

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

**IN RE: BEACH COMMERCIAL REALTY, LLC**

**(Case No. 11655)**

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 Applicant is seeking a variance of 10.9 feet from the forty (40) feet front yard setback requirement for a dwelling. This application pertains to certain real property located on the northwest corner of Millsboro Highway (Route 24) and Boblin Court (911 Address: None Available); said property being identified as Sussex County Tax Map Parcel Number 1-33-20.00-15.11.

1. The Board was given copies of the Application, a portion of the tax map of the area, and a survey dated July 20, 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. The Board found that Frank Ward was sworn in to testify about the Application.
4. The Board found that Mr. Ward testified that there is an easement in front of the Property where the Delaware Department of Transportation ("DelDOT") took a portion of the Property in the front yard.
5. The Board found that Mr. Ward testified that the loss of property created a unique situation.
6. The Board found that Mr. Ward testified that the prior dwelling on the Property was removed and a new dwelling was built in the same location. A temporary Certificate of Occupancy was issued for the new dwelling.
7. The Board found that Mr. Ward testified that the location of the dwelling is similar to the placement of other dwellings in the neighborhood.
8. The Board found that Mr. Ward testified that the prior dwelling had to be torn down because it was infested with bugs.
9. The Board found that Mr. Ward testified that the variance is necessary enable reasonable use of the Property.
10. The Board found that Mr. Ward testified that the difficulty was not created by the Applicant.
11. The Board found that Mr. Ward testified that the variance will not alter the essential character of the neighborhood.
12. The Board found that Mr. Ward testified that the variance requested is the minimum variance necessary to afford relief.
13. The Board found that Mr. Ward testified that the Property has an odd shape.
14. The Board found that Mr. Ward testified that the mound septic system is located in the rear yard and that Property has higher ground in the front yard.
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 and situation are unique as the Property. The Applicant seeks this variance in order to retain a new dwelling on the same footprint as a prior dwelling. The prior dwelling was located 29.1 feet from the front property line. The property line is ten (10) feet closer to the dwelling than it would normally appear because DelDOT has an easement of ten (10) feet near the front of the Property. The existence of this easement has created a unique situation for the Applicant. Furthermore, the Property has an odd shape and elevation. The elevation is particularly troublesome for the Applicant as the Property has a higher elevation near the front yard and is serviced by a mound septic system in the rear yard. The Board is convinced that the uniqueness of the Property's elevation and the existence of the DelDOT right-of-way have created an exceptional practical difficulty for the Applicant which was further exacerbated by the fact that the Applicant was unaware that the original dwelling was not built in compliance with the Sussex County Zoning Code.
- b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property is unique and the DelDOT right-of-way and the mound septic system limit the area where a dwelling can be placed. The Applicant seeks to retain a dwelling on the Property but is unable to do so without violating the Sussex County Zoning Code. The Applicant constructed the dwelling on the same footprint as a previous dwelling but did not realize that the dwelling was constructed outside of the allowable building envelope. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow a reasonable dwelling to remain on the Property. The Board is convinced that the size, shape, and location of the dwelling 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 Applicant did not create the unique elevation of the Property or the DelDOT right-of-way issue; both of which have created an exceptional practical difficulty by limiting the building envelope. The Applicant built the new dwelling on the same footprint as the prior dwelling and reasonably believed that it complied with the Sussex County Zoning Code. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created by the uniqueness of the Property. The Board also notes that the DelDOT right-of-way is ten (10) feet wide but the nearby roadway appears to not fall within that right-of-way area. The discrepancy between the location of the road and the existence of the right-of-way likely created some confusion as to the Property's boundaries when measuring the setback requirements.
- 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. The dwelling is located on the same footprint as the prior dwelling; which had to be removed due to insect infestation. The undisputed testimony confirms that the location of the dwelling is similar to other homes in the area. The Board is convinced that variance should have no impact on the community. No evidence or testimony was presented which indicates that the variance would have any adverse effect on the neighborhood or substantially or permanently impair the appropriate use or development of adjacent property, or be detrimental to the public welfare.

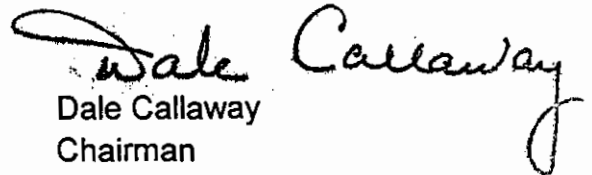
- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to retain the dwelling on the Property. No additions to the dwelling are being proposed which would require additional variances.

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 member voted against the Motion to approve the variance application. Mr. Norman Rickard 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.