

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: BETHESDA LEASING, LLC

(Case No. 11767)

A hearing was held after due notice on May 16, 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 a variance from the front yard setback requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of sixteen (16) feet from the thirty (30) feet front yard setback requirement for a proposed dwelling. This application pertains to certain real property located on the north side of the dead end of Heather Lane in Bethany Dunes (911 Address: 31002 Heather Lane, Bethany Beach); said property being identified as Sussex County Tax Map Parcel Number 1-34-9.00-429.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, a boundary survey plan dated September 10, 2014, and an aerial photograph of the area.
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 Timothy Tice was sworn in to testify about the Application. James Fuqua, Esquire, presented the case on behalf of the Applicant and submitted exhibits for the Board to review. These exhibits included a Bethany Dunes subdivision plan, a fire report, a Delaware Department of Environmental Resources and Natural Control ("DNREC") Building Line Plan, a site plan, a news article, an email from William Quay, and an email from Richard Swirnow.
4. The Board found that Mr. Fuqua stated that the Property is a corner lot and the northern most lot in the development.
5. The Board found that Mr. Fuqua stated that the Property only has fifty (50) feet of road frontage which is unusual.
6. The Board found that Mr. Fuqua stated that the Applicant purchased the vacant property in 2016. The previous dwelling, including the pilings supporting the dwelling, was destroyed by two (2) fires in 2012.
7. The Board found that Mr. Fuqua stated that the size of the Property and the Delaware Department of Natural Resources and Environmental Control ("DNREC") building restriction line make this Property unique.
8. The Board found that Mr. Fuqua stated that a majority of homes in the area were built prior to the establishment of the DNREC building restriction line and all new structures must meet the DNREC building restriction. DNREC refused to grant a waiver to the Applicant for the proposed dwelling because there was no portion of the prior dwelling remaining after the fire. If a portion of the existing dwelling remained after the fire, the Applicant would have been able to rebuild within the DNREC building restriction line.
9. The Board found that Mr. Fuqua stated that the prior dwelling was east of the DNREC building line and other dwellings in the neighborhood are also located east of the DNREC building line.
10. The Board found that Mr. Fuqua stated that only a corner of the proposed dwelling will encroach into the setback requirement.

11. The Board found that Mr. Fuqua stated that the DNREC building restriction line prohibits the proposed dwelling from being built in strict conformity with the Sussex County Zoning Code.
12. The Board found that Mr. Fuqua stated that the variance is necessary to enable reasonable use of the Property.
13. The Board found that Mr. Fuqua stated that the exceptional practical difficulty was not created by the Applicant.
14. The Board found that Mr. Fuqua stated that the variance will not alter the character of the neighborhood and that the views of the neighboring properties will not be affected.
15. The Board found that Mr. Fuqua stated that the Architectural Review Board of Bethany Dunes has approved the proposed dwelling and the neighbors have no objection to the Application.
16. The Board found that Mr. Fuqua stated that the variance sought is the minimum variance to afford relief.
17. The Board found that Mr. Tice affirmed the statements made by Mr. Fuqua.
18. The Board found that Mr. Tice testified that the proposed dwelling will be approximately 2,400 square feet in size and will be similar in style to the other dwellings in the area.
19. The Board found that no parties appeared in support of or in opposition to the Application.
20. 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 because it is located near the Atlantic Ocean and is subject to significant building restrictions due to the regulations set forth by DNREC. These restrictions render approximately one-half of the lot as unbuildable and greatly limits the building envelope for the Applicant. Additionally, the Property is located at the end of Heather Lane is has a unique road frontage and setback requirement as compared with other homes along Heather Lane. These unique conditions have created an oddly shaped building envelope as well. Lastly, the situation is very unique because the prior dwelling located on the Property was destroyed by fire and could not be rebuilt in its same location due to DNREC regulations. The Applicant did not own the Property at that time. It is clear to the Board that the Property and the situation are clearly unique and have created an exceptional practical difficulty for the Applicant who seeks to construct a dwelling comparable to other homes in the neighborhood on the Property.
 - 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 previous dwelling was destroyed by fire prior to the Applicant's purchase of the Property and the Applicant seeks to construct a reasonably sized dwelling on the lot consistent with other homes in the neighborhood but is unable to do so without violating the Sussex County Zoning Code while still complying with the DNREC building restriction requirement. The proposed dwelling will comply with the DNREC building restriction requirements but would encroach into the front yard setback area. Notably, DNREC would not allow the Applicant to reconstruct the prior dwelling because the prior dwelling was completely destroyed. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow this proposed

dwelling to be constructed on the Property. The Board is convinced that the shape and location of this dwelling are reasonable, which is confirmed when reviewing the survey provided by the Applicant.

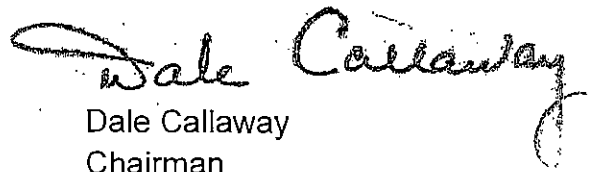
- c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not destroy the prior dwelling. Rather, the dwelling was destroyed by fire during the ownership of a prior owner. The Applicant only recently purchased the Property. The Applicant did not create the DNREC building line restrictions which greatly limit the buildable area of the lot and the Applicant is unable to construct a dwelling consistent with other homes in the neighborhood without a variance. The building envelope resulting from the DNREC building restriction line and the unusual front yard setback is both oddly shaped and smaller than would otherwise be expected for a lot of this size. The Property and the situation are unique and have created the exceptional practical difficulty for the Applicant
- 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 to be constructed in a manner consistent with other homes in the neighborhood and the Applicant has provided evidence that a neighbor and the homeowners association support the Application. The dwelling will not block views of neighboring properties either. No evidence was presented which would indicate that the variance would somehow alter the essential character of the neighborhood 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 construct a reasonably sized dwelling on the Property.

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 July 13, 2016