

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

**IN RE: ROBERT J. PALMER & LAURA M. HUDSON**

**(Case No. 11929)**

A hearing was held after due notice on March 20, 2017. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the setback of an agriculture building requirement.

Findings of Fact

The Board found that the Applicants are seeking a variance of 67.5 feet from the two hundred (200) feet separation requirement for stables. This application pertains to certain real property located on the west side of Cedar Lane (Route 318) approximately 2,884 feet northwest of Governor Stockley Road (Route 432) (911 Address: 23318 Cedar Lane, Georgetown); said property being identified as Sussex County Tax Map Parcel Number 1-33-3.00-1.00.

1. The Board was given copies of the Application, an aerial photograph of the Property, a survey dated January 24, 2017, and a portion of the tax map.
2. The Board found that the Office of Planning & Zoning received one (1) letter in support of the Application and received no correspondence in opposition to the Application.
3. The Board found that Robert Palmer was sworn in to testify about the Application. Mr. Palmer submitted an exhibit booklet and Power Point presentation to the Board to review.
4. The Board found that Mr. Palmer testified that the existing stable consists of six (6) stalls, a tac room, and a workshop. Per the Sussex County Zoning Code, a public stable consists of more than four (4) stalls.
5. The Board found that Mr. Palmer testified that a run in shed attached to the stable is too close to the property line.
6. The Board found that Mr. Palmer testified that a lot line adjustment was recorded approximately one (1) year before the Applicants' purchase of the Property. The previous owner adjusted the lot line to retain four (4) acres, which was the horse pasture.
7. The Board found that Mr. Palmer testified that the Applicants did not learn of the encroachment until after they purchased the Property.
8. The Board found that Mr. Palmer testified that the previous owner owns nearby lands and allows the Applicants to use the horse pasture. The Applicants, however, are unable to purchase a portion of the neighboring property to eliminate the encroachment.
9. The Board found that Mr. Palmer testified that the stables were constructed in October 1996 and conformed with the Sussex County Zoning Code at that time.
10. The Board found that Mr. Palmer testified that the vegetation around the perimeter of the Property screens the stables from neighboring residential properties.
11. The Board found that Mr. Palmer testified that the rear property line is fifteen (15) feet into the woods and the stables cannot be seen from the neighbors to the north, south, or west.
12. The Board found that Mr. Palmer testified that agricultural lands are located nearby as well.

13. The Board found that Mr. Palmer testified that they are unable to purchase the neighboring four acres that were split off in 2015.
14. The Board found that Mr. Palmer testified that the stables do not alter the essential character of the neighborhood nor permanently impair adjacent development or be a detriment to the public welfare.
15. The Board found that Mr. Palmer testified that the stables were 264.78 feet from the lot line prior to the lot line adjustment made by the previous owner. The stables are now located only 132.5 feet from the lot line.
16. The Board found that Mr. Palmer testified that the stables have existed for over 20 years.
17. The Board found that Mr. Palmer testified that the variance requested is the minimum variance necessary to afford relief.
18. The Board found that Mr. Palmer testified that the stables will be used for storage of friends' horses as well as horses owned by the Applicants.
19. The Board found that Mr. Palmer testified that, at the time of creation of the lot line adjustment, a variance was not requested for the stables because the survey did not show any structures.
20. The Board found that Mr. Palmer testified that no additions have been made to the stables since the purchase of the Property.
21. The Board found that one (1) party appeared in support of the Application.
22. The Board found that no parties appeared in opposition to the Application.
23. 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 because it is an oddly shaped lot which has been historically used for horse stables. The Property was originally larger and the stables were located near the center of the lot but 4 acres of the Property were removed in 2015. When the lot line was adjusted, the stables, which were originally constructed in compliance with the Sussex County Zoning Code, became out of compliance with the Sussex County Zoning Code. The unique conditions of the Property's shape and its history have created an exceptional practical difficulty for the Applicants who wish to retain the existing horse stables in their existing location.
  - b. Due to the uniqueness of the Property and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The existing horse stable has been in its present location for over 20 years and is used by the Applicants and their friends for the stabling of horses. The Applicants are unable to purchase neighboring lands to remove the encroachment and the structures cannot be moved into compliance. The Property appears to have been designed to accommodate the raising and stabling of horses and the stables are a vital part of the development and use of the Property. The Board is thus convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the stables to remain on the Property. The Board is convinced that the size, shape, and location of the stables are reasonable, which is confirmed when reviewing the survey provided by the Applicants.
  - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not build the stables or adjust the lot lines to create the encroachment. Rather, the stables were constructed by a prior owner and the prior owner adjusted the lot lines, thereby creating the encroachment. The lot line adjustment has led to an odd shape of the Property and the odd shape and the unique situation have created an exceptional practical

difficulty for the Applicants who seek to use the stables in the same fashion as they have been used for over 20 years. The Board finds that the Applicants had no control over the conditions creating the exceptional practical difficulty.

- 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 stables will have no effect on the character of the neighborhood. The stables have been on the Property for over 20 years without noted complaint in the record. Residential communities have developed nearby and the stables are generally screened from view of those properties. The neighbor who is most affected by the encroachment has submitted a letter supporting the variance request as well. Ultimately, 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 Applicants have demonstrated that the variance sought will allow the Applicants to retain the stables in its existing location. No additions or expansion to the stables is 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. John Mills, and Mr. Brent Workman. Mr. Norman Rickard voted against the Motion to approve the variance application. Mr. Jeff Hudson 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 May 2, 2017.