

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

**IN RE: RYAN SMETHURST**

**(Case No. 11173)**

A hearing was held after due notice on March 18, 2013. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the required lot depth for a parcel and variances from the front yard and side yard setback requirements.

Findings of Fact

The Board found that the Applicant was seeking a variance of 20.8 feet from the 100 feet lot depth requirement for a parcel, a variance of 20 feet from the 30 feet front yard setback requirement for an existing non-conforming dwelling, a variance of 29.2 feet from the 30 feet front yard setback requirement for an existing non-conforming structure, and a variance of 2.25 feet from the 5 feet side yard setback requirement for an existing shed. The Applicant has requested that the aforementioned requested variances be granted as they pertain to certain real property located east of Manor Drive South approximately 539 feet south of Gateway Drive; said property being identified as Sussex County Tax Map Parcel Number 3-34-20.13-62.00. After a hearing, the Board made the following findings of fact:

1. John Plummer and Ryan Smethurst were sworn in to testify on behalf of the Application.
2. The Board found that Mr. Plummer testified that the Property is very unique.
3. The Board found that Mr. Plummer testified that the dwelling located on the Property is approximately 100 years old and that the sheds are over 100 years old.
4. The Board found that Mr. Plummer testified that a prior variance was approved for the Property in 2008.
5. The Board found that Mr. Plummer testified that the Property was purchased by the Applicant's grandfather in 1951.
6. The Board found that Mr. Plummer testified that originally the family wanted to subdivide the Property and create a four (4) lot subdivision and that the subdivision would have involved demolishing the dwelling and creating a cul-de-sac.
7. The Board found that Mr. Plummer testified that the Property is now being purchased by the Applicant and his cousin and that they plan to only create three (3) lots and keep the existing dwelling.
8. The Board found that Mr. Plummer testified that the Applicant's cousin will own Lot 1 and the Applicant will own the proposed lots 2 & 3.
9. The Board found that Mr. Plummer testified that the Applicant's cousin owns Lot 4 and Parcel 61 which are adjacent to the Property.
10. The Board found that Mr. Plummer testified that there are no plans to make any physical changes to the Property at this time.
11. The Board found that Mr. Plummer testified that the Applicant wants 2 lots for his children.
12. The Board found that Mr. Plummer testified that when a dwelling is built on proposed Lot 3 a driveway will be created to accommodate both lots from the right of way off of Manor Drive South.

13. The Board found that Mr. Plummer testified that the right of way was created to serve the Property when the adjacent development, Country Manor, was recorded.
14. The Board found that Mr. Plummer testified that the variances will not alter the character of the neighborhood because the adjacent lots are developed.
15. The Board found that Mr. Plummer testified that there is no detriment to the public welfare.
16. The Board found that Mr. Plummer testified that the variances sought are the minimum variances necessary to afford relief.
17. The Board found that Mr. Plummer testified that the variances are necessary to enable reasonable use of the Property.
18. The Board found that Mr. Plummer submitted exhibits for the Board to review.
19. The Board found that Mr. Smethurst testified that the dwelling on the Property has been a family home since 1951 and has a lot of significant to the family.
20. The Board found that Mr. Smethurst testified that the proposed subdivision would allow the family to maintain ownership of the Property.
21. The Board found that Mr. Smethurst testified that the setbacks in question about to lots which are owned by the family.
22. The Board found that Mr. Smethurst testified that the right-of-way was created to serve the Property and that the right-of-way is the only public access without obtaining an easement over Lot 1.
23. The Board found that Mr. Plummer testified that most of the variances will go away when the house is demolished and that the new house will be built in compliance with zoning standards.
24. The Board found that Mr. Smethurst testified that the lots proposed in the subdivision are larger than other lots in the neighborhood.
25. The Board found that Mr. Plummer testified that the original four (4) lot subdivision was never recorded and only one (1) lot was approved to be carved out of the original parcel at that time.
26. The Board found that William Walker was sworn in and testified in opposition to the Application.
27. The Board found that Mr. Walker testified that he is the President of the Homeowners Association of Country Manor.
28. The Board found that Mr. Walker testified that he owns nearby property and that he is opposed to a 25 feet wide road being constructed in front of his dwelling.
29. The Board found that Mr. Walker testified that Manor Drive South is a private road and is only a "paper road" which is maintained by the Homeowners Association.
30. The Board found that Mr. Walker testified that he is not sure who owns the road, but believes it may be the Applicant.
31. The Board found that Jay Benjamin Roy, Jr. was sworn in and testified in opposition to the Application.
32. The Board found that Mr. Roy testified that he lives on Manor Drive and that he is opposed to the Applicant having access through the Country Manor development.
33. The Board found that Mr. Roy testified that the Homeowners Association is responsible and pay for repairs to the roads in the development.
34. The Board found that Mr. Roy testified that the roads cannot withstand large heavy equipment and that he is concerned about the effect on the street.
35. The Board found that Mr. Roy testified that he has no objection to the variances.
36. The Board found that no parties appeared in support of the Application.
37. The Board found that two (2) parties appeared in opposition to the Application.
38. Based on the findings above and the testimony presented at the public hearing and the public record, the Board determined that the Application met the

standards for granting a variance. The dwelling has been on the Property for 100 years. The Property is unique in shape. The variances are necessary to enable reasonable use of the Property. The difficulty was not created by the Applicant. The variances will not alter the essential character of the neighborhood. The variances sought are the minimum variances to afford relief.

The Board approved the variance application finding that it met the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the Application was approved. The Board Members voting to approve the Application were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Member voted against the Motion to Approve the Application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY

  
Dale Callaway  
Chairman

If the use is not established within one (1)  
year from the date below the application  
becomes void.

Date April 16, 2013