

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: KENNETH L. SHORT & JEFFREY A. SHORT

(Case No. 12030)

A hearing was held after due notice on October 16, 2017. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the minimum lot size and minimum road frontage requirements.

Findings of Fact

The Board found that the Applicants were seeking seek a variance of 0.0683 acres from the minimum one (1) acre lot size requirement for the proposed Lot A, a variance of 0.1852 acres from the minimum one (1) acre lot size requirement for the proposed Lot B, a variance of 0.2495 acres from the minimum one (1) acre lot size requirement for the proposed Lot C, and a variance of 9.12 feet from the minimum 150 feet lot width requirement for the proposed Lot C. This application pertains to certain real property located at the southeast corner of Shorts Landing Road and Warwick Road (911 Address: 28530 Warwick Road, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 2-34-33.00-22.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, and a survey of the Property dated July 27, 2017.
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 Michael Robert Berry was sworn in to testify about the Application. Mr. Berry submitted exhibits to the Board to review.
4. The Board found that Mr. Berry testified that he is one of the owners of the Property and the Applicants acquired the Property in August 2017. The Property consists of 2.5 acres more or less and was previously used as a six (6) unit mobile home park.
5. The Board found that Mr. Berry testified that there are now three (3) individual residences on the Property which have their own addresses, well, septic, and utilities. The existing buildings have been on the Property since before 1970 and two (2) of the units are older mobile homes. The Applicants have no intent to tear down the existing structures which are separated by existing topography.
6. The Board found that Mr. Berry testified that the need for the variances was not created by the Applicants and that the variances will not alter the essential character of the neighborhood.
7. The Board found that Mr. Berry testified that the variances requested are the minimum variances necessary to afford relief.
8. The Board found that Mr. Berry testified that the units are served by well and septic. New septic systems may be needed but the soil has been tested and the lots meet the regulations for standard septic systems.
9. The Board found that Mr. Berry testified that the lots will be divided among the existing owners.
10. The Board found that Mr. Berry testified that the Applicants seek to bring a non-conforming use more in compliance with the existing zoning code.
11. The Board found that Mr. Berry testified that nearby lots are similar in size to the proposed lots.

12. The Board found that Mr. Berry testified that the Property is quite high and slopes towards Indian River.
13. The Board found that Mr. Berry testified that the variances will not adversely affect the water quality of Indian River and the variances are in general harmony with the spirit of the conservation zone.
14. The Board found that Mr. Berry testified that the variances are not based on conditions or circumstances which are a result of actions by the Applicants nor do the variance requests arise from any condition relating to the land use, either permitted or non-conforming, on any neighboring property.
15. The Board found that no parties appeared in support of or in opposition to the Application.
16. The Application was tabled until November 20, 2017, at which time the Board discussed and voted on the Application.
17. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board finds credible, persuasive, and un rebutted, 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 2.497 acres as shown on the survey, is unique as it a large lot in the conservation zone located along Indian River Bay. The Property has a unique history as it was previously used for a manufactured home park consisting of 6 units. The Applicants propose to subdivide the Property into 3 lots to accommodate 3 existing units on the Property. No new structures are proposed. The Property is large and appears to have existing topography and development which gives the Property the appearance of already consisting of 3 different parcels. These conditions are unique and have created an exceptional practical difficulty for the Applicants who seek to subdivide the lot.
 - b. Due to the Property's unique conditions, the Property cannot be subdivided in strict conformity with the Sussex County Zoning Code. The Applicants seek to subdivide the Property into 3 lots but are unable to do so without violating the Sussex County Zoning Code due to the size and narrowness 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 Applicants to reasonably subdivide the Property. The survey attached to the Application confirms that the subdivision is reasonable.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unique size, shape, and development of the Property. The un rebutted evidence confirms that the Property was developed with the existing structures since prior to 1970 and the Applicants only recently acquired 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 has serviced as many as 6 dwellings and the existing 3 structures have effectively operated as homes on separate parcels for many years. Each of those homes has separate utilities and addresses. The unique characteristics of the Property are clear from the record and the Board is convinced that these unique conditions have created an exceptional practical difficulty for the Applicants.
 - 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 3 lots for the existing 3 homes. The record indicates

that these homes have been in their present location for many years and the Property appears to function as 3 separate lots. No evidence was presented that the proposed subdivision of the Property would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.

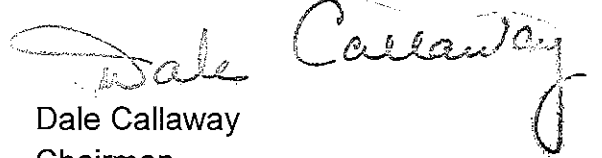
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant have demonstrated the variances will allow the Property to be subdivided into 3 lots. The Property already services 3 dwellings and the proposed subdivision will not add any dwellings to the Property. Rather, the subdivision will separate the homes onto separate parcels in accordance with their historic use and topography of the lot.
- f. The Applicants have demonstrated that special conditions or circumstances exist in that the proposed 3 lot subdivision has considerable frontage on the Indian River Bay and that the nature of the divided lots is similar to the historic use of the Property which has been developed by the existing 3 dwellings since prior to 1970. These conditions are peculiar to the land within the County and a literal enforcement of provisions within the conservation zone, as designated by this section would result in unwarranted hardship.
- g. The variances requested are not based upon conditions or circumstances which are a result of actions by the Applicants, other than the filing of the referenced minor subdivision application. The 2.497 acre parcel has been developed for many years and the existing 3 dwellings have been on the Property since prior to 1970. The variance requests do not arise from any condition relating to the land use, either permitted or nonconforming, on any neighboring property.
- h. The granting of a variances will not adversely affect water quality or adversely impact the tidal water bodies adjacent to the Conservation Zone. The proposed lots that are the subject of the variances otherwise meet the Tidal Waters protective setback of 50 feet and all other setback and area requirements but for the lot width and size requirements. There will be no disturbance within the tidal setback areas. Variances will be in harmony with the general spirit and intent of the section and any subsequent regulations. Septic system permits will be acquired as necessary and the soils have been tested to demonstrate that the soils meet the regulations for standard septic systems. The proposed subdivision also does not add any additional units to the site.
- i. The application for the variances has, in fact, been made, in writing to, the Board of Adjustment on forms provided by the County, with a copy to the County Administrator.

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. Bruce Mears, Mr. John Mills, and Mr. Brent Workman. Ms. Ellen Magee 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 January 23, 2018.