

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: 02 DELAWARE PROPERTY INVESTMENTS, LLC

(Case No. 11763)

A hearing was held after due notice on May 2, 2016. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front yard and rear yard setback requirements.

Findings of Fact

The Board found that the Applicant is seeking a variance of 9.39 feet from the forty (40) feet aggregate front and rear yard setback requirement. This application pertains to certain real property located on the south side of Linkside Drive approximately 287 feet south of Bridgeville Center Road (911 Address: 23605 Linkside Drive, Bridgeville said property being identified as Sussex County Tax Map Parcel Number 1-31-15.00-77.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, a site plan dated May 27, 2008, a site plan dated February 27, 2015, and a survey of the Property dated February 15, 2015.
2. The Board found that the Office of Planning & Zoning received no letters in support of the Application and no letters in opposition to the Application.
3. The Board found that Peter Malmberg was sworn in to testify about the Application.
4. The Board found that Mr. Malmberg testified that he has been involved with this project for four (4) years. The development was originally approved as a 52 unit condominium development but the developer was unable to sell as condominiums because banks would not finance condominiums. The development converted to fee simple lots and is now being sold as fee simple lots. The units are now selling.
5. The Board found that Mr. Malmberg testified that the last unit to sell was constructed with a sunroom and the unit was originally built as the sales model. The sunroom will not be offered on any other units in the development.
6. The Board found that Mr. Malmberg testified that the unit does not meet the required setback requirements for a fee simple lot.
7. The Board found that Mr. Malmberg testified that the Property cannot be otherwise developed in strict conformity without losing two (2) future units.
8. The Board found that Mr. Malmberg testified that the difficulty was not created by the Applicant. The building was constructed as a condominium and was later converted to a fee simple lot, which created the encroachment.
9. The Board found that Mr. Malmberg testified that the variance requested is the minimum variance to afford relief.
10. The Board found that Mr. Malmberg testified that the neighbors have no objection to the Application.
11. The Board found that Mr. Malmberg testified that a Certificate of Compliance has been issued for the existing units.
12. The Board found that Mr. Malmberg testified that units are approximately 1,300 square feet in size and the sunroom measures 10 feet by 20 feet.
13. The Board found that Mr. Malmberg testified that it would be extremely difficult to remove the existing sunroom.

14. The Board found that Mr. Malmberg testified that this unit is within the only existing pack of townhouse buildings completed in this development and that the unit has a contract for sale if the variance is approved.
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 for variances met the standards for granting a variance. The findings below further support the Board's decision to approve the Application.
 - a. The Property, which is a lot in a subdivision, is unique because the development was originally developed as a condominium but the Applicant was unable to sell the units as condominiums due to changes in bank financing policies. Consequently, the development was converted to a community of fee simple lots which have different setback requirements. The unit on the Property encroached into those setback areas and, if no variance was granted, would eliminate the ability to develop two (2) other lots in the development. This situation is quite unique and has created an exceptional practical difficulty for the Applicant, who wishes to sell the existing unit.
 - b. Due to the uniqueness of the Property and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The development consists of 52 lots which were originally designed to sold as condominium units. Due to changes in the economy, those lots were converted to fee simple lots and the existing unit then encroached into the setback areas. Mr. Malmberg testified that it would be extremely difficult to remove the sunroom and the Board agrees. The sunroom was part of the model home which neighbors saw when they purchased neighboring units. The Board also notes that, if the sunroom was retained but no variance was granted, the Applicant would not be able to develop two (2) other lots in the community. As such, it is clear to the Board that the variances are necessary to enable reasonable use of the Property and that the Property cannot be developed in strict conformity without a variance. The Board also notes that the sunroom is no longer being offered as a feature with newer models so this type of encroachment should be an isolated issue.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the changes in banking policies which necessitated a change in the development from condominiums to fee simple lots. While the size of the unit did not change, the setback requirements did change and this change has created an exceptional practical difficulty for the Applicant who wishes to sell its model unit.
 - 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. Evidence indicates that neighbors are aware of the location of the sunroom and have no objection to it. Importantly, other units in the development have not yet been constructed and those property owners will or should also be aware of the location of the sunroom. 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

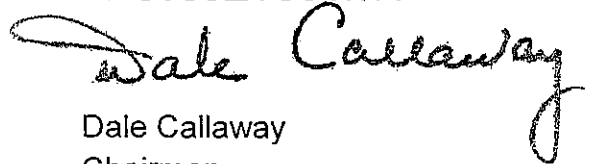
possible of the regulations at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to retain a reasonably sized sunroom. No additions to the sunroom are being sought and the Applicant does not plan to install sunrooms on other units in the development.

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 of the motion 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 did not participate in the vote or discussion on 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 June 21, 2016