

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: EASTBURN ESTATES, LLC

(Case No. 11722)

A hearing was held after due notice on February 29, 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 front yard and side yard setback requirements.

Findings of Fact

The Board found that the Applicant is seeking a variance of 12.9 feet from the thirty (30) feet front yard setback requirement and a variance of 3.6 feet from the fifteen (15) feet corner side yard setback requirement for an existing dwelling. This application pertains to certain real property is located on the northwest corner of Ayres Road and Surf Road (911 Address: 39923 Ayres Road, Bethany Beach); said property being identified as Sussex County Tax Map Parcel Number 1-34-13.16-15.00.

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 July 9, 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. Mike Cummings and Ron Eastburn were sworn in to testify about the Application and submitted pictures of the Property for the Board to review.
4. The Board found that Mr. Cummings testified that the existing masonry footprint of the dwelling was built over fifty (50) years ago. The age of the existing dwelling makes this property unique.
5. The Board found that Mr. Cummings testified that the foundation is structurally sound but encroaches into the setback areas. The dwelling above the foundation is in poor condition and has been vacant for more than four (4) years. The Applicant plans to remodel and update the living space over the existing foundation.
6. The Board found that Mr. Cummings testified that the dwelling is in dire need of repair. The exterior remodel will consist of new roof, windows, and siding and the interior of the dwelling will be remodeled. The renovated dwelling will be an improvement to the neighborhood and will look similar to other homes in the area.
7. The Board found that Mr. Cummings testified that the variances will enable reasonable use of the Property.
8. The Board found that Mr. Cummings testified that the exceptional practical difficulty was not created by the Applicant.
9. The Board found that Mr. Cummings testified that the Applicant inherited the Property.
10. The Board found that Mr. Cummings testified that the Property cannot otherwise be developed.
11. The Board found that Mr. Cummings testified that the Property has been in the Applicant's family since the 1950s and the cost of demolishing the structure and rebuilding it would be substantially greater than the cost of the proposed renovation.
12. The Board found that Mr. Cummings testified that the existing structure meets the Sussex Shores Homeowners Association requirements.

13. The Board found that Mr. Cummings testified that the variances will not alter the essential character of the neighborhood.
14. The Board found that Mr. Cummings testified that the variances are the minimum variances to afford relief.
15. The Board found that Mr. Cummings testified that the renovated dwelling will not exceed the existing footprint.
16. The Board found that Mr. Cummings testified that the proposed renovations have to meet the current flood zone requirements.
17. The Board found that Mr. Cummings testified that the edges of paving for Surf Road and Ayres Road do not extend to the property line separating the road from the property.
18. The Board found that no parties appeared in support of or in opposition to the Application.
19. 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 as it is small. The lot is only 65 feet wide by 110 feet deep. The situation is also unique because the existing dwelling was constructed in the 1950s prior to the enactment of the Sussex County Zoning Code. The Applicant seeks to remodel the dwelling on the same footprint. The foundation and the walls will remain but a new roof, siding, and windows will be installed. When the dwelling was constructed, it complied with the requirements of the Sussex Shores Homeowners Association but it is located in the setback areas later established by the Sussex County Zoning Code. The unique size of the lot and the history of the development of this property have created an exceptional practical difficulty.
 - b. Due to the uniqueness of the lot and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique size and the buildable area thereof is limited due to its size. The Applicant seeks to remodel the dwelling on its existing footprint and foundation but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the Applicant to remodel the dwelling on its existing footprint. The dwelling has been in its current location since the 1950s and is in poor condition; though the foundation is structurally sound. 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 Applicant.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual size of the Property. The unique lot size has resulted in a limited building envelope on the Property and the small building envelope has created an exceptional practical difficulty. The unique characteristics of the Property are clear when reviewing the survey. Furthermore, the dwelling was placed on the Property by a prior owner and has been in its present location for many years. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created the lot's unique characteristics and by the placement of the dwelling by a prior owner.
 - 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 dwelling will have no effect on the character of the neighborhood. The dwelling has been on the Property for many years and the proposed improvements will likely benefit the neighborhood by turning a vacant house in poor condition into a fresher unit similar to other dwellings in the neighborhood. Despite the longstanding location of the dwelling, no complaints were noted in the record about its location. Ultimately, 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 remodel the dwelling on the lot.

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 Member 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 April 5, 2016