

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: TIMOTHY TRIBBITT

(Case No. 11549)

A hearing was held after due notice on April 6, 2015. 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 side yard setback requirement for the principal structure and an accessory structure.

Findings of Fact

The Board found that the Applicant was seeking a variance of one (1) foot from the fifteen (15) feet side yard setback requirement for an existing manufactured home and a variance of 4.8 feet from the five (5) feet side yard setback requirement for an existing accessory structure. This application pertains to certain real property located east of Road 365 (Powell Farm Road) approximately 1,600 feet south of Road 353 (Burbage Road) (911 Address: 32585 Powell Farm Road); said property being identified as Sussex County Tax Map Parcel Number 1-34-15.00-25.03.

1. The Board was given copies of the Application, a portion of the tax map of the area, a survey of the Property dated January 20, 2015, a letter from Manufactured Housing Concepts, a Certificate of Compliance, and responses to the standards for relief.
2. The Board found that the Office of Planning & Zoning did not receive any correspondence regarding the Application.
3. The Board found that Timothy Tribbitt was sworn in and testified regarding the Application. Mr. Tribbitt submitted a survey dated March 30, 2015, which showed that a shed had been removed, along with pictures of the Property.
4. The Board found that Mr. Tribbitt testified that he purchased the Property and placed the manufactured home in 2004 based on stakes placed by a surveyor. A Certificate of Compliance was issued for the manufactured home in 2004.
5. The Board found that Mr. Tribbitt testified that the accessory structure on the side yard has been removed and a variance is no longer required for it.
6. The Board found that Mr. Tribbitt testified that the home has not been moved since it was placed on the Property.
7. The Board found that Mr. Tribbitt testified that the surveyor's error created the difficulty. The original survey showed no encroachment.
8. The Board found that Mr. Tribbitt testified that the angled property line and difference in surveys create a unique situation.
9. The Board found that Mr. Tribbitt testified that the variance is necessary to enable reasonable use of the Property.
10. The Board found that Mr. Tribbitt testified that the difficulty was not created by the Applicant.
11. The Board found that Mr. Tribbitt testified that the variance does not alter the character of the neighborhood. There are other similar mobile homes in the neighborhood. The variance will not affect the development of adjacent and neighboring properties. The use is not detrimental to the public welfare.
12. The Board found that Mr. Tribbitt testified that there have been no complaints from the neighbors.

13. The Board found that Mr. Tribbitt testified that the variances are the least modifications of the regulation at issue. To move the manufactured home into compliance would cost approximately \$20,000.
14. The Board found that Mr. Tribbitt testified that the variances are the minimum variances to afford relief.
15. The Board found that no parties appeared in support of or in opposition to the Application.
16. 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 for the one (1) foot variance from the side yard setback requirement for a dwelling 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 angled shape which creates an unusual building envelope. The situation is also unique because the Applicant placed the dwelling on the Property based on a survey only to later learn that the survey was incorrect. The unique characteristics of this Property have created an exceptional practical difficulty for the Applicant.
 - b. Due to the unique angle of the Property and the surveyor's error, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks the variance to allow for the existing manufactured home to remain in its present location. The Applicant placed the dwelling on the Property in reliance on a survey which was later found to be incorrect. The Applicant obtained a Certificate of Compliance from Sussex County at the time of the placement of the home and made improvements such as skirting and utility connections based on this placement. Without the variance, the home would have to be moved at great expense to the Applicant. The Board found that the variance is necessary to enable the reasonable use of the Property as the variance will allow the home to remain in its current location. The survey attached to the Application confirms that the dwelling is reasonable in size, shape and location.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant relied on a surveyor when placing the home on the Property and he obtained necessary approvals at that time only to later learn that the survey was incorrect. The Board is convinced that the Applicant did not create the need for the variance because the Applicant reasonably relied on the original survey and those approvals.
 - 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 un rebutted testimony of Mr. Tribbitt indicates that the dwelling is similar to those structures placed on neighboring properties and that the variance will be consistent with the character of the neighborhood. The Applicant has not received complaints from neighbors and the home has been on the Property for many years. 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.
 - e. The variance sought is the minimum variance necessary to afford relief and the variance requested represent the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the dwelling to remain in its present location.


- f. The Board denied the variance for the shed because the shed has been removed, as shown on the survey and pictures, and is no longer needed to afford the Applicant relief.

The Board granted the variance application for the side yard variance for a dwelling finding that it met the standards for granting a variance and the Board denied the side yard variance for the shed finding that it did not meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was approved in part and denied in part. The Board Members in favor 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 variance application in part and to deny the variance application in part.

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 May 5, 2015