

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: PAUL WEBSTER & JUSTIN DUHAIME

(Case No. 12093)

A hearing was held after due notice on February 5, 2018. 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 side yard setback requirement.

Findings of Fact

The Board found that the Applicants intend to subdivide the Property into two (2) lots (Lots 304A and 306A) and seek a variance of five (5) feet from the fifteen (15) feet side yard setback requirement on the east side of the proposed Lot 304A and variances of five (5) feet from the fifteen (15) feet side yard setback requirement on both sides of the proposed Lot 306A for proposed dwellings on those lots. No variance is sought from the corner front yard setback requirement for proposed Lot 304A along Bald Eagle Road. This application pertains to certain real property located on the southeast corner of Bald Eagle Drive and 7th Street. (911 Address: 21169 Bald Eagle Road, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-19.16-90.00.

1. The Board was given copies of the Application, photographs of the Property and the neighborhood, a preliminary plat dated September 13, 2017, a front elevation of the proposed dwelling, an aerial photograph of the Property, and a portion of the tax map of the area.
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 Paul Webster was sworn in to testify about the Application.
4. The Board found that Mr. Webster testified that the Applicants purchased the Property in August 2017.
5. The Board found that Mr. Webster testified that the Property measures 100 feet by 100 feet and is improved by a dwelling located in the middle of the lot. The Applicants propose to subdivide the Property into two (2) lots measuring 50 feet wide by 100 feet deep.
6. The Board found that Mr. Webster testified that both lots would be buildable per Sussex County because the lots would revert to the original lot sizes as shown on the Bay Vista subdivision plan.
7. The Board found that Mr. Webster testified that, if the Property is subdivided as proposed, the side yard setback requirements would be 15 feet rather than ten (10) feet and the Applicants propose these variances to allow for side yard setbacks of ten (10) feet except for the corner front setback which borders Bald Eagle Road.
8. The Board found that Mr. Webster testified that there are approximately 70 lots in Bay Vista which measure 50 feet by 100 feet and those lots have side yard setback requirements of ten (10) feet.
9. The Board found that Mr. Webster testified that there are six (6) corner lots which are also similarly situated and measure 50 feet wide by 100 feet deep.
10. The Board found that Mr. Webster testified that similar variances were granted to Gaw Ventures Group (Case No. 11742). The Gaw Ventures property is located on the same block as the Property but there are some differences between the two applications.

11. The Board found that Mr. Webster testified that the entrances for the proposed lots will remain off of Seventh Street.
12. The Board found that Mr. Webster testified that a building envelope with 15 feet side yard setback requirements would only be 20 feet wide and a house of that size is not feasible. He believes that 15 feet side yard setback requirements are also inconsistent with the neighborhood.
13. The Board found that Mr. Webster testified that the lots were created in the 1950s and Bay Vista was originally created with lots measuring 25 feet by 100 feet. The restrictive covenants required that 2 lots be used for each house. As such, the intent of the community was for lots measuring 50 feet by 100 feet.
14. The Board found that Mr. Webster testified that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code and that the variances are necessary to enable reasonable use of the Property.
15. The Board found that Mr. Webster testified that the exceptional practical difficulty was not created by the Applicants.
16. The Board found that Mr. Webster testified that there has been confusion as to the size of the setback requirements for the Property. The Applicants called the Planning & Zoning Office prior to purchasing the Property and were told that the Property could be subdivided with 10 feet wide side yard setbacks.
17. The Board found that Mr. Webster testified that the Applicants intend to relocate and renovate the existing dwelling.
18. The Board found that Mr. Webster testified that the Applicants have cleaned up the Property. The dwelling had been abandoned for 13 years.
19. The Board found that Mr. Webster testified that the variances requested are the minimum variances necessary to afford relief and the variances represent the least modification of the regulations at issue.
20. The Board found that Mr. Webster testified that the Property is located in a flood zone and the existing Property has topographical conditions which have created an exceptional practical difficulty.
21. The Board found that Mr. Webster testified that the dwelling needs to be raised and flood vents installed.
22. The Board found that Mr. Webster testified that the Property is a corner lot.
23. The Board found that Mr. Webster testified that the Applicants did not create the size of the Property in the original Bay Vista subdivision.
24. The Board found that Mr. Webster testified that the variances will not alter the essential character of the neighborhood or be detrimental to the public welfare.
25. The Board found that Mr. Webster testified that the garage located on neighboring Lot 89 is under 600 square feet and is five (5) feet from the property line.
26. The Board found that Mr. Webster testified that an existing shed on the Property is only 2.5 feet from the property line and that shed will be removed or moved into compliance with the Sussex County Zoning Code.
27. The Board found that Mr. Webster testified that all structures, including HVAC systems and stairs, will fit within the building envelope if the variances are approved.
28. The Board found that Mr. Webster testified that the neighbor across the street approves of the requests.
29. The Board found that Justin Duhaime was sworn in to testify in support of the Application. He affirmed the statements made by Mr. Webster as true and correct.
30. The Board found that Mary Beth Dockitty and Grant Dockitty were sworn in to testify in opposition to the Application. Mr. Dockitty submitted exhibits to the Board to review.
31. The Board found that Mr. Dockitty testified that Bay Vista has restrictive covenants which require a setback of 23 feet from the road. The restrictive covenants were created in 1954 and those covenants have resulted in narrow dwellings.

32. The Board found that Mr. Dockitty testified that there plenty of lots in Bay Vista which measure 50 feet by 100 feet but there are not corner lots which measure 50 feet by 100 feet except for the Gaw Ventures property.
33. The Board found that Mr. Dockitty testified that there are some corner lots which measure 75 feet wide.
34. The Board found that Mr. Dockitty testified that his neighbor opposes the Application and that he has a petition with 40 signatures opposing the subdivision of the Property. He has lived in Bay Vista since 1975 and his property measures 75 feet by 100 feet.
35. The Board found that Mr. Dockitty testified that he owns Lot 89 and he is a builder.
36. The Board found that Mr. Dockitty testified that the house built on the Gaw Ventures property looks out of character for the neighborhood and that the proposed variances are out of character for the neighborhood as well.
37. The Board found that Mr. Dockitty testified that there is a right-of-way of three (3) feet behind the lots for drainage to the canal.
38. The Board found that Mr. Dockitty testified that there is no homeowners association.
39. The Board found that Mr. Dockitty testified that he wants the Applicants to comply with the setback requirement of 23 feet off Bald Eagle Road.
40. The Board found that Mr. Dockitty testified that he would prefer two ranch-style houses over two large houses but he does not think the Applicants will build ranch-style houses.
41. The Board found that Mr. Dockitty testified that he does not oppose setbacks of 10 feet but not on the Bald Eagle Road side. He opposes the setback of 15 feet on the Bald Eagle Road side of the Property.
42. The Board found that Mr. Dockitty testified that other houses in the neighborhood have 10 feet side yard setbacks and that he believed the side yard setback requirements were always 10 feet.
43. The Board found that Mr. Webster testified that he is aware of the restrictive covenants.
44. The Board found that one (1) party appeared in support of the Application.
45. The Board found that two (2) parties appeared in opposition to the Application.
46. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered, 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, which consists of Lot 304A and 306A, is unique as it consists of two undersized lots. These lots were originally part of the Bay Vista subdivision which consisted of 25 feet wide lots. The Property, while used as a single lot for many years, is planned to be developed for two homes. This development is consistent with the restrictive covenants for the community which required that a lot measure at least 50 feet wide to have a dwelling. The Property is also a corner lot which fronts on both 7th Street and Bald Eagle Road and the proposed dwellings will be similar to other homes along 7th Street. It is clear to the Board that the other lots in the neighborhood which are 50 feet wide have side yard setback requirements of 10 feet. The resubdivision of the original lots, however, has created an unusual situation where 15 feet side yard setback requirements would be applicable. These unique characteristics of the Property have created an exceptional practical difficulty for the Applicants.
 - b. Due to the Property's unique conditions, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants seek to construct and / or relocate homes on Lots 304A and 306A but are

unable to do so without violating the Sussex County Zoning Code. The un rebutted testimony confirms that many other lots in the neighborhood measure 50 feet wide by 100 feet deep and those lots have 10 feet side yard setback requirements. Even with 10 feet wide side yard setback requirements, the building envelope is particularly narrow and it is unlikely that a dwelling could be constructed to afford the Applicants with reasonable use of the Property if the side yard setback requirements were left at 15 feet. The variances requested simply afford the Applicants with the same building envelope found on other similarly sized lots in the neighborhood. The Board is convinced that the variances requested are necessary to enable the reasonable use of the Property as the variances will allow the Applicants to reasonably develop the Property.

- c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unique size of the lots in the original Bay Vista subdivision. Rather, those lots were created many years ago and the Applicants only recently acquired the Property. The unique characteristics of the Property are clear when reviewing the survey and the tax map of the area. The Board also notes that the un rebutted testimony confirms that the existing home on the Property was uninhabitable and needed to be renovated with flood vents to alleviate flooding problems on the lot. The small size of the lots combined with the 15 feet wide side yard setback requirements have resulted in an exceptionally narrow building envelope and have created an exceptional practical difficulty.
- 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 concerns raised by the opposition focus primarily on the effect of the proposed development of these two lots on the character of the neighborhood. The Board finds those concerns unconvincing as the Applicants may already develop the Property with two homes and the lots and proposed setback requirements are similar to other lots in the neighborhood, including corner lots. The opposition appeared to have no objection to the Applicants' request for 10 feet side yard setback requirements on the sides of the proposed lots. The opposition even testified that he believed the setback requirement was 10 feet on the sides. Rather, the opposition expressed concerns about the setback along Bald Eagle Road. The Applicants, however, are not seeking a variance from that setback requirement. They will be required to meet that 15 feet setback requirement along Bald Eagle Road. The opposition presented evidence that a nearby property was subject to a setback of 23 feet from the road. While it was unclear to the Board whether this restrictive covenant applies to the Property which is the subject of this Application, the Board does not enforce restrictive covenants. Assuming, *arguendo*, the restrictive covenants apply to the Applicants' Property, the existence of those covenants would support the Applicants' request for the side yard variance on Lot 304A because the building envelope would be further reduced beyond what would be required by the Sussex County Zoning Code. Ultimately, after weighing all of the evidence and testimony, the Board was not convinced 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 regulations at issue. The Applicants have demonstrated the variances will allow them to develop Lot 304A and Lot 306A with reasonably sized

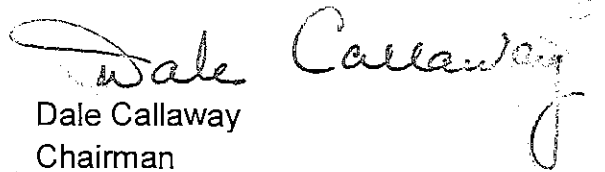
dwellings. The size, width, and setback requirements for the proposed lots will be no different than the size, width, and setback requirements for the original lots and the setbacks will be similar to other lots in the neighborhood. The Board notes that the 15 feet corner yard setback requirement on the new Lot 304A along Bald Eagle Road will be maintained.

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, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, 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 March 20, 2018