

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

**IN RE: RENATO REYNA, JR.**

**(Case No. 11921)**

A hearing was held after due notice on February 20, 2017. The Board members present were: Mr. John Mills, Mr. Jeff Hudson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front yard and rear yard setback requirements.

Findings of Fact

The Board found that the Applicant is requesting a variance of 6.4 feet from the thirty (30) feet front yard setback requirement for an existing dwelling on Proposed Lot #1 and a variance of 7.8 feet from the twenty (20) feet rear yard setback requirement for an existing dwelling on Parcel 1.08. This application pertains west side of Coon Den Road approximately 1,198 feet north of Shawnee Road (911 Address: 11226 Coon Den Road, Greenwood); said property being identified as Sussex County Tax Map Parcel Number 4-30-3.00-1.08, 1.09, & 1.00.

1. The Board was given copies of the Application, an aerial photograph of the Property, a portion of the tax map of the area, and a survey of the Property dated April 21, 2016.
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 Donald Miller was sworn in to testify about the Application.
4. The Board found that Mr. Miller testified that the Applicant owns three parcels of land and the Applicant intends on extending an existing lot line. As part of the plan, four new lots are being created and lots lines for other parcels are being moved. The subdivision has already been approved as a concept plan by the Planning & Zoning Commission. An issue exists, however, because two dwellings on the lots are located too close to property lines and variances are needed in order to keep the homes in their current location.
5. The Board found that Mr. Miller testified that the dwellings existed prior to the Applicant's purchase of the lands. Likewise, the driveway used by both homes has existed prior to the purchase of the lands.
6. The Board found that Mr. Miller testified that this request will not create any change within the neighborhood since the dwellings and easement already exist.
7. The Board found that Mr. Miller testified that there will be no effect on future development of nearby properties because the dwellings already exist.
8. The Board found that Mr. Miller testified that it would be a substantial financial burden to move the existing dwellings.
9. The Board found that Mr. Miller testified that the difficulty was not created by the Applicant because the dwellings already existed in their present positions.
10. The Board found that Mr. Miller testified that the variances will not alter the character of the neighborhood because the dwellings have existed for some time.
11. The Board found that Mr. Miller testified that there are no conflicts with neighbors.
12. The Board found that Mr. Miller testified that both existing dwellings were nonconforming and no changes are being made to the existing dwellings.
13. The Board found that Mr. Miller testified that the fifty-foot easement will access to both dwellings.
14. The Board found that Mr. Miller testified that the existing driveway has existed since the dwellings have existed and the access will still be used.

15. The Board found that Mr. Miller testified that the Applicant intends to move the property line.
16. The Board found that no parties appeared in support of or 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 is unique due to its unique shape and history. The Property consists of three parcels and is being subdivided. Prior to the Applicant's purchase of the Property, two homes were placed on the Property in close proximity to each other. One home is located on the Proposed Lot #1 and the other home is located on Parcel 1.08. The Applicant seeks to rearrange the lot lines, including the lines affecting these two parcels. While the lot lines are proposed to be changed, the actual location of the homes will not change. Likewise, the lines cannot be moved in such a way to avoid the need for a variance because the homes are located very close to each other and use a shared driveway. As noted, these homes were built prior to the Applicant's acquisition of the Property. The Property is quite large and can be subdivided but for the encroachment of these homes into the setback areas. The unique conditions of the Property and its unique development prior to the Applicant's acquisition thereof has created an exceptional practical difficulty for the Applicant who seeks to retain these dwellings in their current locations.
  - b. Due to the uniqueness of the lot and its history, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique size and shape and the Applicant seeks to subdivide the Property but is unable to do so while still retaining two dwellings which were built close to each other. The Applicant seeks to retain the existing dwellings but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow reasonably sized dwellings to remain on the Property. The Board is convinced that the shape and location of these dwellings 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 unusual size of the Property nor did the Applicant place the dwellings on the Property so close to each other. Rather, the structures were placed on the lot by a prior owner. While the Applicant can move lot lines to accommodate development of other portions of the Property, the dwellings were placed too close to each other and have created a need for the variances. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created the lot's unique characteristics and by the historical development of the Property by a prior owner.
  - 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 existing dwellings will have no effect on the character of the neighborhood. The dwellings have been on the Property for many years and, despite the longstanding locations of these dwellings, no complaints were noted in the record about the locations of the structures. Rather,

neighbors have indicated to the Applicant's surveyor that they do not object to the variances. 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.

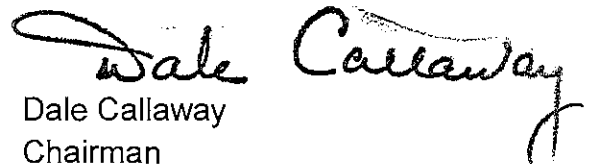
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain the existing dwellings on the Property. No additions or modifications to those dwellings are being sought.

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 of the motion were Mr. Jeff Hudson, Mr. John Mills, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Mr. Dale Callaway and Mr. Norman Rickard did not participate in the discussion or vote on 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 April 4, 2017.