

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: LYNN WILSON & ROBERT WILSON

(Case No. 11651)

A hearing was held after due notice on October 19, 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 a variance from the front yard setback requirement.

Findings of Fact

The Board found that the Applicants are seeking a variance of 21.1 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling. This application pertains to certain real property located on the east side of Venetian Drive approximately 709 feet southwest of Draper Drive (911 Address: 14 Venetian Drive, Dewey Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-20.17-5.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, and a survey of the Property dated January 19, 2015.
2. The Board found that the Office of Planning & Zoning received had not received any correspondence in support of or in opposition to Application.
3. Lynn Wilson was sworn in to testify about the Application and James Fuqua, Esquire, appeared on behalf of the Applicants. Mr. Fuqua submitted exhibits to the Board including a survey, Findings of Fact for Case No. 11035, a portion of the tax map, a Google Earth photograph of the Property, and a letter from Douglas Wingate.
4. The Board found that Mr. Fuqua stated that the Board approved a similar variance request in September 2012. The Applicants were unable to construct the dwelling and the variance expired.
5. The Board found that Mr. Fuqua stated that this variance request is for a lesser variance from the front yard requirement than the variance previously granted.
6. The Board found that Mr. Fuqua stated that the previous dwelling on the Property has been demolished and the proposed house location will be located in the basic footprint of the previous dwelling.
7. The Board found that Mr. Fuqua stated that the cul-de-sac shown in the survey was never constructed and that the existence of the cul-de-sac creates a uniqueness to the Property.
8. The Board found that Mr. Fuqua stated that a similar variance was granted on a neighboring property as well.
9. The Board found that Mr. Fuqua stated that the variance is necessary to enable reasonable use of the Property.
10. The Board found that Mr. Fuqua stated that the practical difficulty was not created by the Applicants.
11. The Board found that Mr. Fuqua stated that the variance will not alter the essential character of the neighborhood as the previous home had a similar setback from the cul-de-sac.
12. The Board found that Mr. Fuqua stated that the variance requested is the minimum variance to afford relief.
13. The Board found that Mr. Fuqua stated that the Homeowners Association does not object to the Application.

14. The Board found that Mr. Fuqua stated that the proposed location of the dwelling will not be an issue if cul-de-sac is ever constructed.
15. The Board found that Mrs. Wilson, under oath, affirmed the statements made by Mr. Fuqua.
16. The Board found that no parties appeared in support of or in opposition to the Application.
17. 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 unrebutted, 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 unique shape as is clearly shown on the survey. The situation is also unique because the southwestern corner of the Property abuts to a cul-de-sac which was never built. The cul-de-sac exists as a paper road only and Venetian Drive is a dead end street ending near the Property. The cul-de-sac effectively cuts into a significant portion of the front yard of the Property and creates an odd building envelope. This shape is particularly strange since the cul-de-sac does not actually exist. Furthermore, the rear of the Property is located adjacent to a lagoon as evidenced by the survey. The Board is convinced that the Property is unique and that the unique characteristics of this Property limit the buildable area available to the Applicants. These unique characteristics have created an exceptional practical difficulty for the Applicants who seek to construct a dwelling 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 Property has a unique shape and the buildable area thereof is limited due to its shape. The Applicants seek to build a dwelling of reasonable size but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow a reasonably sized dwelling to be constructed on the Property. The Board is convinced that the size, shape, and location of this dwelling are reasonable, which is confirmed when reviewing the survey provided by the Applicants.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual shape of the Property nor did the Applicants control the development (or lack of development) of the cul-de-sac. The unusual shape of the Property and the lack of an actual cul-de-sac have created a unique situation and limited the Applicants' ability to develop the Property. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created the lot's unique characteristics and by the lack of construction of the cul-de-sac. A previous dwelling was located on the Property in a similar location as the proposed dwelling and it is clear to the Board that the Applicants merely seek to develop the Property in a similar fashion.
 - d. The variance 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 dwelling will have no effect on the character of the neighborhood. A dwelling was previously located in a similar location on the Property and has only been demolished in recent years. The homeowners association does not object to this Application. This support is telling since a dwelling in a similar location was on the Property for

many years. Furthermore, no evidence was presented which would indicate that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.

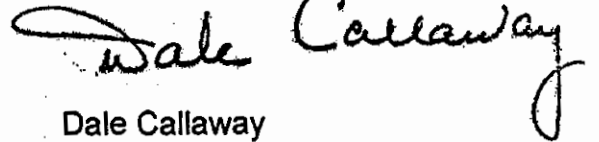
- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicants have demonstrated that the variance sought will allow the Applicants to construct a reasonably sized dwelling on the Property.

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 variance 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 December 15, 2015.