

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: WARRIOR BEACH, LLC

(Case No. 11638)

A hearing was held after due notice on September 21, 2015. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the side yard setback requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 0.3 feet from the ten (10) feet side yard setback requirement for a deck, a variance of 0.4 feet from the ten (10) feet side yard setback requirement for an existing dwelling and proposed addition, a variance of 3.4 feet from the ten (10) feet side yard setback requirement for a deck and set of steps, and a variance of 1.1 feet from the ten (10) feet rear yard setback requirement for a deck. This application pertains to certain real property located on the south end of Heather Lane, 75 feet north of Windswept Way (911 Address: 30980 Heather Lane, Bethany Beach); said property being identified as Sussex County Tax Map Parcel Number 1-34-9.00-422.00.

1. The Board was given copies of the Application and a survey of the Property dated July 7, 2015.
2. The Board found that the Office of Planning & Zoning had not received any correspondence in support of or in opposition to the Application.
3. John Bruce Mears was sworn in to testify about the Application and James Fuqua, Esquire, presented the Application on behalf of the Applicant. Mr. Fuqua submitted a packet of exhibits to the Board to review including the Board's decision in Case No. 11495, Bethany Dunes information, a survey of the proposed house, a survey of the existing house, and an email from the Bethany Dunes Architectural Review Committee.
4. The Board found that Mr. Fuqua stated that the existing dwelling was approved for variances in December 2014. The Applicant later purchased the Property and planned to make some extensive repairs and renovations to the existing dwelling.
5. The Board found that Mr. Fuqua stated that the proposed changes will require the same variances as granted in 2014.
6. The Board found that Mr. Fuqua stated that the Applicant plans to replace the wood on the existing stairs and the existing deck.
7. The Board found that Mr. Fuqua stated that the existing first floor of the dwelling will remain the same. The second and third floors of the existing dwelling will be removed and re-built.
8. The Board found that Mr. Fuqua stated that the first floor must remain to maintain compliance with the Delaware Department of Natural Resources and Environmental Control ("DNREC") setback requirement.
9. The Board found that Mr. Fuqua stated that the proposed addition will have a lower roof line than the existing dwelling.
10. The Board found that Mr. Fuqua stated that the Applicant is requesting the variances in order to assure all the changes to the existing structure are included.
11. The Board found that Mr. Fuqua stated that the situation is unique. The original dwelling was built in 1983 and complied with the setback requirements.
12. The Board found that Mr. Fuqua stated that the variances are necessary to enable reasonable use of the Property.

13. The Board found that Mr. Fuqua stated that the variances will not alter the essential character of the neighborhood and that the variances are the minimum to afford relief.
14. The Board found that Mr. Mears, under oath, affirmed the statements made by Mr. Fuqua.
15. The Board found that no parties appeared in support of or in opposition to the Application.
16. 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 unusual size in comparison with other lots along Heather Lane and its access to Heather Lane. Heather Lane comes to a dead end along the northwest side of the Property. While the Property is larger than nearby lots along Heather Lane, the access to Heather Lane from the Property is much different than other lots along Heather Lane and makes the Property unique. The Property is also unique due to its close proximity to the beach and the DNREC building restrictions which limit the placement of the dwelling. The existing dwelling also needs repair. The unique characteristics of this Property have created an exceptional practical difficulty for the Applicant who seeks to renovate and reconstruct a reasonably sized dwelling and related structures on the lot.
 - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to renovate and reconstruct an existing dwelling and related structures but cannot do so without violating the Sussex County Zoning Code. The current structures have been in their current locations since at least 1991 and probably since 1983. The variances requested will allow the Applicant to renovate and reconstruct those structures on the same footprint. The Board is convinced that the variances are necessary to enable the reasonable use of the Property. The Board is convinced that the size, shape, and location of the structures are reasonable, which is confirmed when reviewing the survey provided by the Applicant.
 - c. The exceptional practical difficulty was not created by the Applicant. The existing structures on the Property have been in their current location for many years and need to be repaired and reconstructed. The existing structures were not placed by the Applicant; as the Applicant recently acquired the Property. The Property is a unique lot due to its proximity to Heather Lane and the DNREC building restrictions which limit the development of the Property. The Applicant seeks to renovate and reconstruct the existing structures on the same footprint as the original structures. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created the need to repair and renovate the existing home and the lot's unique characteristics. The Board also notes that variances for the existing structures had previously been granted.
 - d. 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 renovated building and structures will have no effect on the character of the neighborhood. The structures have been in their current locations since at least 1991 and probably since 1983

and the Applicant only seeks to renovate and reconstruct those structures on the same footprint. The Applicant has obtained approval from the community's architectural review committee. No evidence was presented which indicated that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.

- e. 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 repair and renovate the existing structures as set forth in the survey.

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, and Mr. Brent Workman. No Board Member voted against the Motion to Approve the Application. Mr. Norman Rickard was not present and did not participate in the discussion or vote of this 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 November 17, 2015.