

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: BEEBE MEDICAL CENTER, INC.

(Case No. 12241)

A hearing was held after due notice on December 17, 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 maximum fence height requirement for a proposed structure.

Findings of Fact

The Board found that the Applicant is seeking a variance of 35 feet from the maximum height requirement of sixty (60) feet for a proposed building. This application pertains to certain real property located on the northeast side of Warrington Road approximately 110 feet southeast of John J. Williams Highway (911 Address: N/A) said property being identified as Sussex County Tax Map Parcel Number: 3-34-12.00-125.00.

1. The Board was given copies of the Application, a survey of the Property dated September 18, 2018, building specifications, aerial photographs 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 Mike Riemann and Rick Schaffner were sworn in to testify about the Application. Robert Gibbs, Esquire, presented the Application on behalf of the Applicant and submitted exhibits to the Board to review.
4. The Board found that Mr. Gibbs stated that the Property is located near the Route 24 /Warrington Road intersection. The Property is in close proximity to two other Beebe facilities (Beebe Walk-In Center and Tunnel Cancer Center). The Property is zoned institutional and the Applicant proposes to construct a surgical center on the site. The surgical center will be 95 feet tall.
5. The Board found that Mr. Riemann, who is the engineer on the project, testified that the use of this property is in keeping with the neighborhood.
6. The Board found that Mr. Riemann testified that Beebe Healthcare is working with DelDOT to build a new road which will make accessing the new hospital more efficient.
7. The Board found that Mr. Riemann testified that the building is centrally located on the site to allow appropriate distance from residential neighbors. There are residential neighbors along Route 24 and in the nearby Arbor Lyn community.
8. The Board found that Mr. Riemann testified that there will be sufficient parking on the site.
9. The Board found that Mr. Riemann testified that modern hospitals have requirements which drive design and that floor ratios are tall in medical facilities with most floors being 16 to 18 feet tall. The surgical center will have four floors which is less than other hospitals in the State. The facility will also be shorter than other Delaware hospitals which are 115 to 135 feet tall.
10. The Board found that Mr. Riemann testified that he surveyed the height of the building with regard to the line of site from neighboring properties and that trees will block views of the building. A large portion of the Property is landscaped with evergreens.
11. The Board found that Mr. Riemann testified that the nearest neighbor is over 170 feet away

12. The Board found that Mr. Schaffner testified that Beebe wants to provide services to the larger community and they intend to increase the number of private rooms and to meet the growing demand for healthcare in the area.
13. The Board found that Mr. Schaffner testified that the second floor will be used for a surgical center. The third floor will be used for caesarian section procedures, and the fourth floor will be used for in patients with up to 24 beds. The hospital is designed as a surgical center.
14. The Board found that Mr. Schaffner testified that healthcare and building codes have requirements that require the construction of a vertical hospital and that the best design of the facility is vertical.
15. The Board found that Mr. Schaffner testified that patient rooms will consist of approximately 400 square feet and have access to an exterior window.
16. The Board found that Mr. Schaffner testified that health care facility design is challenging. Corridors must be a minimum width of 8 feet, patient rooms must have a height of 14 feet, and operating rooms must have a height of 16 feet. Greater height is needed for air exchanges, HVAC duct work, wiring, and sprinkler systems.
17. The Board found that Mr. Gibbs stated that the Property is unique as it is an industrial zoned area.
18. The Board found that Mr. Gibbs stated that the Property cannot be otherwise developed because of the healthcare and building codes for a hospital.
19. The Board found that Mr. Gibbs stated that the exceptional practical difficulty was not created by the Applicant as it did not create the healthcare and building code.
20. The Board found that Mr. Gibbs stated that the facility is not overly designed and is designed for function.
21. The Board found that Mr. Gibbs stated that there are constraints on the Property due to DelDOT regulations with flow throughs and parking.
22. The Board found that Mr. Gibbs stated that the facility needs to be this size to meet the population needs.
23. The Board found that Mr. Gibbs stated that the variance will not alter the essential character of the neighborhood, which is mixed-use.
24. The Board found that Mr. Gibbs stated that this facility will be similar to other hospitals and that there are two other medical buildings in close proximity.
25. The Board found that Mr. Gibbs stated that additional landscaping is planned.
26. The Board found that Mr. Gibbs stated that the variance requested is the minimum variance necessary to allow the building to have maximum efficiency.
27. The Board found that Mr. Riemann affirmed the statements made by Mr. Gibbs as true and correct.
28. The Board found that Mr. Riemann testified that the facility will have two access points and that a lighted signal is proposed nearby.
29. The Board found that no one appeared in support of or in opposition to the Application.
30. 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 zoned institutional and the Applicant intends to use the Property for a medical facility with a surgical center. The Applicant currently operates two facilities on an adjacent property. The Property is unique because, while it is a large parcel, a significant portion of the Property will be dedicated to the State of Delaware for public roads. The dedication of these lands thereby limits the developable area of the site. The Applicant also intends to use the site for future expansion of its hospital to benefit the needs of the population. Consequently, portions of the site are reserved for

that development. The site is also limited in its development due to parking necessary for the facility. These conditions have created a limited building envelope and an exceptional practical difficulty for the Applicant. The Applicant is further constrained by health care requirements and building codes which necessitate that floors be taller than would otherwise be available for a non-medical building. Health care regulations also encourage that hospitals be developed vertically rather than horizontally to decrease travel distances within the facility for staff and patients. These regulations create an additional exceptional practical difficulty for the Applicants who seek to design the facility.

- b. Due to the uniqueness of the lot and these conditions, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a limited building envelope and the Applicant is subject to unique healthcare requirements which necessitate taller floors. The Applicant seeks to construct a reasonably sized medical facility while meeting healthcare requirements but 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 Applicant to construct the facility on the Property while meeting those healthcare regulations. The Board is convinced that the height of the facility is also reasonable, which is confirmed when reviewing the documents provided by the Applicant. The Board specifically notes that the facility is located near the center of the Property and is a significant distance away from neighboring properties.
- c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the shape and size of the lot or enact the health care and building code requirements which necessitate taller floors. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created the lot's unique characteristics and the health care and building code requirements.
- 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 facility will have no adverse effect on the character of the neighborhood. There are other similar facilities on adjacent properties and the area is a mixed-use community. The facility will be located near the center of the Property and will be a significant distance from neighbors. The drawing presented by the Applicant demonstrating the views of the structure from neighboring lands was illustrative of how the centering of the facility on the lot will minimize the impact of the height variance on neighboring properties. Furthermore, no evidence was presented which would indicate that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board also notes that the Applicant has represented that it intends to plant landscaping to further buffer the facility from neighboring properties.
- e. The variance is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to construct a reasonably sized medical facility on the Property. The facility will be shorter than other similar facilities in the state and the Board is convinced that the Applicant has taken effort in its design process to reduce the height of the structure while also complying with health care and building code regulations.

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 March 5, 2019