

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

**IN RE: JMH INVESTMENTS, LLC**

**(Case No. 11952)**

A hearing was held after due notice on May 1, 2017. 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 setback requirement and the minimum square footage requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 2,274 square feet from the 7,270 square feet minimum square footage requirement on Parcel 156, a variance of 2,274 square feet from the 7,270 square feet minimum square footage requirement on Parcel 157, a variance of 21.5 feet from the forty (40) feet front yard setback requirement for a proposed duplex on Parcel 156, a variance of 21.5 feet from the forty (40) feet front yard setback requirement for a proposed duplex on Parcel 157, a variance of 20.3 feet from the forty (40) feet front yard setback requirement for a proposed duplex on Parcel 156, and a variance of 20.3 feet from the forty (40) feet front yard setback requirement for a proposed duplex on Parcel 157. This application pertains to certain real property located approximately 232 feet east of State Route 1, on the south side of Lighthouse Road in Fenwick Island (911 Address: None Available); said property being identified as Sussex County Tax Map Parcel Number 1-34-23.20-156.00 & 157.00.

1. The Board was given copies of the Application, aerial photographs of the Property, site plans of the Property dated April 4, 2017, undated surveys of the Property, legal descriptions of the Property, construction plans for the duplexes, and a portion of the tax map.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of or in opposition to the Application.
3. The Board found that Jay Yoder was sworn in to testify about the Application. Mr. Yoder is the owner of Yoder & Sons, which is the company constructing the proposed duplexes. James Fuqua, Esquire, presented the case on behalf of the Applicant and submitted exhibits for the Board to review including photographs, site plans, floor layout and elevations, tax map showing lots in the area which have received variances, minutes from previous Board meetings, and an email from Alan Kent.
4. The Board found that Mr. Fuqua stated that the Property consists of two separate but adjacent lots (Parcels 156 and 157). The lots are located along Lighthouse Road in unincorporated Fenwick Island. The lots are vacant and the Applicant intends to construct a duplex on each of the lots.
5. The Board found that Mr. Fuqua stated that Lighthouse Road is considered a numbered road because west of Route 1 Lighthouse Road is referred to as Route 54. The portion of Lighthouse Road east of Route 1 is only a block long and ends near the Atlantic Ocean. Since Lighthouse Road is a numbered road, the front yard setback requirement is forty (40) feet instead of thirty (30) feet.
6. The Board found that Mr. Fuqua stated that the surrounding properties are commercial and residential properties including multi-family uses and condominiums.
7. The Board found that Mr. Fuqua stated that the front yard setbacks of the neighboring properties are much less than forty (40) feet.
8. The Board found that Mr. Fuqua stated that all other setback requirements will be met as well as all flood regulations.

9. The Board found that Mr. Fuqua stated that there are several unique circumstances related to the Property.
10. The Board found that Mr. Fuqua stated that the borders of the Town of Fenwick Island do not include the southernmost five (5) or six (6) blocks. The Property is located outside the Town.
11. The Board found that Mr. Fuqua stated that the entire surrounding area is zoned C-1 Commercial. The area is treated as a mixed-use high density area with businesses and duplexes.
12. The Board found that Mr. Fuqua stated that the Board has previously granted over twenty variances to surrounding properties and the requested variances are similar to other density variances granted in the area.
13. The Board found that Mr. Fuqua stated that the neighborhood consists of older homes and buildings with nonconforming setbacks.
14. The Board found that Mr. Fuqua stated that a neighboring property has a newly constructed duplex which is similar to the proposed duplexes.
15. The Board found that Mr. Fuqua stated that the parcel located directly across the street was granted a variance.
16. The Board found that Mr. Fuqua stated that surveyor Alan Kent stated that the average front yard setback for buildings in the area is approximately 18 feet. If the setback of the vacant lots were included in this average, the average front yard setback is 24 feet.
17. The Board found that Mr. Fuqua stated that the lots are unique due to their small size being less than 5,000 square feet each.
18. The Board found that Mr. Fuqua stated that the zoning of the area has created a mixture of uses surrounding the lots. There is also a mix of old and new structures surrounding the area.
19. The Board found that Mr. Fuqua stated that the proposed duplexes are a permitted use within the zoning district.
20. The Board found that Mr. Fuqua stated that the exceptional practical difficulty was not created by the Applicant.
21. The Board found that Mr. Fuqua stated that the Applicant recently acquired the Property.
22. The Board found that Mr. Fuqua stated that the proposed duplexes will not alter the essential character of the neighborhood because the duplexes will be consistent with the surrounding mixed use nature.
23. The Board found that Mr. Fuqua stated that the variances requested are the minimum variances needed for reasonable use of the Property.
24. The Board found that Mr. Fuqua stated that the duplexes are located closer to the front yard to preserve the available view and to be consistent with neighboring properties.
25. The Board found that Mr. Yoder, under oath, affirmed the statements made by Mr. Fuqua.
26. The Board found that Mr. Fuqua stated that parking will be available under the proposed duplex units and no living space will be located under the buildings. There will be separate utility connections for the duplexes.
27. The Board found that Mr. Yoder testified that the HVAC units will be located in the rear of the duplexes but will be within the building envelope.
28. The Board found that Mr. Yoder testified that the lots were previously as a parking lot.
29. The Board found that no parties appeared in support of or in opposition to the Application.
30. 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 unrebutted, 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 lots are clearly unique as they are small and narrow lots. The lots were created by a prior owner and consist of only 4,996 square feet; as clearly shown on the survey. The small size of the lots has created an exceptional practical difficulty for the Applicant and this difficulty is exacerbated by the fact that the lots are located off Lighthouse Road. Lighthouse Road is a numbered road and is a continuation of Route 54. The portion of this road east of Route 1 is only a block long and ends at the Atlantic Ocean. Since Lighthouse Road is a numbered road, the front yard setback is 40 feet. This setback requirement combined with the small size of the lots leave an unusually small and limited building envelope. The situation is also unique because neighboring homes and structures are located closer to the front yard property line than is allowed by the setback requirements. The area is also commercially zoned and contains a series of mixed uses throughout, including duplexes similar to the ones proposed by the Applicant.
- 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 lots are exceptionally small and are limited in development by the large front yard setback requirement. The Applicant seeks to construct duplexes on Parcel 156 and 157. The duplexes will be similar in size, shape, and character with other duplexes in the area and will be located a similar distance from the front property line as other nearby structures. These duplexes are a reasonable use of the Property. The Applicant, however, is unable to construct these duplexes due to the lot size requirements. The Applicant is also unable to provide a suitable view from the duplexes while still meeting the front yard setback requirements. The Board is convinced that the variances are necessary to enable the reasonable use of the lots as the variances will allow reasonably sized duplexes to be constructed on the lots. The Board is convinced that the shape and location of these duplexes are reasonable, which is confirmed when reviewing the site plan provided by the Applicant.
- c. The exceptional practical difficulty was not created by the Applicant. The lots were created by a prior owner and are undersized lots with unusual narrowness. The Board notes that these conditions greatly limit the building envelopes. The small building envelopes are exacerbated by the unusual front yard setbacks for the lots. These unique physical conditions and this unique situation have resulted in a limited building envelope and have created the exceptional practical difficulty for the Applicant.
- 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 proposed duplexes will be similar to other duplexes in the area and the structures will be located a similar distance from Lighthouse Road as other nearby structures. The surrounding area is clearly a mixed-use area with businesses, residences, and duplexes nearby. The proposed duplexes appear consistent with the character of the neighborhood. Furthermore, 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 regulation at issue. The Applicant has demonstrated that the variances

sought will allow the Applicant to construct reasonably sized duplexes on the lots consistent with other duplexes in the area.

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 May 16, 2017