

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

**IN RE: HARLTON COMMUNITIES, LLC**

**(Case No. 11689)**

A hearing was held after due notice on January 4, 2016. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the side yard and corner side yard setback requirements.

Findings of Fact

The Board found that the Applicant was seeking a variance of three (3) feet from the side yard setback requirement for all lots in the subdivision and a variance of eight (8) feet from the fifteen (15) feet corner side yard setback requirement for all corner lots in the subdivision. The Applicant has requested that the aforementioned requested variances be granted as they pertain to certain real property located on the south side of Old Mill Road, east of Irons Road, and Murray Road (911 Address: None Available); said property being identified as Sussex County Tax Map Parcel Number 1-34-11.00-169.00. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, the Findings of Fact for Case No. 11376, a portion of the minutes from the meeting of the Board of Adjustment dated April 21, 2014, a preliminary plat of the Property, a survey of the Property dated April 3, 2008, and a survey of the Property dated March 14, 2014.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of or in opposition to the Application.
3. Tom Natelli and Tom Natelli, Jr. were sworn in to testify about the Application. James Fuqua, Esquire, presented the case on behalf of the Applicants and submitted exhibits for the Board to review.
4. The Board found that Mr. Fuqua stated that the subdivision was approved for 191 lots and 16 lots are corner lots. The Board approved an identical request filed by the Applicant in April 2014.
5. The Board found that Mr. Fuqua stated that it took longer than anticipated for the Applicant to obtain all necessary agency approvals for the subdivision and the prior Board approval expired in June 2015. The Applicants did not request a time extension prior to expiration of the variance approval.
6. The Board found that Mr. Fuqua stated that the subdivision was approved in 2007 but no development took place due to the economic recession.
7. The Board found that Mr. Fuqua stated that the Army Corps of Engineers redefined the wetlands on the Property which resulted in additional portions of the Property being classified as wetlands. The Applicant redesigned the subdivision and relocated the entrance after this wetlands delineation.
8. The Board found that Mr. Fuqua stated that a reasonably sized home cannot be placed on the lots without a variance.
9. The Board found that Mr. Fuqua stated that the Applicant did not create the exceptional practical difficulty.
10. The Board found that Mr. Fuqua stated that no lots in the community have been sold and there is no negative impact on neighboring properties.
11. The Board found that Mr. Fuqua stated that the variances requested are the minimum variances necessary to afford relief.

12. The Board found that Mr. Fuqua stated that there have been no changes from the application previously filed by the Applicant and approved by the Board.
13. The Board found that Mr. Fuqua stated that the final site plan was approved December 2015 and the Applicants are ready to proceed with development.
14. The Board found that Messrs. Natelli, under oath, affirmed the testimony of 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 the change in the wetlands delineation which resulted in a redesign of the neighborhood and loss of lots therein. The wetlands re-delineation has resulted in smaller lots has created an exceptional practical difficulty for the Applicant who seeks to construct homes of a reasonable size on those lots. The Board also notes that the Applicant had obtained similar variances in 2014 but was unable to move forward with the construction due to the length of time needed for agency approvals to be received. While waiting for other agency approvals, the previous variance approval expired.
  - b. Due to the uniqueness of the lots, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The lots are unique due to the change in the wetlands delineation – which resulted in narrower lots in the community. The narrower lots led to smaller building envelopes on the lots. The Applicant seeks the variances because the Applicant is unable to construct reasonably sized dwellings on the lots without violating the Sussex County Zoning Code. The Applicant previously obtained variances to allow for the construction of these dwellings but did not realize that the approval for those variances had expired prior to the construction thereof. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will afford the Applicant the opportunity to construct reasonable dwellings on the lots.
  - c. The exceptional practical difficulty was not created by the Applicant. Rather, the difficulty was caused by the new wetlands delineation from the Army Corps of Engineers which resulted in a redesign of the subdivision. The lots are narrower than the lots in the previously approved subdivision and the variances are needed to allow for a reasonably sized dwelling to be placed on the lots. The smaller lot sizes are a direct result from the wetlands re-delineation by the Army Corps of Engineers.
  - 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 variances will have no effect on the character of the neighborhood. The subdivision has not yet been developed and the variances will only affect those lots within the un-built subdivision. The variances will allow for a uniform side yard setback within the community and the Board is convinced that variances should have no impact on the community. No evidence was presented which would indicate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.

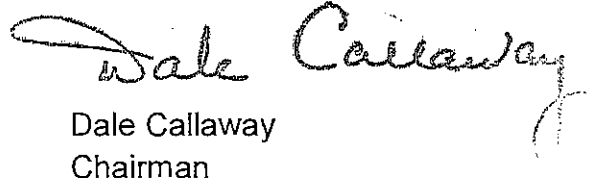
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to construct reasonably sized dwellings on the lots.

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 March 1, 2016