

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: PATRICIA A. BARTHELMESS

(Case No. 11971)

A hearing was held after due notice on June 19, 2017. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the minimum lot size requirement.

Findings of Fact

The Board found that the Applicant was seeking a variance of 1,172 square feet from the 10,000 square feet minimum lot size requirement for Proposed Lot 1, a variance of 1,153 square feet from the 10,000 square feet minimum lot size requirement for Proposed Lot 2, a variance of 929 square feet from the 10,000 square feet minimum lot size requirement for Proposed Lot 3, and a variance of 1,500 square feet from the 10,000 square feet minimum lot size requirement for Proposed Lot 4. This application pertains to certain real property located on the east side of Lagoon Lane approximately 150 feet southeast of Bay Haven Road (911 Address: 37735 Lagoon Lane, Ocean View); said property being identified as Sussex County Tax Map Parcel Number 1-34-8.00-140.04 & 140.05.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, and a survey of the Property dated September 7, 2016.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of the application and five (5) letters in opposition to the Application.
3. The Board found that Patricia Barthelmess was sworn in to testify about the Application. David Hutt, Esquire, presented the case on behalf of the Applicants and submitted exhibits for the Board to review including copies of deeds to the Property, Google Earth image, a site plan, and a letter of support from Louis & Kerri Travalini.
4. The Board found that Mr. Hutt stated that the Property consists of two adjacent lots identified as Parcels 140.04 and 140.05 and the Applicant proposes to subdivide the two (2) parcels into four (4) lots. Parcel 140.04 is improved by a structure with three (3) apartment units and Parcel 140.05 is a vacant parcel.
5. The Board found that Mr. Hutt stated that, in 2002, Mrs. Barthelmess became the sole owner of both properties through a deed.
6. The Board found that Mr. Hutt stated that the minimum lot area is 10,000 square feet and the minimum road frontage requirement is 75 feet. The proposed lots will meet the road frontage requirement but do not meet the square footage requirement.
7. The Board found that Mr. Hutt stated that the proposed lots will be larger than the lots across Lagoon Lane. The neighboring lots consist of approximately 5,000 square feet.
8. The Board found that Mr. Hutt stated that the Applicant has two (2) children and three (3) grandchildren. The Applicant owns another property and the Applicant plans to bequeath the five (5) lots to her children and grandchildren with each beneficiary receiving one (1) lot. The Applicant does not propose to construct townhouses on the lots.
9. The Board found that Mr. Hutt stated that the area is susceptible to tidal flooding but the number of units on the Property will have no impact on the tidal flooding.
10. The Board found that Mr. Hutt stated that the Applicant must comply with the Sussex County parking requirements.

11. The Board found that Mr. Hutt stated that the Applicant's representative contacted Sussex County and learned that the sewer system has adequate sewer capacity to accommodate those lots.
12. The Board found that Mr. Hutt stated that the Applicant originally sought to create five (5) lots but revised her plans after speaking with her neighbors. The original five (5) lot proposal including lots which were close in size to the lots across the street.
13. The Board found that Mr. Hutt stated that the Property is shallow which prevents the Property from meeting the lot size requirement.
14. The Board found that Mr. Hutt stated that the variances are necessary to enable the reasonable use of the Property and the exceptional practical difficulty was not created by the Applicant.
15. The Board found that Mr. Hutt stated that the original subdivision plots in the area date back to the 1950s or 1960s and that the neighboring lots have varying sizes and shapes.
16. The Board found that Mr. Hutt stated that the proposed subdivision would provide a transition from the smaller lots in the community to the larger lots nearby.
17. The Board found that Mr. Hutt stated that the variances will not alter the essential character of the neighborhood.
18. The Board found that Mr. Hutt stated that the adjacent neighbors support the Application and they even supported a five (5) lot subdivision.
19. The Board found that Mr. Hutt stated that the variances requested are the minimum variances necessary to afford relief.
20. The Board found that Mrs. Barthelmess, under oath, affirmed the statements made by Mr. Hutt.
21. The Board found that Mr. Hutt stated that the Sussex Conservation District will address drainage of these lots.
22. The Board found that Mr. Hutt stated that the Rogers Haven development is located across the street and most of the lots in Rogers Haven are 50 feet wide.
23. The Board found that Mr. Hutt stated that the existing structure with apartments will remain on Parcel 140.04.
24. The Board found that Mrs. Barthelmess testified that the apartment structure has been there for at least 40 years.
25. The Board found that Sarah Powell, Eileen Barnhard, Dr. Patricia Riola, Constance Bond, and Douglas Scott were sworn in to testify in opposition to the Application.
26. The Board found that Ms. Powell testified that she has lived on Lagoon Lane for eight (8) years. Her lot is across the street from the Property and is on higher ground. Her home was built in 1969.
27. The Board found that Ms. Powell testified that the Property is a low-lying property with a tidal ditch and the tidal water flows onto other lots. She is concerned that additional fill dirt and driveway pipes could jeopardize the drainage and that, if approved, four new driveway pipes would need to be installed for drainage.
28. The Board found that Ms. Powell testified that the variances will adversely affect her lot by pushing water over onto her property and that the proposed subdivision could adversely affect neighboring property values.
29. The Board found that Ms. Powell testified that other neighboring homes are larger homes and she is concerned with overdevelopment of the area.
30. The Board found that Ms. Powell testified that the neighborhood uses well water.
31. The Board found that Ms. Powell testified that she is a civil engineer at the Delaware Department of Transportation ("DelDOT") and that additional entrances to the road from the subdivision would threaten the integrity of the road.
32. The Board found that Ms. Powell testified that ten (10) vehicle trips per day per household is an average.
33. The Board found that Ms. Powell testified that she supports a reasonable development of the Property provided the development complies with the Code. She

would not object to a subdivision of three (3) lots if the subdivision met the Sussex County Zoning Code.

34. The Board found that Ms. Powell testified that the area floods from rainwater and tidal water but most of the flooding comes from tidal waters.
35. The Board found that Ms. Powell testified that she questions where the hardship exists. She believes that the only hardship is that the Applicant has a certain number of beneficiaries to whom she wishes to bequeath land.
36. The Board found that Ms. Barnhard testified that the Applicant seeks higher density but the Property can be developed without a variance and can be subdivided within code requirements.
37. The Board found that Ms. Barnhard testified that the parcels across Lagoon Lane were developed in 1963 and the Applicant purchased the Property in 1982.
38. The Board found that Ms. Barnhard testified that the neighboring lots contiguous to the Property are 10,000 square feet.
39. The Board found that Ms. Barnhard testified that the Applicant's request is a want not a need and this request is not an estate plan issue.
40. The Board found that Ms. Barnhard testified that there is no uniqueness to the Property.
41. The Board found that Dr. Riola testified that the Property can otherwise be developed.
42. The Board found that Dr. Riola testified that the area is susceptible to flooding when it rains at high tide.
43. The Board found that Dr. Riola testified that neighboring homes were built in the 1950s and 1960s and that there is no promise as to what will happen in future development.
44. The Board found that Ms. Bond testified that she is the adjacent neighbor on parcel 140 to the rear of the Applicant's lots and she has lived there for 20 years.
45. The Board found that Ms. Bond testified that Rogers Haven is a charming area and that many lots in the area are larger than 1 acre. The neighboring lots which consist of 5,000 square feet line the only canal in the area and those lots would not be allowed to be created today.
46. The Board found that Ms. Bond testified that the proposed subdivision increases density in the area and would set a precedent for future new lots in the area. She believes that the neighborhood would be degraded by the proposed subdivision.
47. The Board found that Ms. Bond testified that, if the application is approved, her property will share three (3) backyards sharing her property line.
48. The Board found that Ms. Bond testified that she is not satisfied that the Applicant is showing a hardship exists.
49. The Board found that Mr. Scott testified that his father lives across the street.
50. The Board found that Mr. Scott testified that the drainage ditch along the road drains to the bay and there are flooding problems in the area. His main concern is the drainage of the water.
51. The Board found that Mr. Scott testified that he is concerned about the drainage as the ditch provides a way for the water to flow and new driveways would go over the ditch. The ditch is maintained by the residents that live along the road.
52. The Board found that Mr. Hutt stated that the ditch is not a tax ditch and that storm water management was not regulated when the neighboring properties were developed.
53. The Board found that no parties appeared in support of the Application.
54. The Board found that twelve (12) parties appeared in opposition to the Application.
55. The Board tabled the Application until July 10, 2017, at which time the Board discussed and voted on the Application.
56. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board has weighed and

considered, 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.

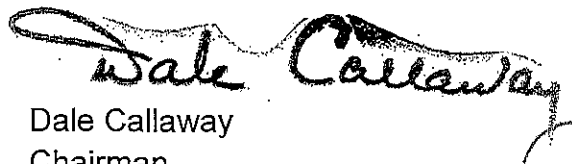
- a. The Property, which consists of 2 lots, is wide but shallow. The Property has road frontage of 303.05 feet which is wide enough to subdivide the Property into 4 parcels within the MR zoning district. The Property is, however, too shallow to meet the lot size requirements. These unique characteristics of the Property have created an exceptional practical difficulty for the Applicant who seeks to subdivide the Property.
- b. Due to the Property's unique conditions, the Property cannot be subdivided in strict conformity with the Sussex County Zoning Code. The Applicant seeks to subdivide the Property into four lots but is unable to do so without violating the Sussex County Zoning Code due to the shallowness of the lot. The Board is convinced that the proposed subdivision of the Property 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 subdivide the Property. The survey attached to the Application confirms that the subdivision is reasonable. The Board also notes that neighboring properties across from Lagoon Lane are narrower and smaller lots than the lots proposed with this application.
- c. The exceptional practical difficulty was not created by the Applicant. The Applicant, who only acquired sole ownership of the Property in 2002, did not create the unique size of the Property. No evidence was presented that the lot's size and shape has changed since the implementation of the lot width requirement in the Sussex County Zoning Code. Notably, the Property is quite wide and could easily service four lots but the Property is too shallow to meet the lot size requirement. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that these unique conditions have created an 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 Property will be subdivided into four lots – all of which will meet the necessary lot width requirement but will be slightly smaller than the lot size requirement. The unrebutted evidence confirms that there are other lots in the neighborhood which consist of less than 5,000 square feet and the proposed lots will be larger and wider than those lots. Neighbors presented concerns about the impact of the subdivision on flooding but the neighbors also opined that the flooding was generally due to tides in the area. The Board was not convinced that the variances would impact flooding in the area. The Board also notes that one neighbor stated that she would be fine with a subdivision of 3 lots and another neighbor submitted a letter supporting the request to create 4 lots.
- 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 Property to be subdivided into four lots. The proposed subdivision will meet the lot width requirement. The Applicant considered a subdivision of five lots but, by reducing the number of lots to four, the Applicant is minimizing the need for the variances.

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. John Mills, and Mr. Brent Workman. No Board Members voted against the Motion to approve the variance application. Ms. Ellen Magee and Mr. Norman Rickard did not participate in the discussion or vote 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 August 22, 2017