

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: NUSSBAUM Q.P.R TRUST**

**C/O ANDREW NUSSBAUM, TRUSTEE**

**(Case No. 12511)**

A hearing was held after due notice on January 4, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, and Mr. John Williamson.

Nature of the Proceedings

This is an application for a variance from the minimum lot width requirement and the minimum lot area requirement for proposed lots.

Findings of Fact

The Board found that the Applicant is requesting a variance of 16,830 square feet from the 32,670 square foot minimum lot area requirement for Lot 71, a variance of 24.2 feet from the minimum lot width requirement of 100 feet for Lot 71, a variance of 16,981 square feet from the 32,670 square foot minimum lot area requirement for Lot 72, and a variance of 69.32 feet from the minimum lot width requirement of 100 feet for Lot 72. This application pertains to certain real property located on the east side of Holly Road within the North Shores Subdivision (911 Address: 37 Holly Road, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-14.05-8.00. After a public hearing, the Board made the following findings of fact:

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 portion of the plat for North Shore, a photograph of the area, a survey of the Property dated August 6, 2018, and correspondence in support of the Application.
2. The Board found that the Office of Planning & Zoning received five letters in support of and no correspondence in opposition to the Application.
3. The Board found that Andrew Nussbaum was sworn in to testify about the Application. Jim Fuqua, Esquire, presented on behalf of the Applicant.
4. The Board found that Mr. Fuqua stated that this request is to re-establish two lots that were previously created in the North Shores subdivision and to slightly change the configuration of those lot by adjusting the internal lot line between the lots.
5. The Board found that Mr. Fuqua stated that the Applicant owns Lots 71 and 72 and plans to give a lot to each of her two sons.
6. The Board found that Mr. Fuqua stated that the lots were purchased in 1969 and are located in the North Shores subdivision, which was recorded in 1956 prior to the enactment of the Sussex County Zoning Code.
7. The Board found that Mr. Fuqua stated that the vast majority of the lots in North Shores consist of less than 20,000 square feet and are less than 100 feet wide; which are the requirements for lots in an AR-1 district.
8. The Board found that Mr. Fuqua stated that that Lots 71 and 72 front on a cul-de-sac and the rear of the lots back up to common area that is adjacent to the North Shores Yacht Basin.
9. The Board found that Mr. Fuqua stated that the Applicant built a home and a later addition on Lot 71 and a small portion of the home extends across the lot line to Lot 72. According to Mr. Fuqua, since the Applicant owned both lots, it was not an issue but, by crossing the boundary line, the lots became merged into one parcel for tax mapping purposes.

10. The Board found that Mr. Fuqua stated that, if the existing dwelling was demolished, the parcel could be then separated back to the two original lots but, by preserving the house, variances are necessary from lot area and width requirements.
11. The Board found that Mr. Fuqua stated that the house is functional and destruction of the house would be wasteful.
12. The Board found that Mr. Fuqua stated that the North Shores Homeowners Association will also need to confirm that it has no objection to the subdivision of the property and the Applicant proposes that the Association's approval be a condition of the Board's approval. The Applicant has reached out to the Association and the Association has provided the Applicant with of a list of conditions to which the Applicant intends to which comply.
13. The Board found that Mr. Fuqua stated that the two lots have always existed and the reestablishment of the two lots will be in character with the area.
14. The Board found that Mr. Fuqua stated that, without the variance, the two lots cannot be reestablished unless the existing dwelling was demolished.
15. The Board found that Mr. Fuqua stated that the exceptional practical difficulty was not created by the Applicant as the Property was established as two lots and the variances will return it to two lots with a slight variation so that the existing dwelling can remain in its current location.
16. The Board found that Mr. Fuqua stated that, as a result of the proposal, a small triangular area of Lot 72 will now be part of Lot 71 but the front and rear corners of the lot will not change.
17. The Board found that Mr. Fuqua stated that the variances are necessary to enable the reasonable use of the Property.
18. The Board found that Mr. Fuqua stated that the variances will not alter the essential character of the neighborhood as the two lots are similar to the original two lots and are consistent with other lots within the North Shores area.
19. The Board found that Mr. Fuqua stated that no variances are required for the setback of the existing dwelling and are only slight changes from the original lot lines are proposed.
20. The Board found that Mr. Fuqua stated that neighbors support the request.
21. The Board found that Mr. Fuqua stated that the variances are the minimum variances necessary to afford relief and represent the least modifications of the regulations at issue.
22. The Board found that Mr. Nussbaum affirmed the statements made by Mr. Fuqua as true and correct.
23. The Board found that no one appeared in support of or opposition to the Application.
24. 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 with conditions.
  - a. The Property is unique due to its size, shape, and history. The Property consists of two lots which were subdivided in 1956. The lots have been treated as one property for quite some time and the Applicant seeks to re-establish the lot lines with a small adjustment due to the location of the existing house. The lots, which are undersized and narrow as compared to the current zoning code, would be able to be re-subdivided to their original state if not for the existing dwelling. The Board notes that the lots are unusually shaped as they are located at the end of a cul-de-sac as well. Due to the existing conditions of the Property, the Applicant is unable to re-establish the lots and reconfigure the lot interior lot line as proposed while meeting the lot area and lot width requirements. These conditions have



created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to reasonably subdivide the Property.

- b. The unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code.
- c. Due to the uniqueness of the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to reasonably subdivide the Property in a manner consistent with the historical subdivision of the lot but is unable to do while complying with the Sussex County Zoning Code. The Board is thus convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the Applicant to reasonably subdivide the Property. The Board is convinced that the size, shape, and location of the proposed lots are reasonable. The Board notes that the resulting two lots will be similar in size and configuration to the originally subdivided lots and that the front and rear corners of the lot line separating the two lots will not change.
- d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. As discussed above, the Property has unique conditions which have limited the Applicant's ability to reasonably subdivide the Property. The Applicant did not create the unique size and shape of the lots and the Board was convinced that the Applicant have not created the exceptional practical difficulty and unnecessary hardship. Furthermore, the Board is convinced that the Applicant did not come to the Property with an illegal use in mind. Rather, the Applicant is limited by the physical conditions of the Property and need the variance in order to reasonably subdivide the Property as proposed.
- e. 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 Board is convinced that proposed subdivision will have no effect on the character of the neighborhood. The proposed subdivision will result in the creation of 2 lots similar in size and shape to the originally subdivided lots created in 1956. The front and rear corners of the shared lot line will not change but there will be a small deviation in the internal lot line. There was no evidence that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. Neighbors have submitted support to the request and the Applicant will have to receive approval from its homeowners association as well.
- f. 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 that the variances sought will allow the Applicant to reasonably subdivide the Property into two lots similar in size to the prior lots. The Applicant is subdividing the Property in a manner such that no variances will be needed for the existing house on Lot 71 and the Applicant is confident that Lot 72 can be developed without further variances.
- g. The condition or situation of the Property and the intended use of the Property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.
- h. This Application is approved subject to the following conditions as proffered by the Applicant:
  - i. These variances are limited to adjusting the interior lot line between Lots 71 and 72 as shown on the Proposed Resubdivision and Reconfiguration Survey of Lands for Goldie Z. Nussbaum Qualified

Personal Residence Trust as prepared by Foresight Services and dated August 6, 2018, which is attached to this decision as Exhibit A.

- ii. This variance is conditioned on receipt of a letter of no objection to the reconfiguration of Lots 71 and 72 as shown on Exhibit A from the North Shores Homeowners Association.

The Board granted the variance application with conditions 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 with conditions. The Board Members in favor were Dr. Kevin Carson, Mr. Jeffrey Chorman, and Mr. John Williamson. No Board Members voted against the Motion to approve the variance application with conditions. Mr. Brent Workman did not participate in the discussion or vote on this application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY



John Williamson  
Chairman

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

Date March 1, 2021.



EXHIBIT A  
SURVEY DATED AUGUST 6, 2018

