE HREBIK :

The Board of Adjustment of the Town of Selbyville convened at 5:00 o'clock in the afternoon, prevailing time, on Wednesday, February 21, 2024, at the Town Hall, 1 West Church Street, Selbyville, Sussex County, Delaware, to hear the application of Bruce Hrebik (hereinafter the "Applicant") for variances from the minimum front, side and rear yard setback requirements imposed by Section 200-94.B of the Zoning Code of the Town of Selbyville (hereinafter the "Zoning Code"), for industrial property owned by Applicant located at 9 Mason Drive, Selbyville, Delaware, Sussex County Tax Map and Parcel No. 533-16.00-135.00. Present for the Board of Adjustment were Richard A. Duncan, Sr., Mayor and Chair, and members Chris S. Snader, Sr., Council Member, and Mary R. Schridder-Fox, Town Solicitor. Present as well were Stacey Long, Town Manager and Secretary for the Board of Adjustment, and Tony Merollini, Building Inspector and Code Enforcement Official. The Applicant, Bruce Hrebik, appeared to present the application.

FINDINGS OF FACT

The Applicant, Bruce Hrebik, is the owner of industrial real property located at 9 Mason Drive, Selbyville, Delaware, Sussex County Tax Map and Parcel No. 533-16.00-135.00, within the corporate limits of the Town of Selbyville, Sussex County, State of Delaware (the "subject property"). The subject property is located in the IP Industrial Park District.

The subject property is improved with an existing warehouse building used to store products and equipment related to Applicant's wholesale turf business. Applicant sells products such as, but not limited to, grass seed and fertilizer, as well as equipment for turf application.

Applicant has owned the subject property for approximately 6 months.

Applicant desires to further improve the subject property by constructing 2 additional warehouse buildings thereon in order to accommodate the growth of his existing turf business and the need to store more products and equipment related thereto. One proposed new building will be approximately 4,900 square feet in size, more or less, and the other proposed new building will be approximately 3,300 square feet in size, more or less.

No flammable materials are or will be stored on the subject property in either the existing or proposed new warehouse buildings.

The space available to construct the 2 additional warehouse buildings is limited due to the placement of the existing warehouse building on the subject property. A previous owner of the subject property built the existing building in approximately 1998 or 1999 and placed the building at an odd angle so that the front of the building would align with Mason Drive. However, the odd angle of the existing building creates wasted space on the subject property and creates difficulty with respect to constructing 2 additional warehouse buildings without encroaching into setback areas.

The subject property has 3 entrances from adjacent roadways for Fire Department access.

According to Section 200-94.B of the Zoning Code, the setback requirements for the subject property are: (1) Front yard – 30 feet; (2) Side yard abutting Discovery Lane – 20 feet; (3) Side yard abutting Dixon Street – 30 feet; and (4) Rear yard – 30 feet.

The Industrial Park Committee for the Town met on November 29, 2023, to consider Applicant's request to construct 2 additional warehouse buildings on the subject property and unanimously accepted Applicant's request, provided Applicant obtains all necessary variances from the Board of Adjustment. The Industrial Park Committee recommended to the Mayor and Council that they also approve Applicant's request.

Subsequently, at the December 4, 2023, Town Council meeting, the Mayor and Council accepted the Industrial Park Committee's recommendation concerning Applicant's request, including the condition that Applicant must obtain all necessary variances from the Board of Adjustment.

Some time after the December 4, 2023, Town Council meeting, Applicant met with the Fire Marshal for the State of Delaware and was informed that Applicant would have to make some changes to the size of the 2 proposed buildings and the placement of said buildings on the subject property in order to accommodate certain requirements regarding distance between buildings. Accordingly, Applicant revised his original proposal and presented that revised proposal to the Town Council at its February 5, 2024, meeting. The Mayor and Council unanimously approved Applicant's revised proposal, once again conditioned upon Applicant obtaining all necessary variances from the Board of Adjustment.

According to the Town Administrator, the Industrial Park Committee advised her that its acceptance of and recommendation of Applicant's proposal from November 29, 2023, extended to Applicant's revised proposal as well.

The variances that Applicant is requesting in order to construct the 2 new warehouse buildings in accordance with his revised proposal, conditionally approved by the Mayor and Council on February 5, 2024, are as follows: (1) A variance of up to 10 feet into the 30 foot front yard setback; (2) A variance of 2 feet into the 20 foot side yard setback abutting Discovery Lane; (3) A variance of 5 feet into the 30 side yard setback abutting Dixon Street; and (4) A variance of 12 feet into the 30 foot rear yard setback.

No other variances are necessary in order for Applicant to construct the 2 new warehouse buildings. Specifically, Applicant's proposed new construction will comply with the 70% lot coverage requirement in the Zoning Code applicable to the subject property.

Neighboring properties also located in the industrial park, where the subject property is located, are also used for similar light industrial purposes.

The Board received no comments from the public, either in person at the hearing or in writing.

CONCLUSIONS

Pursuant to Section 200-132. C. of the Zoning Code of the Town of Selbyville, the Board of Adjustment shall:

authorize upon appeal, in specific cases, such variance from the chapter as will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions of the chapter will result in unnecessary hardship or exceptional practical difficulties to the owner of the property, and so that the spirit of this chapter shall be observed and substantial justice done, provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the chapter or Zoning Map.

Under Delaware case law, the Delaware Supreme Court has defined the two (2) types of variances, "use" variances and "area" variances. The Board of Adjustment v. Kwik-Check Realty, Inc., Del. Supr. 389 A.2d at 1289, 1291 (1978). That court indicated that "a use variance is a variance that changes the character of the zoned district by allowing the land to be used for a purpose otherwise proscribed by the zoning regulations." Id. However, an area variance "does not involve a prohibited use, and 'concerns only the practical difficulty in using the particular property for permitted use.'" Id. at 1291. The variance requested in this instance is an area variance to which the "exceptional practical difficulty" standard applies.

The Board concludes that the Applicant faces an exceptional practical difficulty in relation to its efforts to make normal improvements to the subject property that will accommodate the growth of his existing turf business and the need to store more products and equipment related thereto.

The Board further concludes that the previous owner's placement of the existing building at an odd angle and the existence of 3 entrances on the subject property create a difficulty unique to the subject property with respect to having adequate space to construct additional, normal improvements that are necessary for Applicant's business.

The Board further concludes that Applicant's exceptional practical difficulty was not self-created, as the previous owner chose to locate the existing building at an odd angle, making future improvements more difficult.

The Board further concludes that the requested variances will not adversely affect neighboring properties and are in keeping with the character of the neighborhood, as evidenced by the Industrial Park Committee's approval of Applicant's proposal.

The Board further concludes that the variances hereby granted are within the spirit of the zoning regulations and the existing neighborhood.

DECISION

It is the unanimous decision of the Board of Adjustment of the Town of Selbyville that the following variances are hereby granted for Applicant's property located at 9 Mason Drive, Selbyville, Delaware, Sussex County Tax Map and Parcel No. 533-16.00-135.00: (1) A variance of up to 10 feet into the 30 foot front yard setback; (2) A variance of 2 feet into the 20 foot side yard setback abutting Discovery Lane; (3) A variance of 5 feet into the 30 side yard setback abutting Dixon Street; and (4) A variance of 12 feet into the 30 foot rear yard setback.

BOARD OF ADJUSTMENT OF THE TOWN OF SELBYVILLE

By:


Richard A. Duncan, Sr., Mayor/Chair

By:


Chris S. Snader, Sr., Member/Council Member

By:


Mary R. Schrider-Fox, Member/Town Solicitor

Date Filed with Town: March 11, 2024

Date Mailed/Emailed to Applicant: March 12, 2024