

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: TERRY SHENK**

**(Case No. 11886)**

A hearing was held after due notice on December 12, 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 rear yard setback requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 8.33 feet from the twenty (20) feet rear yard setback requirement for a proposed manufactured home. This application pertains to certain real property located on the west side of White Oak Road approximately 1,438 feet north of South Dogwood Drive (911 Address: 30878 White Oak Road, Dagsboro); said property being identified as Sussex County Tax Map Parcel Number 1-34-6.00-40.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, a survey of the Property dated October 19, 2016, an aerial photograph of the Property, and photographs of the proposed manufactured home.
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 Terry Shenk was sworn in to testify about the Application. Mr. Shenk submitted a copy of his septic system plan.
4. The Board found that Mr. Shenk testified that the Property is unique because it is one of four lots in the subdivision that is shallower than other lots in the development.
5. The Board found that Mr. Shenk testified that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code. The proposed manufactured home is the shortest length manufactured home which will meet the age requirements for a manufactured home set forth by the County.
6. The Board found that Mr. Shenk testified that the exceptional practical difficulty was not created by the Applicant.
7. The Board found that Mr. Shenk testified that the lot was designed by the developer and the depth of the lot limits the length of a home which can be placed thereon.
8. The Board found that Mr. Shenk testified that the proposed unit will not alter the character of the neighborhood.
9. The Board found that Mr. Shenk testified that the development was originally designed a manufactured home community.
10. The Board found that Mr. Shenk testified that the original manufactured home, which was uninhabitable, has been removed and the proposed manufactured home will be placed in the same location as the previous manufactured home. The previous unit was damaged by a tree and had to be removed.
11. The Board found that Mr. Shenk testified that the variance sought is the minimum variance to afford relief.
12. The Board found that Mr. Shenk testified that he can only place a singlewide manufactured home on the Property because the Property is less than  $\frac{3}{4}$  acre.
13. The Board found that Mr. Shenk testified that the previous manufactured home was a 1985 model and the replacement manufactured home must be a newer model than the one being replaced.

14. The Board found that Mr. Shenk testified that he initially looked at a doublewide manufactured home which would probably fit within the building envelope but, when he contacted the Planning & Zoning Office, he was told that he had to replace it with a singlewide manufactured home. He has already placed a deposit on a singlewide manufactured home because he was told that he could not place a doublewide manufactured home on the lot.
15. The Board found that Mr. Shenk testified that a doublewide manufactured home would also limit the available area for a septic system and a doublewide manufactured home would require a larger drain field.
16. The Board found that Mr. Shenk testified that the proposed manufactured home was the shortest singlewide manufactured home he could find. He considered turning the manufactured home but that did not leave enough room for the septic system and the well.
17. The Board found that Mr. Shenk testified that he plans to install a new septic system on the Property. He believes the Property was previously serviced by a cesspool.
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 it is a small and shallow lot in a community that was originally designed a manufactured home community. The Applicant seeks to replace an uninhabitable, singlewide manufactured home with a newer model but the new home will not fit within the building envelope. The Board notes that this lot is shallower than other lots in the neighborhood as is shown on the tax map. The Property is also not serviced by central sewer so the Applicant is required to have a septic system servicing the home. The septic system needs to be placed on the lot in part of the building envelope thereby further limiting the available space to place the home. The Board finds that the unique conditions of the Property have created an exceptional practical difficulty for the Applicant.
  - 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 small building envelope and this envelope is further restricted by the location of the proposed septic system. The Applicant is also hamstrung by the Code's requirements that the previous manufactured home must be replaced by a newer model. The Applicant has struggled to find a singlewide manufactured home that would fit within the building envelope and most of the models he saw were longer than the one he proposes to place on the lot. The Applicant, however, cannot place this reasonably sized manufactured home (which is shorter than other models) on the lot without violating the Sussex County Zoning Code. The variance is thus necessary to enable reasonable use of the Property as the variance will allow a reasonably sized singlewide, manufactured home to be placed on the Property. The Board is convinced that the shape and location of this home 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 size of the lot which has resulted in a limited building envelope on the Property. The unique characteristics of the Property are clear from the record and the survey. The community was also

designed as a manufactured home community by a prior owner and the Applicant did not create the size of the lot or place the previous manufactured home thereon. The difficulty experienced by the Applicant was exacerbated by the need to place a septic system on the Property thereby further restricting the building envelope. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created by the lot's unique characteristics.

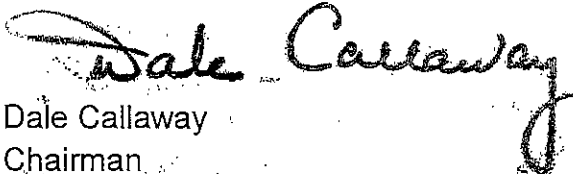
- d. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the encroachment of the manufactured home will have no effect on the character of the neighborhood. The home will be located in the same proximate location as a previous singlewide manufactured home that had become uninhabitable after being damaged by a tree. This manufactured home has been removed from the lot and the proposed manufactured home should be an improvement to the Property. The pictures presented by the Applicant indicate that the proposed home has a neat appearance. As previously discussed, the community was originally designed as a manufactured home community and the proposed home will be consistent with the historical use of the Property and character of the community. No evidence was presented which would indicate that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- 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 place a reasonably sized manufactured home on the Property. The Applicant has explored other options such as turning the manufactured home to limit the size of the variance and even purchasing a shorter manufactured home only to find that those options are not feasible. The Board is satisfied that the Applicant has taken steps to minimize the size of the variance and otherwise limit the encroachment into the setback areas. Notably, the home will also be placed at the front yard setback line on the deepest side of the Property so as to minimize the rear yard encroachment.

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 2/7/2017