

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

**IN RE: GAW VENTURES GROUP, LLC**

**(Case No. 11742)**

A hearing was held after due notice on March 21, 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 lot width requirement for a parcel, from the side yard setback requirement, and the square footage for a parcel requirement.

Findings of Fact

The Board found that the Applicant was seeking to rotate two (2) lots which face 7<sup>th</sup> Street so that the lots face Bay View Road. As a result of the proposed rotating of the lots, the Applicant seeks a variance of fifty (50) feet from the one-hundred (100) feet lot width requirement for both parcels, a variance of five (5) feet from the fifteen (15) feet side yard setback requirement for both parcels, and a variance of 15,000 square feet from the 20,000 square feet minimum lot size requirement for both parcels. This application pertains to certain real property located southwest corner of 7th Street and Bay View Road (911 Address: None Available); said property being identified as Sussex County Tax Map Parcel Number 3-34-19.16-87.00 & 87.01.

1. The Board was given copies of the Application, a portion of the tax map of the area, an undated survey of the Property showing the lots as they exist, an undated survey of the Property showing the lots as proposed, and a survey of the Property and other properties along Bay View Road dated November 23, 2015.
2. The Board found that the Office of Planning & Zoning received two (2) letters in opposition to the Application and no letters in support of the Application.
3. John Gaw was sworn in to testify about the Application. Richard Berl, Esquire, presented the case on behalf of the Applicant and submitted exhibits for the Board to review including a survey of Lots 314A and 316A, a survey of the proposed alignment of Lots 314A and 316A, a survey of the setbacks of other houses along Bay View Road, a survey of the Property dated August 20, 2015, and photographs of the Property and the neighborhood.
4. The Board found that Mr. Berl stated that the Applicant is requesting to rotate two (2) existing lots perpendicular to Bay View Road. The Applicant wants to turn the lots 90 degrees so the front yard will face Bay View Road rather than 7<sup>th</sup> Street. The size of the lots will not change.
5. The Board found that Mr. Berl stated that the lots are in the older section of Bay Vista and all lots in Bay Vista were developed as twenty-five (25) feet wide lots. Most of the lots have been combined and consist of a minimum width of fifty (50) feet. There are a few lots measuring seventy-five (75) feet and one-hundred (100) feet wide.
6. The Board found that Mr. Berl stated that the prior dwelling on the Property had to be torn down due to its in poor condition.
7. The Board found that Mr. Berl stated that the Property is low and the crawl space of the older house was usually wet. The area floods due to the nearby bay.
8. The Board found that Mr. Berl stated that the prior dwelling also faced Bay View Road.

9. The Board found that Mr. Berl stated that the lots measure 5,000 square feet and are undersized so there is no way to rotate the lots without creating a need for variances.
10. The Board found that Mr. Berl stated that the current direction of Lot 314A faces existing power line guy wires and a pole thereby making it difficult to enter the lot. Once the lots are rotated, the existing power lines will be to the rear of the Property and, thus, less obtrusive.
11. The Board found that Mr. Berl stated that there are 69 other lots in Bay Vista which measure 50 feet by 100 feet and each of those lots have ten (10) feet side yard setbacks.
12. The Board found that Mr. Berl stated that most dwellings along Bay View Road face Bay View Road.
13. The Board found that Mr. Berl stated that the fifteen (15) feet corner yard setback requirement will be maintained for Lot 314A as proposed.
14. The Board found that Mr. Berl stated that the lots are unique due to their narrow width and the location of the guy wires and electric pole.
15. The Board found that Mr. Berl stated that the proposed rotation of the lots will enable reasonable use of the Property.
16. The Board found that Mr. Berl stated that the exceptional practical difficulty was not created by the Applicant, since the development was many created years ago. The community is a non-conforming community.
17. The Board found that Mr. Berl stated that the variances will not alter the character of the neighborhood and that the new dwellings will improve the character of the neighborhood.
18. The Board found that Mr. Berl stated that the variances are the minimum variances necessary to afford relief.
19. The Board found that Mr. Gaw testified that the proposed dwellings will comply with current flood zone regulations as they will be raised out of the flood zone. The dwellings will be on block foundations as well.
20. The Board found that Mr. Gaw testified that the prior dwelling, which occupied both lots, was uninhabitable and needed to be torn down.
21. The Board found that Mr. Gaw testified that the electric pole cannot be removed and creates issues for parking and the driveway.
22. The Board found that Mr. Gaw testified that the proposed dwellings will better align with other homes along Bay View Road. A majority of the homes along Bay View Road face Bay View Road and the proposed alignment will allow for the dwellings to face Bay View Road.
23. The Board found that Mr. Gaw testified that he affirmed the statements made by Mr. Berl.
24. The Board found that Grant Dockitty and Chuck Wilson were sworn in and testified in opposition to the Application.
25. The Board found that Mr. Dockitty testified that he owns a property on 7<sup>th</sup> Street and the lots along 7<sup>th</sup> and 8<sup>th</sup> Streets are the lowest lying lots in the development. Flooding comes from tidal flooding and rain. There are no street drains and all the rain collects in this low lying area.
26. The Board found that Mr. Dockitty testified that there are fifty (50) feet wide lots in Bay Vista but there are no corner lots in the development less than seventy-five (75) feet wide. He believes that most corner lots are one-hundred (100) feet wide. Bay Vista was developed with twenty-five (25) feet wide lots.
27. The Board found that Mr. Dockitty testified that the original plot survey shows this property as a lot measuring 100 feet by 100 feet.
28. The Board found that Mr. Dockitty testified that the entire neighborhood is opposed to the Application.

29. The Board found that Mr. Dockitty testified that he will see the rear of the Applicant's dwelling because the dwelling will only be fifteen (15) feet from 7<sup>th</sup> Street.
30. The Board found that Mr. Dockitty testified that the proposed dwelling for Lot 314A will be closer to 7<sup>th</sup> Street and will then be further out than other dwellings on 7<sup>th</sup> Street.
31. The Board found that Mr. Dockitty testified that the lots will not align properly with lots on 7<sup>th</sup> Street.
32. The Board found that Mr. Dockitty testified that the variances will set a precedent.
33. The Board found that Mr. Dockitty testified that there is only one sewer hook-up available for the Property.
34. The Board found that Mr. Dockitty testified that the previous dwelling was in character with the neighborhood and that the proposed dwellings will be out of character with the neighborhood.
35. The Board found that Mr. Dockitty testified that he objects to the Applicant building two (2) dwellings on the corner lot.
36. The Board found that Mr. Wilson testified that he lives in the area and that he feels the Applicant should maintain the side yard setback requirements for the proposed dwellings.
37. The Board found that Mr. Berl stated that the requested variances for the side yard setbacks are consistent with the standard setbacks in the development.
38. The Board found that Mr. Berl stated that the existing lots have 10 feet side yard setback requirements but the requirement would increase to 15 feet if the lots are rotated.
39. The Board found that Mr. Berl stated that other lots measuring 50 feet by 100 feet have 10 feet side yard setback requirements.
40. The Board found that one (1) party appeared in support of the Application.
41. The Board found that two (2) parties appeared in opposition to the Application.
42. The Board tabled its discussion on this Application until April 4, 2016, at which time it discussed and voted on the Application.
43. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, 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, which consists of Lot 314A and 316A, is unique as it consists of two undersized lots. These lots were originally part of the Bay Vista subdivision which consisted of twenty-five (25) feet wide lots. The Property, while used as a single lot for many years, is planned to be developed for two homes. The Property is also a corner lot which fronts on both 7<sup>th</sup> Street and Bay View Road and there is a pattern of homes along Bay View Road facing Bay View Road (including the prior home on the Property). Furthermore, the Property is unique due to the location of a utility pole and guy wires on Lot 314A. These unique characteristics of the Property have created an exceptional practical difficulty for the Applicant.
  - b. Due to the Property's unique conditions, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to construct homes on Lot 314A and 316A but is unable to do so without violating the Sussex County Zoning Code. The location of the utility pole and guy wires on Lot 314A pose a particular problem for the Applicant as it would make access to that lot extremely difficult. The un rebutted testimony confirms that the pole and guy wires cannot be moved and would make access to Lot 314A impractical. The inability to access this lot would render it difficult, if not impossible, to reasonably use. The proposed turning of Lots 314A and 316A ninety degrees would enable

the Applicant to construct dwellings on those lots as the pole and guy wires would then be located in the rear yard away from the access points of the Property. The variances requested simply afford the Applicant with the same building envelope it currently has with the existing lots. The Board is convinced that the proposed rotation of the lots is reasonable and that the variances requested are necessary to enable the reasonable use of the Property as the variances will allow the Applicant to reasonably develop the Property. The survey attached to the Application confirms that the rotation of the lots is reasonable.

- c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unique size of the lots in the original Bay Vista subdivision nor did the Applicant place the utility pole and guy wires on the Property which obstruct the development thereof. Notably, the Applicant only recently acquired the Property. The unique characteristics of the Property are clear when reviewing the survey. The Board also notes that the un rebutted testimony confirms that the existing home on the Property was uninhabitable and needed to be torn down. The Applicant also did not direct that the homes along Bay View Road face Bay View Road as is common within the community.
- 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 concerns raised by the opposition focus primarily on the effect of the proposed development of these two lots on the character of the neighborhood. The opposition expressed concerns as to the effect of the development on flooding but the Board finds those concerns unconvincing as the Applicant may already develop the Property with two homes. The Applicant simply seeks to rotate the lots to face a different direction. While it is un rebutted that the Property and its surrounding area suffer from flooding problems, the Board is not convinced that the construction of two homes on the Property facing Bay View Road will increase the flooding any more than the construction of homes on the Property facing 7<sup>th</sup> Street. The opposition also expressed concerns that the dwellings will be out of character for the neighborhood because they will not face 7<sup>th</sup> Street and may block views of other homes along 7<sup>th</sup> Street. It is undisputed, however, that the prior dwelling on the Property faced Bay View Road and that a majority of the homes along Bay View Road face Bay View Road. The Board finds that the proposed rotation of the lots will actually be more in line with the character of the neighborhood than the existing development. Ultimately, after weighing all of the evidence and testimony, the Board was not convinced 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 the variances will allow the proposed rotation of the lots to take place. The size, width, and setback requirements for the proposed lots will be no different than the size, width, and setback requirements for the original lots. The Board notes that the 15 foot corner yard setback requirement on the new Lot 314A along 7<sup>th</sup> Street will be maintained.

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 Members 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 May 17, 2016