

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

**IN RE: M&M PROPERTIES, LLC**

**(Case No. 11378)**

A hearing was held after due notice on April 21, 2014. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front yard setback requirement for a through lot.

Findings of Fact

The Board found that the Applicant was seeking a variance of fifteen (15) feet from the forty (40) feet front yard setback requirement for a through lot on Road 611 (Owens Road) and a variance of fifteen (15) feet from the forty (40) feet front yard setback requirement for a through lot on Route 16 (Beach Highway). The Applicant has requested that the aforementioned requested variances be granted as they pertain to certain real property located northwest of Road 611 (Owens Road) and south of Route 16 (Beach Highway); said property being identified as Sussex County Tax Map Parcel Number 4-30-6.00-38.00. After a hearing, the Board made the following findings of fact:

1. The Board found that the Office of Planning and Zoning received no correspondence regarding the Application.
2. Anthony Morgan, III, was sworn in to testify on behalf of the Application.
3. The Board found that Mr. Morgan testified that he purchased the Property at a tax sale.
4. The Board found that Mr. Morgan testified that he originally believed the Property to be a half ( $\frac{1}{2}$ ) acre lot but later discovered after surveying it that the Property was only a quarter ( $\frac{1}{4}$ ) acre lot.
5. The Board found that Mr. Morgan testified that the Delaware Department of Transportation ("DelDOT") acquired the corner of the Property in 1988 for a daylight easement and that the Property borders Road 611 and Route 16.
6. The Board found that Mr. Morgan testified that the triangular shaped lot and setback requirements for a through lot make the Property unique.
7. The Board found that Mr. Morgan testified that he intends to construct a two-story dwelling that will measure twenty-eight (28) feet by forty-two (42) feet.
8. The Board found that Mr. Morgan testified that there will be an attached garage, porch and deck to the proposed dwelling.
9. The Board found that Mr. Morgan testified that the proposed dwelling will meet the ten (10) feet side yard setback requirement.
10. The Board found that Mr. Morgan testified that the current structure encroaches into the roadway.
11. The Board found that Mr. Morgan testified that the current structure is over a hundred years old and is falling down.
12. The Board found that Mr. Morgan testified that he intends to tear down the current structure and build a new house.
13. The Board found that Mr. Morgan testified that the variances are needed to enable reasonable use of the Property.
14. The Board found that Mr. Morgan testified that the buildable area on the Property would only allow for a structure measuring twelve (12) feet by twelve (12) feet.
15. The Board found that Mr. Morgan testified that the difficulty was not created by him.

16. The Board found that Mr. Morgan testified that the proposed dwelling enhances the neighborhood and does not alter the character of the neighborhood.
17. The Board found that Mr. Morgan testified that the variances are the minimum variances to afford relief.
18. The Board found that Mr. Morgan testified that the Property cannot otherwise be developed without the variances.
19. The Board found that Mr. Morgan testified that the proposed structure will encroach twenty-seven (27) feet less into the setback areas than the existing structures.
20. The Board found that no parties appeared in support of or in opposition to the Application.
21. Based on the findings above and the testimony presented at the public hearing and the public record, the Board determined that the Application met the standards for granting a variance. The shape of the Property and the DelDOT right-of-way make the Property unique. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code. The setback requirements leave a very small building envelope and the Applicant is unable to build a reasonable dwelling within that building envelope. As such, the variances are necessary to enable reasonable use of the Property. The difficulty was not created by the Applicant. The right-of-way easements and the shape of the Property were not created by the Applicant. The variances will not alter the essential character of the neighborhood. The variances sought are the minimum variances necessary to afford relief.

The Board approved the variance application finding that it met the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the Application was approved. The Board Members voting to approve the Application were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Member voted against the Motion to Approve the Application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY

  
Dale Callaway  
Chairman

If the use is not established within one (1) year from the date below the application becomes void.

Date June 3, 2014