

## BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

### IN RE: UMARU BOLARINWA

(Case No. 12529)

A hearing was held after due notice on February 15, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. John Williamson, and Mr. Brent Workman.

#### Nature of the Proceedings

This is an application for variances from the front yard, side yard, and rear yard setback requirements for proposed structures.

#### Findings of Fact

The Board found that the Applicant is requesting the following variances: 1) a variance of 4.5 feet from the fifteen (15) feet front yard setback requirement for a proposed porch; 2) a variance of 3 feet from the fifteen (15) feet front yard setback requirement for proposed steps; and 3) a variance of 18.01 feet from the twenty-five feet (25) feet rear yard setback requirement a proposed dwelling. This application pertains to certain real property that is located on the west side of Charleys Run approximately 250 feet southwest of Jay Bird Street (911 Address: 31600 Charleys Run, Bethany Beach); said property being identified as Sussex County Tax Map Parcel Number 1-34-13.00-2184.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a letter from the Applicant, photographs, a portion of a subdivision site plan, a site plan dated December 23, 2020, the final site plan for the subdivision, a letter from the Bethany Woods Property Owners Association, a deed to the Property, 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 four letters in support of and no correspondence in opposition to the Application.
3. The Board found that Tim Naughton was sworn in to give testimony about the Application. James Fuqua, Esquire, appeared on behalf of the Applicant.
4. The Board found that Mr. Fuqua stated that the Property is located in Bethany Woods, which is an 18 lot subdivision north of Bethany Beach.
5. The Board found that Mr. Fuqua stated that this lot is unique as it has an irregular shape and is narrow. He noted that the lot as its deepest point has a depth of only 100 feet and the lot's angle sharply decreases both to the north and south of the Property.
6. The Board found that Mr. Fuqua stated that the shape of the lot reduces its building envelope and that, because of the small buildable area, the variances are necessary for the reasonable use of this lot.
7. The Board found that Mr. Fuqua stated that the exceptional practical difficulty was not caused by the Applicant as no construction has occurred. The lot is currently vacant.
8. The Board found that Mr. Fuqua stated that that the lot's shape was created when the Bethany Woods was created in 2007.
9. The Board found that Mr. Fuqua stated that, if the variances are approved, it will permit the building of a dwelling that will be compatible and similar to homes in the neighborhood and will not alter the essential character of the neighborhood.
10. The Board found that Mr. Fuqua stated that the only adjacent homes are to the north and the home will meet the setbacks on this portion of the lot.

11. The Board found that Mr. Fuqua stated that, in addition to meeting the setbacks on this side of the property, there is also an area of common community space between the subject property and the neighboring properties to the north.
12. The Board found that Mr. Fuqua stated that there is a conservation easement to the rear of the subject property measuring approximately 25 – 30 feet.
13. The Board found that Mr. Fuqua stated that the proposed house plans were submitted to the Bethany Woods Property Owners Association and the Applicant has received approval of the proposed setbacks and support for the variance application.
14. The Board found that Mr. Fuqua stated that the variances requested are the minimum variances for the reasonable use of the Property.
15. The Board found that Mr. Fuqua stated that there is a restriction for the subdivision that requires homes therein to have no less than 2,000 square feet of interior space.
16. The Board found that Mr. Fuqua stated that normally, in a medium residential (MR) cluster subdivision, the setbacks would be 30 feet for the front yard and 10 feet for the rear and side yard but, in this subdivision of Bethany Woods, the setbacks are 15 feet from the front and 10 feet for the rear and side yard. This property, however, has a rear yard setback of 25 feet, which Mr. Fuqua believes is unusual.
17. The Board found that Mr. Naughton affirmed the statements made by Mr. Fuqua as true and correct.
18. The Board found that Mr. Fuqua stated that the conservation easement is wooded and overgrown.
19. The Board found that Mr. Naughton testified that the HVAC system will not require additional variances and that there will be no steps from the rear of the dwelling.
20. The Board found that no one appeared in support of or in opposition to the Application.
21. 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 due to its size, shape, and restrictive covenants. The restrictive covenants require that a house on the lot have at least 2,000 square feet of interior space so the house must meet certain size requirements. The lot, however, is oddly shaped and small. If it were 24 square feet smaller, the lot would be considered an undersized lot and benefitted from reduced setbacks. The lot, however, does not benefit from those setback reductions and is actually subject to larger setback requirements than neighboring lots. Additionally, the lot's shape creates difficulties in practically developing the lot. These conditions are unique and have created an exceptional practical difficulty and unnecessary hardship for the Applicant who seeks to construct a new dwelling, porch, and steps on the Property which will comply with the restrictive covenants.
  - 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 lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has unique conditions which limit the developable options for the home. The Applicant seeks to construct a dwelling, steps, and porch in compliance with the lot's restrictive covenants but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the Applicant to construct these structures on the site. The Board is convinced that the shape and location of these structures are also



reasonable, which is confirmed when reviewing the survey provided by the Applicant.

- d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. The Applicant did not create the unusual conditions of the Property. These conditions have resulted in a limited development options for the Applicant and have created the exceptional practical difficulty and unnecessary hardship. The unique characteristics of the Property are clear when reviewing the survey and the testimony presented by the Applicant's representatives. The Board is convinced that the unnecessary hardship and exceptional practical difficulty were not created by the Applicant but were created by the lot's unique characteristics. The Board also notes that the Applicant did not create the lot as the Applicant only recently acquired the Property as is evidenced by the deed.
- 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 the structures will have no effect on the character of the neighborhood. The testimony indicates that the proposed home will be similar to other homes in the neighborhood and will meet the restrictive covenant requirements. Furthermore, the Board has received evidence of support for the proposal. There was no evidence as to why the variances for these structures would alter the alter the essential character of the neighborhood. Furthermore, there is a gap between the edge of paving of Charley's Run and the front property line so the front yard encroachments will not be as noticeable. The rear yard encroachment will be difficult to notice as well because the rear yard abuts to a wooded, conservation easement.
- 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 him to construct a new house, steps, and porch on the lot. The Applicant is limited by the Property's unique conditions but the location of these structures minimizes the need to further encroach into the setback areas. The Board also notes that the Applicant has designed the home so that the HVAC system and rear steps will not encroach into the setback areas. The house also meets the setback requirements on the north side, which is the side closest to a neighboring residence.
- 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. The Board also notes that there was some question as to the applicable front yard and rear yard setbacks. Based on the information provided in the record, the Board finds that the rear yard setback requirement is 25 feet and the front yard setback requirement is 15 feet. The Board also evaluated the Applicant's request based on a site plan dated December 23, 2020, prepared by Solutions and approves the needed variances for the proposed structures shown on that site plan.

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 of the Motion to approve were Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. Travis Hastings, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY



John Williamson  
Chair

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

Date April 12, 2021.