

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ALLEN HARIM FARMS, LLC

(Case No. 11801)

A hearing was held after due notice on July 18, 2016. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicant is seeking a variance of 7.6 feet from the forty (40) feet front yard setback requirement for an existing dwelling. This application pertains to certain real property located on the southeast corner of Woodland Ferry Road and Ellis Mill Road (911 Address: 4526 Woodland Ferry Road, Seaford); said property being identified as Sussex County Tax Map Parcel Number 5-31-15.00-11.00.

1. The Board was given copies of the Application, a letter from the Planning & Zoning Department dated March 15, 2016, a survey of the Property dated September 25, 2015, an aerial photograph of the area, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of or in opposition to the Application.
3. The Board found that Barry Neal was sworn in to testify about the Application. Craig Aleman, Esquire, presented the case on behalf of the Applicant.
4. The Board found that Mr. Aleman stated that the Property is unique. The Property has a dwelling, existing poultry houses and large shed located thereon. The existing dwelling is located on a foundation and is serviced by well and septic.
5. The Board found that Mr. Aleman stated that the Applicant relocated a dwelling to this Property and the Applicant would suffer an exceptional practical difficulty if required to move the dwelling.
6. The Board found that Mr. Aleman stated that there is a limited space on the Property to locate the dwelling. The location of the septic system and existing chicken houses limit where the dwelling could be placed.
7. The Board found that Mr. Aleman stated that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
8. The Board found that Mr. Aleman stated that the Applicant did not create the exceptional practical difficulty. The Applicant relied on contractors to obtain the building permit and place the dwelling in compliance with the Sussex County Zoning Code.
9. The Board found that Mr. Aleman stated that the variance will not alter the essential character of the neighborhood and the use will not be detrimental to the public welfare. The surrounding area is mainly farmland and the nearby areas are agricultural lands or wooded. The Applicant also owns nearby property.
10. The Board found that Mr. Aleman stated that the variance is the minimum variance necessary to afford relief and that the variance is the least modification of the regulation at issue.
11. The Board found that Barry Neal, under oath, affirmed the statements made by Mr. Aleman.
12. The Board found that Mr. Neal testified that he represents Regional Builders.
13. The Board found that Mr. Neal testified that the dwelling was relocated from a property in Maryland. An error was made when measuring from the property line. It would cost the Applicant well over \$10,000 to bring the Property into compliance.

14. The Board found that Mr. Neal testified that there were two (2) dwellings on the Property that have been removed.
15. The Board found that Mr. Neal testified that the poultry farm has existed for a long time and the dwelling is for the Applicant's employee.
16. The Board found that Mr. Neal testified that the septic system limits where the house can be located.
17. The Board found that Mr. Neal testified that there is approximately 7 feet from the front property line to the edge of paving.
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 as an existing septic system limits where the dwelling can be placed. The situation is also unique because the Applicant relied on a contractor to place the dwelling in compliance with the Sussex County Zoning Code only to later discover that the contractor made a mistake. It is clear to the Board that the lot's unique characteristics and the unique situation have created an exceptional practical difficulty for the Applicant who seeks to retain a dwelling on the lot.
 - b. Due to the uniqueness of the lot and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a limited building envelope due to the location of the septic system and poultry houses. The Applicant seeks to retain a dwelling of a reasonable size but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the Applicant to retain a reasonably sized dwelling on the Property. The Board is convinced that the shape and location of the dwelling are also 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 unique characteristics of the lot and, more importantly, the Applicant relied on a contractor to place the dwelling on the Property in compliance with the Sussex County Zoning Code only to learn after the home was placed and the foundation was set that a violation existed. The unique characteristics of the Property are clear when reviewing the survey after hearing testimony from the Applicant's contractor. The Board also notes that the front property line does not match the edge of paving for the adjacent roadway and that the error in placement of the dwelling likely arose due to a mistaken belief as to the location of the property line. Ultimately, the Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created the lot's unique characteristics and the contractor's error.
 - 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 Board is convinced that the dwelling will have no effect on the character of the neighborhood. The Property previously had two dwellings which have since been removed and replaced with this dwelling. The surrounding area is agricultural in nature or wooded and the dwelling will be consistent with those uses and the historical use of the Property. Furthermore, 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. The encroachment into the front yard setback area is also unlikely to be noticed due to the difference between the front property line and the edge of paving of the adjacent road.

- 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 Applicant has demonstrated that the variance sought will allow the Applicant to retain the existing dwelling on the Property and that no additions to the dwelling are 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 Mr. Norman Rickard, and Mr. Brent Workman. No Board Member 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 September 20, 2016.