

## BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE:            **WEST REHOBOTH COMMUNITY LAND**            **Case No. 10831 – 2011**

A hearing was held after due notice on September 26, 2011. The Board members present were: Mr. Dale Callaway, Mr. Ronald McCabe, Mr. John Mills, Mr. Brent Workman, and Mr. Jeff Hudson.

### Nature of the Proceedings

This is an application for a variance from the maximum square footage requirement for a multifamily structure.

### Finding of Facts

The Board found that the Applicant was seeking a variance from minimum square footage requirements for a multi-family structure on a parcel east of Route 1 (Coastal Highway), north of Dunbar Street, part of Lot 90, West Rehoboth. The Applicant was requesting a 273 sq. ft. variance from the required 7,260 sq. ft. lot size requirement for a multi-family structure. After a hearing, the Board made the following findings of fact:

1. The lot was originally created by a Deed which indicated that the lot had 7,107.75 sq. ft. A survey and Deed in 1994, however, showed a reduced size of 6,986 sq. ft.
2. The Applicant wishes to construct a duplex on the property, but there is insufficient square footage under the current Code.
3. The applicant represented that until 1999 there were two manufactured homes on the lot, and the lot has two existing sewer and water laterals.
4. The proposed duplex will front on both Dunbar Street and Hebron Road; however, DelDOT has limited access to the Dunbar Street footage.
5. Four parking spaces will be available.
6. The Applicant also has applied to the Planning & Zoning for a conditional use permit, in order to allow for the duplex. Any approval by Planning & Zoning would be contingent upon the Board granting a variance, and any variance would be void if the conditional use is denied.
7. The Applicant is a non-profit organization that wants to provide affordable housing to two families.
8. Robert Paul, an adjacent property owner, appeared in opposition through counsel. Although he supports the Applicant's desire to help the community, he has renovated homes for low income families for a number of years and is opposed to a multi-family structure, which he believes will decrease property values. He pointed out that there are no other multi-family structures in West Rehoboth, no sidewalks, and inadequate parking. He does not believe there is anything unique about the property itself, as all of the lots in the development are similar in size. He does not believe in economic hardship should suffice as justification for the variance.
9. Jason Abela also testified in opposition, pointing out that a single family dwelling could be built on the property without variances.
10. Stephanie Shelton also testified in opposition. She has owned property in the development since 1991, and does not remember manufactured homes being located on the property. She testified that there is already a parking problem on the street.
11. Helena Berp testified in opposition, similarly pointing to a significant traffic and parking problem. She testified that she would not have purchased her property had she understood that multi-family structures would have been permitted.
12. Tim Waters testified in opposition, and warned of a precedent should the Board grant such an application.
13. Frank Ruffie similarly testified in opposition, and was concerned that approval of this application would lead to additional multi-family structures.
14. The Board determined that the application did not meet the standards for granting a variance. As testimony revealed, there is nothing unique about the property, and it is of the same approximate size as other lots in the development. The property can also reasonably be utilized and developed without the need for a variance.

Specifically, a single family dwelling can be built without variances, which the Board considered to be reasonable use. Any difficulty presented by the application is being created by the Applicant's attempt to place two dwellings on one lot.


15. Although the Board understood that two dwellings may have been located on the property in the past, that non-conforming use has been eliminated, and under the general theory of non-conforming uses, once a non-conforming use disappears, the property should be developed in conformity with the existing Ordinance. The Board also determined that a duplex would alter the essential character of the neighborhood, which consists of single family residential structures.

The Board denied the requested variance.

Decision of the Board

Upon motion duly made and seconded, the application was denied. The Board members voting in favor of denial were: Mr. Callaway, Mr. McCabe, Mr. Mills, Mr. Workman, and Mr. Hudson; voting against denial – none.

**BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY**

  
Dale Callaway  
Chairman

Date November 8, 2011