

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JAMES BRITTINGHAM & DONNA BRITTINGHAM

(Case No. 11631)

A hearing was held after due notice on September 14, 2015. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, and Mr. Norman Rickard.

Nature of the Proceedings

This is an application for a variance from the front yard setback requirement.

Findings of Fact

The Board found that the Applicants are seeking a variance of 14.4 feet from the thirty (30) feet front yard setback requirement for an existing dwelling. This application pertains to certain real property located on the north side of Beauchamp Lane approximately 285 feet east of Beaver Dam Road (911 Address: 21647 Beauchamp Lane, Harbeson); said property being identified as Sussex County Tax Map Parcel Number 2-34-10.00-103.12.

1. The Board was given copies of the Application, a portion of the tax map of the area, and a survey dated November 6, 2012.
2. The Board found that the Office of Planning & Zoning received one (1) letter in support of the Application and had not received any correspondence in opposition to the Application.
3. The Board found that James Brittingham, Donna Brittingham, and Neil Dickerson were sworn in to testify about the Application.
4. The Board found that Mr. Dickerson testified that a Certificate of Compliance was issued for the dwelling in 2012 but a recent survey completed for settlement showed the encroachment. The Applicants are selling the Property.
5. The Board found that Mr. Dickerson testified that the dwelling was built in 2012 and there have been no changes, additions, or modifications to the Property since the Certificate of Compliance was issued.
6. The Board found that Mr. Dickerson testified that Beauchamp Lane is a crush and run road which is an access road for three properties. Beauchamp Lane is maintained by the owners of those properties.
7. The Board found that Mr. Dickerson testified that Beauchamp Lane is not fifty (50) feet wide and that the dwelling is approximately thirty-five (35) feet from the edge of the lane.
8. The Board found that Mr. Dickerson testified that the dwelling faces Beaver Dam Road and Beauchamp Lane is located to the side of the dwelling.
9. The Board found that Mr. Dickerson testified that the variance does not alter the character of the neighborhood.
10. The Board found that Mr. Brittingham testified that the existing well and septic system limited the placement of the dwelling. The septic system was originally installed but DNREC required that the septic system be moved because they had overlooked the location of a well on a neighboring parcel. The septic system is located in front of the dwelling and the well is to the rear of the dwelling.
11. The Board found that Brooke Brittingham was sworn in and testified in opposition to the Application.
12. The Board found that Brooke Brittingham testified that the Property is not unique in size and that the Property is large enough for the Applicant to construct the dwelling in compliance with the Sussex County Zoning Code.
13. The Board found that Brooke Brittingham testified that her property is located across from Beauchamp Lane.

14. The Board found that Brooke Brittingham testified that the Applicants have created their own difficulty.
15. The Board found that Brooke Brittingham testified that the variance alters the character of the neighborhood.
16. The Board found that Brooke Brittingham testified that she has tried to sell her house but has received complaints about the location of her dwelling as compared to other dwellings in the neighborhood – specifically the Applicants' dwelling.
17. The Board found that Brooke Brittingham testified that she was not aware of the encroachment until receiving notification of the public hearing.
18. The Board found that Brooke Brittingham testified that she built her dwelling in 2011.
19. The Board found that Brooke Brittingham testified that her dwelling is the only one along Beauchamp Lane that does not face Beaver Dam Road.
20. The Board found that Brooke Brittingham testified that lot 120.01 is undeveloped and that the dwelling on lot 120.00 faces Beaverdam Road.
21. The Board found that three (3) parties appeared in support of the Application.
22. The Board found that one (1) party appeared in opposition to the Application.
23. The Board tabled its decision on this application until October 5, 2015. Mr. Brent Workman advised the Board that he reviewed the Application, public record, and testimony from the prior hearing.
24. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, 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 and situation are unique as the Property is located on Beauchamp Lane which is a small, unpaved, access road which services four lots. Beauchamp Lane connects to Beaver Dam Road. Most of the houses along Beauchamp Road, including the Applicants' home, face Beaver Dam Road rather than Beauchamp Lane. The development of this area is unique. Furthermore, the Property is unique as DNREC requires that the well be placed to the rear of the home and the septic system be placed to the front of the home. These restrictions greatly limit the available locations where a dwelling could be placed on the lot. After the Applicants constructed the dwelling, they received a Certificate of Compliance that the dwelling met the requirements under the Sussex County Zoning Code. Only recently did the Applicants learn that the dwelling was not built in compliance with the Code. The Board is convinced that the uniqueness of the Property and the nearby development have created an exceptional practical difficulty for the Applicants which was further exacerbated by the error in construction.
 - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property and the nearby development are unique and the buildable area of the Property is greatly limited due to the DNREC requirements. The Applicants seek to retain a dwelling but are unable to do so without violating the Sussex County Zoning Code. The Applicants previously obtained a Certificate of Compliance which indicated that the dwelling met the Sussex County Zoning Code but did not realize that the dwelling was constructed outside of the allowable building envelope. The Board is convinced that the variance is 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 the dwelling are

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

- c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the uniqueness of the Property and the nearby development which has created an exceptional practical difficulty. The DNREC requirements have also created an exceptional practical difficulty as the building envelope is quite small. The Applicants relied on their builder to construct the home in compliance with the Sussex County Zoning Code and the Applicants obtained the necessary approvals for the construction, including a Certificate of Compliance. It is clear to the Board that the Applicants reasonably believed that the dwelling was built in compliance with the Code. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created by the uniqueness of the Property and nearby development and the builder's error in constructing the dwelling. The Board also notes that Beauchamp Lane is 50 feet wide but the actual driving area of Beauchamp Lane is significantly less than 50 feet wide. The undisputed testimony presented by the Applicants indicates that the dwelling is approximately 35 feet from the edge of Beauchamp Lane. The difference between the paper road of Beauchamp Lane and the usable area of Beauchamp Lane likely created some confusion as to its boundaries when measuring the setback requirements.
- 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 has been on the Property since 2012 and is similar to other homes in the area. The Board was not swayed by testimony of the opposition that the dwelling somehow alters the character of the neighborhood. The opposition's main gripe appeared to be that the Applicants' home faced Beaver Dam Road rather than Beauchamp Lane. The opposition admitted, however, that her home is the only dwelling along Beauchamp Lane which does not face Beaver Dam Road – thereby indicating that the Applicants' home fits with the character of the neighborhood. The similarity of the placement of the Applicants' home to other homes along Beauchamp Lane notwithstanding, there is no requirement that the Applicants' home faces Beauchamp Lane. The issue presented to the Board is whether a variance from the front yard setback requirement is appropriate. The opposition admitted that she was unaware that the dwelling encroached into the setback area and the opposition presented no evidence which convinced the Board that the encroachment into the front yard setback area alters the character of the neighborhood. Rather, the Board is convinced that variance should have no impact on the community. Furthermore, the Board notes that the developed portion of Beauchamp Lane is significantly less than 50 feet wide and that the Applicants' dwelling is 35 feet from the edge of the road. The encroachment into the front yard setback requirement is, thus, not easily noticed.
- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicants have demonstrated that the variance sought will allow the Applicants to retain the dwelling on the Property. No additions to the dwelling are being proposed which would require additional 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. Jeff Hudson, and Mr. Brent Workman. No member voted against the Motion to approve the variance application. Mr. John Mills and Mr. Norman Rickard did not participate in the discussion or vote of this 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 November 17, 2015.

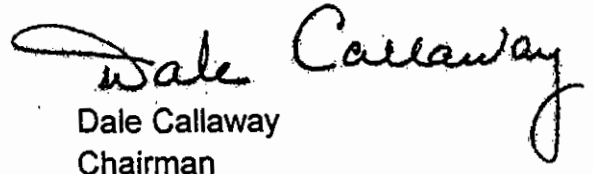
possible of the regulations at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to construct a reasonably sized dwelling, shed, HVAC system, and shed on the Property.

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, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Mr. Norman Rickard was not present and did not participate in the discussion or vote of this Application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


Dale Callaway
Chairman

If the use is not established within one (1)
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Date December 15, 2015