

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: HALTON F. JOHNSON, JR.

(Case No. 11816)

A hearing was held after due notice on August 1, 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 a variance from the side yard setback requirement and the minimum lot width requirement for a parcel.

Findings of Fact

The Board found that the Applicant is seeking a variance of 2.3 feet from the fifteen (15) feet side yard setback requirement for an existing attached water pump shed and a variance of 28.31 feet from the 150 feet lot-width requirement for a parcel. This application pertains to certain real property located on the west side of Honeysuckle Road approximately 605 feet north of Wilgus Cemetery Road (911 Address: 35416 Honeysuckle Road, Frankford); said property being identified as Sussex County Tax Map Parcel 5-33-6.00-70.00.

1. The Board was given copies of the Application, an undated survey of the Property, an aerial photograph of the Property, and a portion of the tax map.
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 the existing dwelling is a non-conforming dwelling and pre-dates the enactment of the Sussex County Zoning Code.
4. The Board found that Halton F. Johnson, Jr., was sworn in to testify about the Application.
5. The Board found that Mr. Johnson testified that the existing dwelling was built in the 1940s and the pump house has been on the Property for many years. The dwelling was centered on the lot.
6. The Board found that Mr. Johnson testified that he seeks to subdivide the Property into 2 lots and the Property cannot be subdivided without a variance.
7. The Board found that Mr. Johnson testified that the Property consists of approximately 3.6 acres. The Property will be subdivided into two lots measuring 2.6 acres and 1.0 acre respectively.
8. The Board found that Mr. Johnson testified that the lot is narrower in the front than the back. The rear yard property is five-hundred (500) feet wide and the front yard is less than three-hundred (300) feet wide.
9. The Board found that Mr. Johnson testified that he inherited the Property from his parents and the lot was purchased by his parents as it currently exists.
10. The Board found that Mr. Johnson testified that the difficulty was not created by the Applicant.
11. The Board found that Mr. Johnson testified that the variances will not alter the essential character of the neighborhood.
12. The Board found that Mr. Johnson testified that the neighboring property only has 103 feet of road frontage.
13. The Board found that Mr. Johnson testified that the variances are the minimum variances to afford relief.
14. The Board found that Mr. Johnson testified that he plans to give the dwelling to his daughter and he plans to sell the other proposed parcel to a friend.
15. The Board found that two (2) parties appeared in support of the Application.

16. The Board found that no parties appeared in opposition to the Application.
17. 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, which consists of 3.6 acres, more or less as shown on the survey, is unique as it a large but narrow lot. The Property only has road frontage of 282.70 feet rather than the minimum 300 feet needed to subdivide the lot into two parcels. These unique characteristics of the Property have created an exceptional practical difficulty for the Applicant who seeks to subdivide the lot. The situation is also unique because the Property was developed prior to the enactment of the Sussex County Zoning Code and the dwelling was placed near the center of the lot. The water pump shed has been on the Property for many years and will encroach into the side yard setback if the lot is subdivided as proposed.
 - b. Due to the Property's unique conditions, the Property cannot be subdivided in strict conformity with the Sussex County Zoning Code. The Applicant seeks to subdivide the Property into two lots but is unable to do so without violating the Sussex County Zoning Code due to the narrowness of the lot. The Board is convinced that the proposed subdivision of the Property is reasonable and that the variance requested is necessary to enable the reasonable use of the Property as the variance will allow the Applicant to reasonably subdivide the Property. The survey attached to the Application confirms that the subdivision is reasonable.
 - c. Likewise, due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The well pump shed was constructed many years ago and the Applicant seeks to retain that shed on the same footprint 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 shed to remain on the Property. The Board is convinced that the shape and location of this shed are reasonable, which is confirmed when reviewing the survey provided by the Applicant.
 - d. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unique size and shape of the Property. The un rebutted evidence confirms that the Property was developed with a house in the 1940s and has existed in its current form for many years. No evidence was presented that the lot's size and shape has changed since the implementation of the lot width requirement in the Sussex County Zoning Code. Notably, the Property is quite large and could easily service two dwellings on separate lots but the Property is too narrow in the front to meet the lot width requirement. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that these unique conditions have created an exceptional practical difficulty for the Applicant.
 - e. 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 Property will be subdivided into two lots – one of which will meet the necessary lot width requirement and one of which will be slightly smaller than the lot width requirement. The un rebutted evidence confirms that there is another lot in the neighborhood which is less than 150 feet wide and no evidence was presented that the proposed subdivision of the Property would somehow alter the essential character of the neighborhood or be detrimental to the

public welfare. The Board also notes that the shed will not be moved and appears to have been in its present location for many years and, despite its longstanding location and notification to neighbors, no complaints were noted in the record about its location. 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.

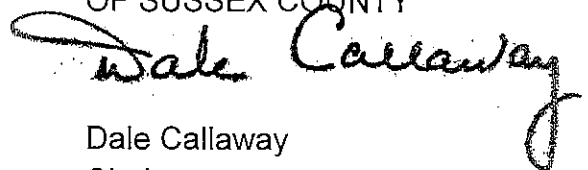
- f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated the variances will allow the Property to be subdivided into two lots. The proposed subdivision will include one lot which will meet the lot width requirement but not be wider than the minimum requirement. By limiting the size of the lot which will comply with the lot width requirement, the Applicant is minimizing the need for the variance for the other, narrower lot. The side yard variance will allow the shed to remain its present location. No additions or modifications to the shed 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 October 4, 2016.