

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: COLONIAL EAST, L.P.

(Case No. 12179)

A hearing was held after due notice on August 6, 2018. The Board members present were: Mr. Dale Callaway, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the side yard setback requirement for a proposed structure.

Findings of Fact

The Board found that the Applicant is seeking a variance of 9.79 feet from the fifteen (15) feet side yard setback requirement on the east side for a proposed building. This application pertains to certain real property on the north side of Lewes-Georgetown Highway, approximately 741 feet east of Minos Conway Road (911 Address: 30769 Lewes-Georgetown Highway, Lewes) said property being identified as Sussex County Tax Map Parcel Number 3-34-5.00-166.00.

1. The Board was given copies of the Application, a site plan of the Property dated April 11, 2018, 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 one (1) letter in support of the Application or no correspondence in opposition to the Application.
3. The Board found that Steve Class was sworn in to testify about the Application. David Hutt, Esquire, presented the Application on behalf of the Applicant and submitted exhibits for the Board to review, including 41 letters supporting the Application.
4. The Board found that Mr. Hutt stated that the Property is one of three parcels which makes up the Sussex East and Sussex West communities located off Route 9. Those communities are manufactured home parks owned and operated by Colonial East, L.P. The communities are subject to conditional use approvals granted in 1981, 1997, and 2007 and a 7 acre portion of the community was rezoned B-1. The entire community consists of 15 acres and has internal lot lines separating the three parcels; though the entire community is often treated as one parcel.
5. The Board found that Mr. Hutt stated that the community consists of 350 units and that most residents are over 55 years old and reside there full-time.
6. The Board found that Mr. Hutt stated that a clubhouse serving both communities was erected on the site where an old farmhouse was located. In 2016, the Applicant constructed a pool house (known as the "Manor House") where residents could use an indoor pool. After constructing the pool, the Applicant realized that the pool house did not have adequate showering facilities and the Applicant worked with an architect to design an addition to the Manor House to house showers. The addition was designed to consist of 194 square feet.
7. The Board found that Mr. Hutt stated that the Property is unique because, though it functions as one community, there are internal lot lines and separate tax parcels. The lot lines cannot be moved to accommodate the proposed addition because a shift in the lot lines would result in an odd shape and would also create a split-zoned property.
8. The Board found that Mr. Hutt stated that the Applicant worked with an architect to minimize the encroachment into the setback area and that the variance requested is the minimum variance necessary to afford relief.

9. The Board found that Mr. Hutt stated that the Applicant has reached out to residents and they support the Application.
10. The Board found that Mr. Hutt stated that the variance is necessary to enable reasonable use of the Property.
11. The Board found that Mr. Hutt stated that the historical make up of these properties created this situation and the exceptional practical difficulty was not created by the Applicant.
12. The Board found that Mr. Hutt stated that the Property cannot be developed in strict conformity with the Sussex County Zoning Code.
13. The Board found that Mr. Hutt stated that the variance will not alter the essential character of the neighborhood and the nearest neighbor who is not a member of this community is over 500 feet away from the proposed building.
14. The Board found that Mr. Class testified that he is a member of the Applicant and he affirmed the statements made by Mr. Hutt as true and correct.
15. The Board found that no parties appeared in support of or in opposition to the Application.
16. 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 un rebutted, 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 is unique as it is one of three parcels which consist of the Sussex East and Sussex West manufactured home communities. One of those parcels was previously developed with an old farmhouse and the Applicant has centered its community facilities (clubhouse and pool house) where that farmhouse was located. The area surrounding these facilities consist of open space and parking areas. While the community is generally treated as 1 parcel, the community has internal lot lines and the proposed shower addition will be too close to the side property line of the Property. The Board finds that the Property has unique characteristics and these characteristics have created an exceptional practical difficulty for the Applicant.
 - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has unique lot lines and the existence of these lot lines limit the Applicant's ability to construct a small addition to the pool house to allow for showers. The Applicant is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the showers to be erected on the Property and the showers are clearly incidental and necessary to the pool house use. The Board is convinced that the shape and location of the shower addition are also reasonable, which is confirmed when reviewing the survey provided by the Applicant.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the lot lines of the Property or its unique historical development. The Property has been developed as a manufactured home park for many years and was subject to conditional use approvals prior to the Applicant's ownership thereof. The lot lines for the community have been in place for many years even though it has functioned as one parcel. These conditions have created the exceptional practical difficulty.
 - d. The variance 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 Board is convinced that the shower addition will have no effect on the character of

the neighborhood. The shower addition is small and will be adjacent to an existing pool house. Though it will encroach into the side yard setback area, there was no evidence that the internal lot lines are even recognized for practical purposes. The Applicant owns the adjacent property most affected by the encroachment and the two lots functionally appear as one lot. Notably, the Applicant also received overwhelming support from neighbors. No evidence was presented that the variance would somehow alter the essential character of the neighborhood. Rather, the shower will likely benefit the neighborhood.

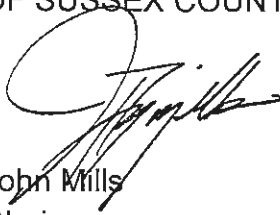
- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represent the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to place a reasonably sized shower addition on the Property. The Board is convinced that the Applicant tried to fit the shower addition within the building envelope but was constrained by the internal lot lines of the Property. The Applicant worked with an architect to minimize the encroachment and the shower addition is small. The Board also notes that the Applicant is unable to adjust the lot lines because an adjustment would result in an exceptionally odd lot line and a split-zoned property.

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. No Board Member voted against the Motion to approve the variance application. Ms. Ellen Magee did not participate in the discussion or vote on this application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



John Mills
Chairman

If the use is not established within two (2) years from the date below the application becomes void.

Date October 2, 2018.