

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DRC PROPERTIES, LLC

(Case No. 11469)

A hearing was held after due notice on October 20, 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 maximum length requirement for a multi-family buildings located in a development.

Findings of Fact

The Board found that the Applicant was seeking a variance of 3.42 feet from the maximum length of 165 feet for multi-family buildings located in a development. This application pertains to certain real property located east of Old Mill Bridge Road (Road 381) approximately 300 feet north of Lighthouse Road (Route 54) (911 Address: None Available); said property being identified as Sussex County Tax Map Parcel Number 5-33-12.00-76.05). After a hearing, the Board made the following findings of fact:

1. The Board found that the Office of Planning & Zoning received no correspondence regarding the Application.
2. Preston Dyer and Mark Davidson were sworn in to testify about the Application.
3. The Board found that Mr. Dyer testified that he is a member of the Applicant.
4. The Board found that Mr. Dyer testified that Sussex County Council rezoned the Property as HR1 (density residential) several years ago and the Applicant placed a deed restriction limiting the construction to only 100 residential units on the Property.
5. The Board found that Mr. Dyer testified that the Sussex County Planning & Zoning Commission approved a site plan.
6. The Board found that Mr. Dyer testified that the original project was designed to accommodate six (6) unit villas not to exceed 165 feet long.
7. The Board found that Mr. Dyer testified that market conditions changed and the national builder, who requested the originally approved plan, requested a change in the proposed villas to accommodate a master bedroom on the first floor and a single car garage.
8. The Board found that Mr. Dyer testified that the changes were made in response to the new market conditions.
9. The Board found that Mr. Dyer testified that the design change added 3.5 feet to the total length of originally proposed buildings which were 165 feet long.
10. The Board found that Mr. Dyer testified that 404 Non-Tidal Wetlands exist on the site at an irregular shape which makes the Property unique.
11. The Board found that Mr. Dyer testified that the Delaware Department of Transportation ("DelDOT") imposed a restriction that the entrance to the community also serve the adjacent commercial property.
12. The Board found that Mr. Dyer testified that the irregular shaped borders and the wetland lines do not allow the newly designed buildings to be rearranged in such a manner to maintain the forty (40) feet separation requirement between units.
13. The Board found that Mr. Dyer testified that an exceptional practical difficulty exists.
14. The Board found that Mr. Dyer testified that, due to the maximum length requirement by the zoning code, the Property cannot otherwise be developed to accommodate the new design.

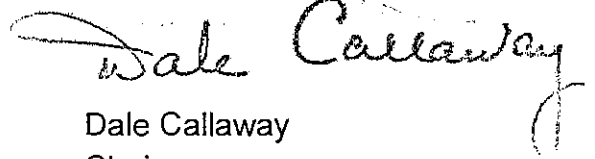
15. The Board found that Mr. Dyer testified that the variance is necessary to enable reasonable use of the Property and that the difficulty was not created by the Applicant.
16. The Board found that Mr. Dyer testified that the existence of the irregular shaped 404 Non-Tidal Wetlands boundary and market conditions created the difficulty.
17. The Board found that Mr. Dyer testified that the variances will not alter the essential character of the neighborhood since the required forty (40) feet separation requirement between buildings will be met.
18. The Board found that Mr. Dyer testified that the use will not substantially or permanently impair the appropriate use for development of adjacent properties, since the additional 3.42 feet is imperceptible by those within the Property or from the adjoining properties.
19. The Board found that Mr. Dyer testified that the use will not be detrimental to the public welfare.
20. The Board found that Mr. Dyer testified that the variance represents the least modification possible of the regulation at issue.
21. The Board found that Mr. Dyer testified that the variance requested is the minimum variance necessary to afford relief.
22. The Board found that Mr. Dyer testified that the roadway cannot be adjusted due to the DeDOT restriction.
23. The Board found that Mr. Dyer testified that the original villas were designed with a second floor master bedroom but the builder no longer builds master bedrooms on the second floor and the houses need to be larger to accommodate the first floor bedrooms.
24. The Board found that Mr. Dyer testified that the garage is needed due to limited on-street parking.
25. The Board found that no parties appeared in support of or in opposition to the Application.
26. Based on the findings above and the testimony and exhibits presented at the public hearing and the public record, the Board determined that the application met the standards for granting a variance. The Property is unique due to its limited access and the existence of the 404 Non-Tidal Wetlands. The variances are necessary to enable reasonable use of the Property. The Applicant is working with a national builder to construct homes on the Property and the builder has changed its design to better accommodate market conditions. Due to the restricted access to the Property and the location of the wetlands, the Applicant is unable to reconfigure the homes in the neighborhood to accommodate the changes in design. The variances will enable the Applicant to develop the Property with the original planned number of units. This use is reasonable. The exceptional practical difficulty and hardship were not created by the Applicant. The location of the restricted access and the 404 Wetlands along with the change in market conditions has created the difficulty and hardship. The variances will not alter the essential character of the neighborhood. The changes in the sizes of the villas are minimal and will not have an adverse effect on the neighborhood. The use is not detrimental to the public welfare. The variances sought are the minimum variances necessary to afford relief.

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 Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Members voted against the Motion to approve the variance 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 December 16, 2014