

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: CMF BAYSIDE LLC

(Case No. 12123)

A hearing was held after due notice on April 16, 2018. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the minimum lot width requirement and the minimum lot size requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 12 feet from the sixty (60) feet minimum lot width requirement and a variance of 1,800 square feet from the 7,500 square feet minimum lot size requirement for twenty-four (24) lots in Village A of the Americana Bayside Residential Planned Community. These 24 lots are identified as "patio" lots. This application pertains to certain real property located on the southeast of the intersection of Signature Boulevard and Lakeview Drive and within Village A of the Americana Bayside MR-RPC (911 Address: None Available); said property being identified as Sussex County Tax Map Parcel Number 5-33-19.00-36.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, a site plan rendering of the Property, and the minutes for Case No. 11262.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of the Application or in opposition to the Application.
3. The Board found that Rich Rishel and Steven Marsh were sworn in to testify about the Application. James Fuqua, Esquire, presented the case on behalf of the Applicants and submitted exhibits for the Board to review.
4. The Board found that Mr. Fuqua stated that the request is for certain lots located in Village A of Americana Bayside and the Applicant requests variances from the lot width and lot size minimum requirements for those lots.
5. The Board found that Mr. Fuqua stated that Village A consists of 96 single-family lots and the variance requests apply to 24 lots that are known as patio lots.
6. The Board found that Mr. Fuqua stated that Americana Bayside was approved in 2001 as a large-scale, residential-planned community and the community consists of 1,700 residential lots. The community includes 170,000 square feet of office and retail space. Amenities also include a golf course, the Freeman Stage, and others.
7. The Board found that Mr. Fuqua stated that the variation in architectural style leads to variations in the lot size.
8. The Board found that Mr. Fuqua stated that Village A will include 17 lots measuring 72 feet by 100 feet, 54 lots measuring 64 feet by 120 feet, and 24 lots measuring 48 feet by 120 feet known as patio lots.
9. The Board found that Mr. Fuqua stated that, in order to maintain the architectural style of the development, the variances are needed.
10. The Board found that Mr. Fuqua stated that, in 2004, the Board of Adjustment approved 127 lots elsewhere in the community measuring 6,000 square feet and, in 2013, the Board of Adjustment approved 93 lots measuring 5,000 square feet that were only 40 feet wide.
11. The Board found that Mr. Fuqua stated that the Applicant is requesting 24 lots which will consist of 5,700 square feet and will measure 48 feet wide.

12. The Board found that Mr. Fuqua stated that the requested variances are smaller variances than the Board previously granted in the community.
13. The Board found that Mr. Fuqua stated that the exceptional practical difficulty was not created by the Applicant and the variances will not alter the essential character of the neighborhood.
14. The Board found that Mr. Fuqua stated that Americana Bayside is the largest residential community in Sussex County.
15. The Board found that Mr. Fuqua stated that the variances will lead to consistency with the existing homes within the community that are already built.
16. The Board found that Mr. Rishel affirmed the statements made by Mr. Fuqua as true and correct.
17. The Board found that Mr. Fuqua stated that Village A is an island by itself and is not surrounded by other residential lots.
18. The Board found that Mr. Rishel testified that there has been no site work completed yet and that Village A is surrounded by the golf course.
19. The Board found that Mr. Fuqua stated that the Applicant will be adding land to Village A but will not be adding density to Village A. The number of units per acre will be reduced.
20. The Board found that Mr. Fuqua stated that the design of Village A is a superior design and the Applicant will adhere to the original MR-RPC approval.
21. The Board found that Mr. Rishel testified that there will be no density increase in the overall project.
22. The Board found that no parties appeared in support of or in opposition to the Application.
23. 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 is unique as it is part of the Americana Bayside Residential Planned Community which is a large residential planned community approved for 1,700 units in 2001. The community has a mixture of uses over a large development and the community has a unique mixture of architecture and design. The community itself is a rare type of development in Sussex County. The Applicant seeks to develop Village A for 96 residential units, including 24 "patio" lots which are smaller and narrower than other lots. These lots are identified on the plans submitted by the Applicant. Village A was initially approved for 169 residential units but the Applicant seeks to reduce the number of residential units to 96 single-family lots by the elimination of condominium units. This design feature will reduce the number of units in Village A. Village A is limited in its area for development as it is surrounded by the existing golf course and much of Village A consists of ponds. These unique characteristics of the Property have created an exceptional practical difficulty for the Applicant who seeks to develop the Property in a manner consistent with other development in the community.
  - 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 96 lots, including 24 "patio" lots which measure 48 feet wide and consist of 5,700 square feet but the Applicant is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the proposed development 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 develop the Property. The survey attached to the Application confirms that the development is reasonable. The Board also notes that other lots in the Americana Bayside community have been granted similar variances and Village A is surrounded by the golf course.

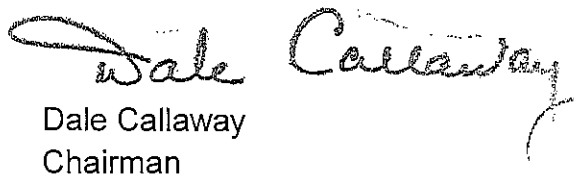
- c. The exceptional practical difficulty was not created by the Applicant. Village A is part of the unique Americana Bayside community which has an unusual development and history. The area where Village A is to be located is a limited area due to the surrounding golf course. The Applicant seeks to reduce the density of Village A but is unable to subdivide Village A as proposed without variances due to the unique size and shape of the Property. 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 96 lots – all of which will meet the necessary lot width requirement except for 24 “patio” lots will be smaller and narrower than the lot width and size requirements. The unrebutted evidence confirms that there are other lots in the neighborhood which are narrower and smaller than the proposed “patio” lots. The impact of these smaller lots should have no impact on the neighborhood as the lots are within the confines of Village A and will be interspersed throughout Village A in a manner consistent with the design of Americana Bayside. Since no units in Village A have been sold, persons who purchase lots within Village A will have adequate notice of the difference in lot sizes prior to purchasing their lots. Furthermore, Village A is surrounded by the golf course so it is unlikely that these variances would be noticeable on neighbors outside of Village A. Lastly, 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 regulations at issue. The Applicant has demonstrated the variances will allow the Property to be subdivided into 96 lots as proposed. Most of the lots will meet the lot width and lot size requirements. The proposed design will significantly reduce the number of units per acre.
- f. The variances are approved for only 24 patio lots in Village A as identified in the Application and materials submitted 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, Ms. Ellen Magee, Mr. Bruce Mears, and Mr. Brent Workman. No Board Members voted against the Motion to approve the variance application. Mr. John Mills 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 two (2) years from the date below the application becomes void.

Date June 19, 2018