

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DONOVAN – SMITH MHP, LLC

(Case No. 11945)

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 1.4 feet from the twenty (20) feet separation distance between units requirement from the landing on Lot A-20, a variance of 0.4 feet from the twenty (20) feet separation distance between units requirement from the dwelling on Lot A-20, a variance of 6.4 feet from the twenty (20) feet separation distance between units requirement from the dwelling on Lot A-20, a variance of 7.4 feet from the twenty (20) feet separation distance between units requirement from the shed on Lot A-18, a variance of 7.5 feet from the twenty (20) feet separation distance between units requirement from the deck on Lot A-18, a variance of 11.5 feet from the twenty (20) feet separation distance between units requirement from the deck on Lot A-18, and a variance of 1.5 feet from the twenty (20) feet separation distance between units requirement from the porch on Lot A-18. This application pertains to certain real property located the northwest side of Grandview Street, approximately 770 feet northwest of Central Avenue (911 Address: 16307 Grandview Street, Lewes); said property being identified as Sussex County Tax Map Parcel 3-35-8.14-43.00-55406.

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 October 20, 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 the Donovan-Smith Manufactured Home Park is a smaller and older mobile home park and this Application pertains to Lot A-19.
5. The Board found that Mr. Thompson stated that the lot is one of many narrow lots in the Park.
6. The Board found that Mr. Thompson stated that the owner of the home on the adjacent lot (Lot A-18) obtained a variance in 2001. The owner of the home on Lot A-18 added a shed, deck, and covered porch to the existing manufactured home prior to the placement of the manufactured home on Lot A-19.
7. The Board found that Mr. Thompson stated that the narrowness of the lot has created an exceptional practical difficulty for the Applicant.
8. The Board found that Mr. Thompson stated that the additions on the neighboring lot have also made it difficult for the Applicant to replace the older mobile home on Lot A-19 with a newer structure.
9. The Board found that Mr. Thompson stated that the new mobile home measures 13.9 feet wide by 60 feet long.
10. The Board found that Mr. Thompson stated that the Applicant seeks to improve the Park by removing older homes and replacing them with newer homes.

11. The Board found that Mr. Thompson stated that the newer manufactured home is a smaller model home.
12. The Board found that Mr. Thompson stated that a newer home cannot be placed on the lot in strict conformity with the Sussex County Zoning Code due to the narrowness of the lot and the additions to the home on Lot A-18.
13. The Board found that Mr. Thompson stated that the exceptional practical difficulty was not created by the Applicant.
14. The Board found that Mr. Thompson stated that the accessory structures on Lot A-18 have decreased the available separation distance.
15. The Board found that Mr. Thompson stated that the Applicant obtained a manufactured home placement permit last year.
16. 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.
17. The Board found that Mr. Thompson stated that the variances will not be detrimental to the public welfare.
18. The Board found that Mr. Thompson stated that there have been numerous variances granted within the Park.
19. The Board found that Mr. Thompson stated that the direct neighbors to Lot A-19 do not have any complaints.
20. The Board found that Mr. Thompson stated that the manufactured home was placed a year ago and is still unoccupied.
21. The Board found that Mr. Thompson stated that the owner of the manufactured home park wants to update the Park with newer manufactured homes and that newer mobile homes are larger than older ones.
22. The Board found that Mr. Thompson stated that, if no variances from the separation distance requirement are granted, it would encourage a park owner to retain older manufactured homes in the Park which would be a detriment to the community.
23. The Board found that Mr. Thompson stated that the variances represent the minimum variances necessary to afford relief.
24. The Board found that Mr. Thompson stated that the home was placed in the most compliant manner possible.
25. The Board found that Mr. Betts, under oath, affirmed the statements made by Mr. Thompson.
26. The Board found that Mr. Betts testified that the Applicant tried to center the home in the center of Lot A-19 but he was not aware that the deck and shed on the neighboring lot would affect the separation distance.
27. The Board found that Mr. Betts testified that the measurements were made from manufactured home to manufactured home but measurements were not made from the neighboring shed, deck, and covered porch.
28. The Board found that Mr. Betts testified that the shed on Lot A-18 is a plastic shed located on top of the deck.
29. The Board found that Mr. Betts testified that the new manufactured home replaced an older manufactured home on Lot A-19.
30. The Board found that Mr. Betts testified that the older manufactured home that was replaced was similar in size and location to the new manufactured home.
31. The Board found that James McCarty, Terry Saunders, Sam Saunders, and Sharon Ashe were sworn in to testify in opposition to the Application.
32. The Board found that Mr. McCarty testified that he is concerned about the closeness of the manufactured home to existing structures and that his main concern is the hazard and safety issues.
33. The Board found that Dr. Saunders submitted exhibits for the Board to review and testified that a neighbor on Lot A-18 was granted a variance in 2001 and the neighbor opposes the Application.

34. The Board found that Dr. Saunders testified that the previous mobile home on Lot A-19 was an older, smaller mobile home that was referred to as the "Crack Trailer" due to drug use by its occupants.
35. The Board found that Mr. Saunders testified that he agrees with the testimony of his neighbors who oppose the Application and that he wishes the Park would utilize the larger vacant lots rather than squeeze manufactured homes together.
36. The Board found that Ms. Ashe testified that the homeowners are looking to make the Park more aesthetically pleasing. She also has safety concerns with the closeness of the manufactured homes.
37. The Board found that no parties appeared in support of the Application.
38. The Board found that six (6) parties appeared in opposition to the Application.
39. The Board tabled the matter until May 1, 2017, at which time the Board discussed and voted on the Application.
40. 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 A-19 but needs 7 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 or additions thereby shrinking the available separation distances normally required between units. The homes on Lots A-18 and A-20 are 13.5 feet and 13.7 feet wide respectively. Both lots also have significant additions and accessory structures. Lot A-18 has a covered porch, deck, and shed which expands its footprint significantly and Lot A-20 has a landing, sunroom, shed and storage facilities. 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 or additions be placed on Lots A-18 and A-20, the proposed manufactured home would likely fit comfortably on Lot A-19 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 structures and overdevelopment of the community, perhaps a home could be placed on Lot A-19. Notably, however, the park owner has allowed homes with significant additions and accessory structures to be placed on adjacent lots thereby shrinking the available space for the placement of the home. The home placed on Lot A-19 would otherwise fit thereon if the homes and structures on Lots A-18 and A-20 were smaller. The Applicant's failure to restrict the size of the homes and structures 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.

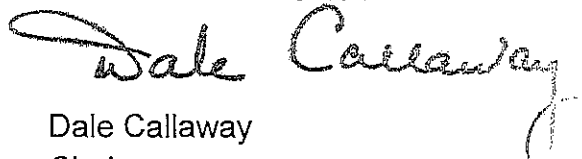
- c. The variances requested will alter the essential character of the neighborhood. The number of variances sought by the Applicant is troublesome (particularly since each of these variances is from the separation distance from other units and structures in the Park) and it is difficult to see how the 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, 2010