

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DONOVAN – SMITH MHP, LLC

(Case No. 11944)

A hearing was held after due notice on April 17, 2017. 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 separation requirement between units.

Findings of Fact

The Board found that the Applicant is seeking a variance of 2.8 feet from the twenty (20) feet separation distance between units requirement from the dwelling on Lot G-8, a variance of 0.4 feet from the twenty (20) feet separation distance between units requirement from the dwelling on Lot G-8, a variance of 1.1 feet from the twenty (20) feet separation distance between units requirement from the dwelling on Lot G-10, and a variance of 1.0 feet from the twenty (20) feet separation distance between units requirement from the dwelling on Lot G-10. This application pertains to certain real property located on the southeast side of Cooper Circle, approximately 309 feet southwest of Road 263 (911 Address: 34290 Cooper Circle, Lewes) said property being identified as Sussex County Tax Map Parcel 3-35-8.14-43.00-55401.

1. The Board was given copies of the Application, a portion of the tax map of the area, aerial photographs of the Property, a structural separation plan dated July 18, 2016, a manufactured home placement permit, and copies of findings of fact from the Board of Adjustment.
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 Billy Betts was sworn in to testify about the Application. Seth Thompson, Esquire, presented the case on behalf of the Applicant and submitted exhibits for the Board to review.
4. The Board found that Mr. Thompson stated that Mr. Betts is the park manager.
5. The Board found that Mr. Thompson stated that the Donovan-Smith Mobile Home Park is an older park and there have been other variances granted in the Park in the past dating back to 1989.
6. The Board found that Mr. Thompson stated that the Park is unique due the narrowness of the lots within the Park and the lots are narrow because the Park is an older park. The lots measure 35 feet by 75 feet.
7. The Board found that Mr. Thompson stated that the narrowness of the lots make it difficult for the Park to improve the character of the neighborhood by removing older homes and replacing them with newer homes while still complying with the Sussex County Zoning Code.
8. The Board found that Mr. Thompson stated that there is no possibility to develop the Property in strict conformity with the Sussex County Zoning Code.
9. The Board found that Mr. Thompson stated that the Property is identified as Lot G-9.
10. The Board found that Mr. Thompson stated that the new manufactured home measures 12 feet by 40 feet and is a small home.
11. The Board found that Mr. Thompson stated that the manufactured home was placed squarely between the neighboring units yet still does not meet the separation distance requirements.

12. The Board found that Mr. Thompson stated that the exceptional practical difficulty was not created by the Applicant.
13. The Board found that Mr. Thompson stated that the issue lies with the age and size of the lots and the increase in size of available manufactured homes.
14. The Board found that Mr. Thompson stated that the Applicant obtained a manufactured home placement permit last year.
15. The Board found that Mr. Thompson stated that the home will not alter the essential character of the neighborhood or impair the uses or development of neighboring properties.
16. The Board found that Mr. Thompson stated that the variances will not be detrimental to the public welfare.
17. The Board found that Mr. Thompson stated that there have been numerous variances granted within the Park and the newer manufactured home will upgrade the appearance of the Park.
18. The Board found that Mr. Thompson stated that the Property is adjacent to a railroad in the rear and a parking lot in the front.
19. The Board found that Mr. Thompson stated that the variances requested are the minimum variances necessary to afford relief and the variances requested represent the least modifications of the regulations at issue.
20. The Board found that Mr. Thompson stated that the home was placed in the most compliant manner possible.
21. The Board found that Mr. Betts, under oath, affirmed the statements made by Mr. Thompson.
22. The Board found that Mr. Betts testified that most of the newer manufactured homes are 14-16 feet wide but the Applicant found a 12 feet wide model to place on the lot. The manufactured home that was placed on the lot is a 2011 model.
23. The Board found that Mr. Betts testified that the Applicant is unable to place a manufactured home measuring 60 feet long so a shorter home is needed.
24. The Board found that Mr. Betts testified that an older manufactured home was selected because it is smaller in width suitable for a smaller lot.
25. The Board found that Mr. Betts testified that a previous manufactured home on the Property was replaced with the newer model.
26. The Board found that Mr. Betts testified that he does not believe that a brand new 12 feet wide manufactured home is not available and a 14 feet wide manufactured home is the smallest model available now.
27. The Board found that Mr. Betts testified that a "park model" home is more like a travel trailer and does not meet the requirements for a manufactured home.
28. The Board found that Mr. Betts testified that, on April 8, 2016, a manufactured home placement permit was given to the Applicant.
29. The Board found that Mr. Betts testified that he has not received complaints about the home
30. The Board found that Mr. Thompson stated that the lots are angled so the home had to be placed at an angle.
31. The Board found that James McCarty, Sam Saunders, Terry Saunders, and Sharon Ashe were sworn in to testify in opposition to the Application.
32. The Board found that Mr. McCarty testified that he lives in the Park.
33. The Board found that Mr. McCarty testified that he is a former fireman and is concerned about the effect of the home on the fire code.
34. The Board found that Mr. McCarty testified that, if a home catches fire, it can easily spread if the homes are not sufficiently separated. He believes that the 20 feet separation distance requirement between units is recommended but is not safe and that even two feet closer in separation distance is a huge safety issue. He is concerned with the manufactured homes being so close to each other and catching fire.

35. The Board found that Mr. McCarty testified that there are 12 feet wide manufactured homes available.
36. The Board found that Mr. Saunders testified that he is concerned with the closeness of the manufactured homes and he is concerned about the safety of the park. He is a resident of the Park.
37. The Board found that Mr. Saunders testified that the new manufactured home that was placed is also close to the railroad tracks. A bicycle path is going to be located near the tracks as well.
38. The Board found that Dr. Saunders submitted exhibits for the Board to review and testified that she has lived in the Park for 8 years.
39. The Board found that Dr. Saunders testified that she was not aware of the placement of the new manufactured homes because there were no permits posted. There are three separate lots where permits were issued but not posted.
40. The Board found that Dr. Saunders testified that the manufactured homes were placed prior to the filing of this Application and she believes the Applicant should have applied for the variances prior to placing the home on the Property.
41. The Board found that Dr. Saunders testified that, if the variances are granted, it will decrease the property value of the neighboring properties and increase the hazards surrounding the manufactured homes.
42. The Board found that Dr. Saunders testified that there are abandoned units in the neighborhood.
43. The Board found that Mrs. Ashe submitted exhibits for the Board to review and testified that she agrees with the other opposition testimony.
44. The Board found that Mrs. Ashe testified that she is a member of the recently created homeowners' association.
45. The Board found that Mrs. Ashe testified that the manufactured homes being placed are oversized structures on undersized lots and the new manufactured homes loom over the older, smaller homes.
46. The Board found that Mrs. Ashe testified that there are plenty of vacant manufactured homes within the Park.
47. The Board found that no parties appeared in support of the Application.
48. The Board found that seven (7) parties appeared in opposition to the Application.
49. The Board tabled the matter until May 1, 2017, at which time the Board discussed and voted on the Application.
50. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board has weighed and considered, the Board determined that the application failed to meet the standards for granting a variance. The findings below further support the Board's decision to deny the Application.
 - a. The Applicant failed to convince the Board that the Park could not be developed in strict conformity with the Sussex County Zoning Code. Likewise, the Board was not convinced that the variances were necessary to enable the reasonable use of the Park. The Donovan-Smith Mobile Home Park is a large, older manufactured home park. Over time, homes within the Park have been removed and replaced with newer, larger homes. The replacement of these homes has reduced the available separation distance between homes. The Applicant has placed a home on Lot G-9 but needs 4 different variances to keep the home thereon. Notably, the Applicant placed the home on the Property in 2016 and only recently sought the necessary variances rather than applying for the variances prior to placing the home in the Park. Nevertheless, the Applicant, as the owner of the Park, has allowed other homes to be expanded or replaced with larger units thereby shrinking the available separation distances normally required between units. The homes on Lots G-8 and G-10 are 20.4 feet and 19.1

feet wide respectively. As such, the Board finds that the Applicant is already reasonably using the Park through its development of the adjacent lots. If the Applicant had required that smaller units be placed on Lots G-8 and G-10, the proposed manufactured home would fit comfortably on Lot G-9 and no variance would be needed.

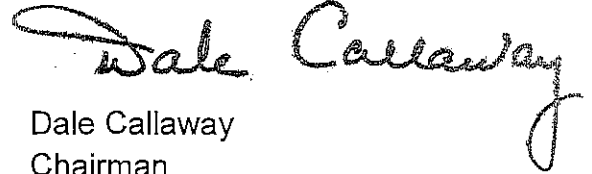
- b. The Board finds that the exceptional practical difficulty by proposing to place a dwelling which does not fit within the building envelope is self-created. Had the owner of the Park not allowed for expansion of other units and overdevelopment of the community, perhaps a home could be placed on Lot G-9. Notably, however, the park owner has allowed larger homes to be placed on adjacent lots thereby shrinking the available space for the placement of the home. The home placed on Lot G-9 would otherwise fit thereon if the homes on Lot G-8 and G-10 were smaller. Even homes which are 14 feet to 16 feet wide would provide enough space for the proposed home to fit on the lot. The Applicant's failure to restrict the size of the homes on the lots it leases has created this difficulty. As such, the Board was not convinced that the variance request was the product of a *need*. Instead, the variance request appears to be the product of a *want* as the owner seeks to place the dwelling as proposed for purposes of convenience and profit, and / or caprice.
- c. The variances requested will alter the essential character of the neighborhood. The number of variances sought by the Applicant is troublesome (particularly since each of these variances is from the separation distance from other units and structures in the Park) and it is difficult to see how the granting of these variances would not alter the ability of neighboring properties or lots in the Park to be developed. The proposed dwelling needs separation distance variances from 2 existing homes. The granting of these variances would only exacerbate a problem within this community where there are simply too many homes in such a small space. The Board also shares the concerns of neighbors about the safety effect of homes in such close proximity to each other; particularly with regard to the potential spread of fire. Ultimately, the Board finds that the proposed home would alter the essential character of the neighborhood, substantially or permanently impair the appropriate use or development of adjacent property, and be detrimental to the public welfare.
- d. Furthermore, since the Park is already developed by numerous lots, the Board finds that the variances for the dwelling are not the minimum variances necessary to afford relief. Rather, no variance for the dwelling will be needed since the owner is already utilizing the Park with other homes.

The Board denied the variance application finding that it failed to meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was denied. The Board Members in favor of the motion to deny were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Members voted against the Motion to deny 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 May 16, 2017