

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

**IN RE: DRC PROPERTIES, LLC**

**(Case No. 11859)**

A hearing was held after due notice on October 17, 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 maximum outside wall dimension of a building requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 3.75 feet from the 165 feet maximum outside wall length of a building requirement. This application pertains to certain real property located on the north side of Lighthouse Road (Route 54) approximately 475 feet east of Old Mill Bridge Road (911 Address: 37045 Old Mill Bridge Road, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-12.00-76.00.

1. The Board was given copies of the Application, a site plan dated August 24, 2016, a survey of the Property dated August 18, 2016, a portion of the tax map of the area, and aerial photographs of the Property.
2. The Board found that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application.
3. The Board found that Preston Dyer was sworn in to testify about the Application. Mr. Dyer also submitted an exhibit to the Board to review.
4. The Board found that Mr. Dyer testified that the Property consists of approximately 12 acres.
5. The Board found that Mr. Dyer testified that a deed restriction limits the site to no more than 100 multi-family units.
6. The Board found that Mr. Dyer testified that the number of units on the Property was reduced from 100 units to 87 units.
7. The Board found that Mr. Dyer testified that the project was originally designed to accommodate six (6) villa units in a building that would not exceed 165 feet in length. In May 2014, the builder redesigned the units to accommodate a first floor master bedroom and a single car attached garage. The walls separating the units are also slightly thicker.
8. The Board found that Mr. Dyer testified that the new design adds three (3) feet eight (8) inches to the length of the building and the proposed buildings would now measure 168 feet 8 inches in length.
9. The Board found that Mr. Dyer testified that the Property is unique due to its irregular shape and the location of the 404 Non-Tidal Wetlands area which encroaches unevenly on the west side of the Property.
10. The Board found that Mr. Dyer testified that the Delaware Department of Transportation ("DelDOT") also required a fifty (50) feet right-of-way providing access to the Property.
11. The Board found that Mr. Dyer testified that the buildings must be separated by forty (40) feet to meet Fire Marshal regulations and the buildings will meet that separation requirement.
12. The Board found that Mr. Dyer testified that the Property was rezoned to HR-1 (High Density Residential) and, as an HR-1 property, the site could accommodate more than 87 units.

13. The Board found that Mr. Dyer testified that the Property cannot be developed in strict conformity with the Sussex County Zoning Code.
14. The Board found that Mr. Dyer testified that the design change of the units was made in response to new market conditions. First floor master bedrooms and single car garages are needed in this market.
15. The Board found that Mr. Dyer testified that the variance is imperceptible from adjoining property owners. The increase in the length of the building is less than 2% of the total size of the building and the minimal change in length is not visible to the naked eye.
16. The Board found that Mr. Dyer testified that the variance is the least modification of the regulation at issue.
17. The Board found that Mr. Dyer testified that the Applicant will be required to obtain Final Site Plan approval from the Planning and Zoning Commission.
18. The Board found that Mr. Dyer testified that an increase in wall thickness required by the new design prevents the Property from being built in strict conformity with the Sussex County Zoning Code.
19. The Board found that Mr. Dyer testified that market conditions have changed since the regulations were enacted.
20. The Board found that no parties appeared in support of or in opposition to the Application.
21. 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 a large parcel zoned High Density Residential but is unable to be developed as originally intended due to the existence of 404 Non-Tidal Wetlands areas. These wetlands areas, as well as the unusual shape of the Property – as is clearly shown on the survey – create a unique situation and an exceptional practical difficulty for the Applicant. The Applicant has reduced the number of units on the Property but is still unable to meet the size requirement set forth for the buildings located thereon due to the unique conditions of the Property. The Board also notes that a portion of the Property has also been taken by DelDOT for an access easement.
  - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to develop the Property with townhome villas but is unable to do so without violating the Sussex County Zoning Code. The townhouses buildings are required to be separated by no less than 40 feet due to Fire Marshal requirements but the Applicant is unable to fit the proposed number of units without violating that separation distance requirement. Notably, the number of units has been substantially reduced from the previous plan. The existence of the wetlands has posed a particular problem as this renders a significant portion of the Property unusable. If the wetlands were not on the Property, the Applicant could shift the buildings to fit on the site while still meeting the separation distance requirements. The Applicant proposes to design the buildings to allow for first floor master suites and single car garages. This design is consistent with market conditions but renders the buildings slightly wider than allowed under the Code. Furthermore, the re-designed unit also incorporates a wider wall thickness thereby also increasing the width of the building units. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the Applicant to construct reasonably sized units on the

Property as set forth in the site plan. The Board is convinced that the shape and location of the units are also reasonable.

- c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the 404 Non-Tidal Wetlands on the west side of the Property nor did the Applicant require a 50 feet wide access road on the Property. These unique conditions on the Property have created a limited building envelope where the Applicant can place the units and the Applicant is unable to place the buildings on the Property in compliance with the Code. It is clear to the Board that the exceptional practical difficulty was not created by the Applicant. Rather, the difficulty was created by the Property's unique conditions.
- 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 unrebutted testimony confirms that variance will likely be imperceptible to neighbors. The buildings will be increased in size by approximately 2% yet the number of units on the Property will be reduced from the originally approved 100 units. The variance will enable for more practical living area in the townhomes and will be consistent with market conditions. Additionally, 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 reasonably sized units on the Property while providing first floor living space and meeting the Fire Marshal separation requirements. The number of units on the Property will not increase and the size increase of the buildings is the minimum size needed by the Applicant.
- f. The variance will apply to the buildings shown on the site plan presented by the Applicant.

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 December 20, 2016.