

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ANNETTE M. ENSLEY

(Case No. 11644)

A hearing was held after due notice on October 5, 2015. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the side yard setback, the minimum square footage for a parcel, and the minimum lot width for a parcel requirements.

Findings of Fact

The Board found that the Applicant is seeking a variance of 2.4 feet from the ten (10) feet side yard setback requirement for an existing dwelling on the west side (for Parcel 79), a variance of 15,318 square feet from the minimum 32,670 square feet requirement for a parcel (for Parcel 79), a variance of 9,827 square feet from the minimum 32,670 square feet requirement for a parcel (for Parcel 80), a variance of 48.88 feet from the minimum 150 feet lot width requirement for a parcel (for Parcel 80), and a variance of 110.68 feet from the minimum 150 feet lot width requirement for a parcel (for Parcel 79). This application pertains to certain real property located on the northwest side of Powell Farm Road approximately 245 feet south of Wesley Avenue (911 Address: 32214 Powell Farm Road, Frankford); said property being identified as Sussex County Tax Map Parcel Number 1-34-11.00-80.00 and 1-34-11.00-79.00.

1. The Board was given copies of the Application, a portion of the tax map, and a survey of the Property dated December 3, 2014.
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. C. Claudia Drew Waters and Gregory Hook were sworn in to testify about the Application and Raymond Tomasetti, Esquire, and Harold Dukes Esquire, presented the Application.
4. The Board found that Mr. Dukes stated that he and Mr. Tomasetti represent neighbors who have a boundary line dispute and that the parties seek to divide the Property but need the variances due to the setback issues. The Property has been in the family for many generations.
5. The Board found that Mr. Tomasetti stated that the two (2) parcels have been in the family since 1946. No surveys were completed until 2009 and that survey showed the encroachments.
6. The Board found that Mr. Tomasetti stated that Ms. Waters has owned Parcel 79 since 1980 and she placed the dwelling on Parcel 79 in 1988. Ms. Waters' home and shed encroach onto Parcel 80.
7. The Board found that Mr. Tomasetti stated that the owner of Parcel 80 acquired ownership in 2004.
8. The Board found that Mr. Tomasetti stated that two improvements located on Parcel 80 have been removed. Parcel 80 is currently vacant but could be developed with a house even after the Property is divided as proposed.
9. The Board found that Mr. Tomasetti stated that the parties sought an amicable resolution and the parties met with the surveyor Greg Hook to address the encroachments.
10. The Board found that Mr. Tomasetti stated that the properties are narrow and unique. Parcel 79 is so narrow that it would be impossible to replace the existing home.

11. The Board found that Mr. Tomasetti stated that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
12. The Board found that Mr. Tomasetti stated that the lot width of each parcel has existed since 1946.
13. The Board found that Mr. Tomasetti stated that the exceptional practical difficulty was not created by the Applicant.
14. The Board found that Mr. Tomasetti stated that Ms. Waters believed that the dwelling complied with setback requirements when it was placed.
15. The Board found that Mr. Tomasetti stated that the variances do not alter the character of the neighborhood. There are other lots in the area with similar road frontage.
16. The Board found that Mr. Tomasetti stated that the variances requested are the minimum variances to afford relief.
17. The Board found that Mr. Hook testified that the proposed property line was consistent with the existing driveway used for the dwelling on Parcel 79.
18. The Board found that Ms. Waters, under oath, affirmed the statements made by Mr. Tomasetti.
19. The Board found that Ms. Waters testified that the dwelling on Parcel 79 is a manufactured home located on a foundation.
20. The Board found that no parties appeared in support of or in opposition to the Application.
21. 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. Parcel 79 is a unique property due to its narrow shape. The lot is only 39.32 feet wide. The uniqueness of this property has created an exceptional practical difficulty because the house and shed used by the owner of Parcel 79 encroach onto the neighboring Parcel 80. The parties have engaged in settlement discussions to resolve the boundary line dispute and agreed to an adjustment of the property line separating Parcel 79 and Parcel 80 but cannot adjust those lines without a variance. Parcel 80 is also narrower and smaller than normal lots thereby further creating an exceptional practical difficulty for the parties.
 - b. Due to the uniqueness of the lots, the boundary line dispute cannot be resolved in strict conformity with the Sussex County Zoning Code. Parcel 79 is so narrow that it would be impossible to place a reasonably sized home on the lot without a variance. The existing dwelling is not a large structure and cannot be moved as it is located on a foundation. Even if it could be moved, there is no way the dwelling could be moved onto Parcel 79 in compliance with the Sussex County Zoning Code due to the narrowness of the lot. The variance for the side yard setback is necessary to enable reasonable use as it will allow the dwelling to remain in its current location. The dwelling is reasonable in size, shape, and location. The variances for the lot size requirements are also necessary to enable the reasonable use of the properties as they will allow the boundary line to be moved so that the encroaching dwelling and shed will be located solely on Parcel 79. While the lot size of Parcel 80 is being reduced, the lot size of Parcel 79 is being increased proportionate to the decrease in the lot size of Parcel 80. The variances from the minimum lot width requirement for Parcel 79 and Parcel 80 merely allow for the existing lot widths of those properties to remain unchanged. Ultimately, the Board is convinced

that the variances are necessary to enable the reasonable use of the properties.

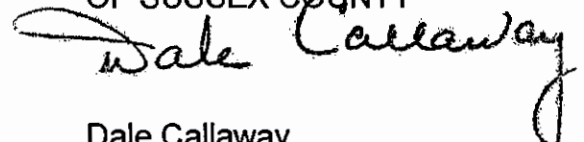
- c. The exceptional practical difficulty was not created by the Applicant. The lots were created in 1946, which is prior to the creation of the Sussex County Zoning Code, and have been the same family for many generations. When created, the lots were undersized and narrow. Parcel 79 is particularly narrow and its unique size has greatly limited the building envelope for a dwelling. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created by the unique characteristics of the lots.
- 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 variances will allow the existing dwelling and shed to remain in their current location (both of which have been there since 1988) and for the lot line adjustment to resolve the boundary dispute. The unrebutted testimony confirms that there are other small parcels in the area. No evidence was presented which indicated that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The lack of opposition testimony or evidence is telling since the structures have been in their present location for many years.
- 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 variances will allow the existing dwelling and shed to remain in their present location and for the parties to adjust the boundary line in an equitable manner that will allow for development of both parcels. The Board notes that the boundary line is also consistent with the existing driveway used by the owner of Parcel 79. No additions to the existing structure are being proposed.

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 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)
year from the date below the application
becomes void.

Date November 17, 2015