

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ROBERT MITCHELL

(Case No. 11490)

A hearing was held after due notice on November 17, 2014. 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 variances from the front yard, rear yard, and side yard setback requirements.

Findings of Fact

The Board found that the Applicant was seeking a variance of 13.5 feet from the thirty (30) feet from the required front yard setback requirement for an existing dwelling, a variance of 29.6 feet from the fifty (50) feet rear yard setback requirement for an existing stable, a variance of 41.6 feet from the fifty (50) feet side yard setback requirement for an existing stable, and a variance of 12.3 feet from the thirty (30) feet front yard setback requirement for an existing shed. This application pertains to certain real property located northeast of Route 78 (Woodland Ferry Road) and being southeast of Dusty Road, a subdivision street, approximately 1,500 feet southeast of Route 20 (Stein Highway) (911 Address: 2952 Dusty Road, Seaford, DE); said property being identified as Sussex County Tax Map Parcel Number 5-31-11.00-36.07. After a 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, and an undated survey of the Property.
2. The Board found that the Office of Planning and Zoning received no correspondence regarding the Application.
3. Robert Mitchell was sworn in to testify about the Application.
4. The Board found that Mr. Mitchell submitted two (2) letters of support to the Application and exhibits for the Board to review.
5. The Board found that Mr. Mitchell testified that he purchased the Property at auction and a survey obtained after the purchase showed the encroachments.
6. The Board found that Mr. Mitchell testified that the dwelling is 100 years old.
7. The Board found that Mr. Mitchell testified that the Property is part of a three (3) lot subdivision.
8. The Board found that Mr. Mitchell testified that the dwelling originally complied with setbacks but encroached into the setbacks when the subdivision was created.
9. The Board found that Mr. Mitchell testified that he did not create the subdivision.
10. The Board found that Mr. Mitchell testified that the horse stable was built by the previous owner without a building permit.
11. The Board found that Mr. Mitchell testified that the stable is on a permanent foundation and adds value to the Property.
12. The Board found that Mr. Mitchell testified that the shed provides a visual buffer from the neighboring properties and that the value of the Property would be impacted if the shed was to be moved.
13. The Board found that Mr. Mitchell testified that the structures were placed on the Property by a prior owner and that the hardship was not created by the Applicant.
14. The Board found that Mr. Mitchell testified that the variances do not alter the character of the neighborhood.
15. The Board found that Mr. Mitchell testified that neighboring properties consist of horse pastures and farmland.

16. The Board found that Mr. Mitchell testified that the structures have not created problems with the neighborhood and they have been in their present locations for many years.
17. The Board found that Mr. Mitchell testified that the variances are the minimum variances to afford relief.
18. The Board found that no parties appeared in support of or in opposition to the Application.
19. 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 the age of the existing dwelling and the previous subdivision of the Property and neighboring lands. The dwelling located on the Property is very old and cannot be moved from its current location. Likewise, the stable is on a concrete foundation and cannot be moved.
 - b. The variances are necessary to enable reasonable use of the Property. The Property is used as a horse farm and the structures are consistent with this use. The variances will allow the Property to continue to be used in this fashion.
 - c. The exceptional practical difficulty and unnecessary hardship were not created by the Applicant. The Applicant recently purchased the Property at an auction and later learned that these structures were in violation of the Sussex County Zoning Code. The Applicant did not place the structures on the Property nor did the Applicant create the subdivision. The structures have been in their present locations for over ten (10) years without complaint.
 - d. The variances will not alter the essential character of the neighborhood. The Applicant demonstrated that nearby properties are also used for horses and farmland.
 - e. The variances sought are the minimum variances necessary to afford relief. The variances will allow the existing structures to remain on the 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. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Members voted against the Motion to approve the variance 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 January 27, 2015.