

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: SCHELL BROTHERS, LLC

(Case No. 11626)

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

Findings of Fact

The Board found that the Applicant is seeking a variance of 5.7 feet from the thirty (30) feet front yard setback requirement and a variance of 9.5 feet from the twenty (20) feet rear yard setback requirement for an existing dwelling. This application pertains to certain real property located on the south side of Jennifer Way approximately 315 feet south of Cindy Way (911 Address: 28660 Jennifer Way, Harbeson); said property being identified as Sussex County Tax Map Parcel Number 2-34-12.00-321.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, a letter from the Office of Planning and Zoning dated March 19, 2013, the Findings of Fact for Case No. 11157, a building permit, and a survey of the Property dated June 25, 2015
2. The Board found that the Office of Planning & Zoning had not received any correspondence in support of or in opposition to the Application.
3. The Board found that Mark Fitzgerald was sworn in to testify about the Application.
4. The Board found that Mr. Fitzgerald testified that the requested variances were approved by the Board on March 19, 2013. There are no changes from the original request.
5. The Board found that Mr. Fitzgerald testified that the lot is in the final phase of the community.
6. The Board found that Mr. Fitzgerald testified that the Applicant does not offer a dwelling that would fit on the lot.
7. The Board found that Mr. Fitzgerald testified that the prior application was for the smallest dwelling offered by the Applicant which would be placed on the lot.
8. The Board found that Mr. Fitzgerald testified that the approved variances expired before the Property could be sold and it was discovered at settlement the variance approvals had expired.
9. The Board found that Mr. Fitzgerald testified that the lot is irregular in shape.
10. The Board found that Mr. Fitzgerald testified that the lot was originally designed for the on-site sewer treatment plant and that the last phase of the community was built once County sewer became available.
11. The Board found that Mr. Fitzgerald testified that the Applicant was not involved in the design of the development.
12. The Board found that no parties appeared in support of or in opposition to the Application.
13. 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 unrebutted, 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.

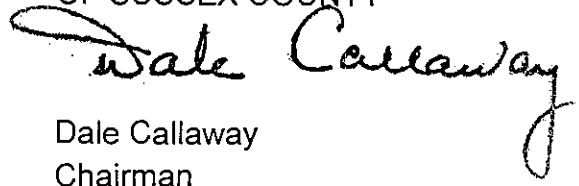
- a. The Property is unique due to its unique shape. The Property was originally designed to house an on-site sewer treatment system for the community but public sewer was made available to the community. As a result, the Property was not designed for development and it is very oddly shaped; as is shown on the survey. The unique shape of the Property has created an exceptional practical difficulty for the Applicant who built a dwelling on the Property. Previously, the Applicant had obtained variances in order to build the dwelling but did not realize the prior approval had expired.
- b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique shape and the buildable area thereof is greatly limited due to its shape. The Applicant seeks to retain a dwelling but is unable to do so without violating the Sussex County Zoning Code. The Applicant previously obtained variances to allow for the construction of this dwelling but did not realize that the approval for those variances had expired prior to the construction of the dwelling. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow a reasonable dwelling to remain on the Property. The Board is convinced that the size, shape, and location of this dwelling are reasonable, which is confirmed when reviewing the survey provided by the Applicant.
- c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual shape of the Property. The community was designed by a prior owner. The unique shape of the Property has clearly created an exceptional practical difficulty for the Applicant in designing a dwelling to place on the Property. The Applicant has used its smallest model and has not added any additions thereto but variances are still needed due to the unique shape of the Property. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created by the shape of the lot.
- d. 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 dwelling will have no effect on the character of the neighborhood. The dwelling is of new construction and the Property is located at the end of a dead-end street and is adjacent to a forested buffer, open space, and storm water management area. The Board is convinced that variances should have no impact on the community. No evidence was presented which would indicate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- e. 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 retain the dwelling on the Property. No additions to the dwelling are being proposed which would require additional variances. The Applicant has also used its smaller model dwelling so as to minimize the need for variances.

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. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. Mr. Jeff Hudson 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 October 6, 2015