

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DONOVAN – SMITH MHP, LLC

(Case No. 11946)

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 a variance from the separation requirement between units.

Findings of Fact

The Board found that the Applicant is seeking a variance of 1.3 feet from the twenty (20) feet separation distance between units requirement from a deck on Lot C-15 and a variance of 6.2 feet from the twenty (20) feet separation distance between units requirement from a shed to the lot to the rear of the Lot C-16. This application pertains to certain real property located the north side of Seneca Street, approximately 624 feet northwest of Central Avenue (911 Address: 16335 Seneca Street, Lewes); said property being identified as Sussex County Tax Map Parcel 3-35-8.14-43.00-55408.

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 the Application refers to Lot C-16 in the Donovan-Smith Manufactured Home Park and the Park is an older park with small, narrow lots.
5. The Board found that Mr. Thompson stated that the manufactured home that was placed is 13.9 feet wide. The manufactured home on the adjacent Lot C-17 is also 13.9 feet wide and the manufactured home on the lot to the rear is 19.4 feet wide.
6. The Board found that Mr. Thompson stated that the manufactured home is comparable in size to nearby homes.
7. The Board found that Mr. Thompson stated that the Property is unique because it is narrow and shallow. The building envelope is also smaller due to the accessory structures on neighboring lots.
8. The Board found that Mr. Thompson stated that the narrow lots create an issue with placing newer manufactured homes within the Park.
9. The Board found that Mr. Thompson stated that the Property cannot be developed in strict conformity with the Sussex County Zoning Code even with the smaller home and the variances are necessary to enable reasonable use of the Property.
10. The Board found that Mr. Thompson stated that the exceptional practical difficulty was not created by the Applicant and the size of the lots predates the Applicant's ownership of the Park.
11. The Board found that Mr. Thompson stated that available manufactured homes are not as small as they once were.
12. The Board found that Mr. Thompson stated that a placement permit for the manufactured home was issued on April 8, 2016.

13. 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 and the variances will not be detrimental to the public welfare. There have been numerous variances granted within the Park.
14. The Board found that Mr. Thompson stated that the Park owner's goal is to replace the older manufactured homes with newer manufactured homes in hopes of upgrading the community.
15. The Board found that Mr. Thompson stated that there is a fence located between the rear neighboring lot and Lot C-16 which is referred to in this Application.
16. 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.
17. The Board found that Mr. Thompson stated that the home was placed in the most compliant manner possible.
18. The Board found that Mr. Betts, under oath, affirmed the statements made by Mr. Thompson.
19. The Board found that Mr. Betts testified that he chose the largest available lots to place new manufactured homes and he chose the home to fit each individual lot.
20. The Board found that Mr. Betts testified that he found the smallest home available to fit the available lot.
21. The Board found that Mr. Betts testified that the manufactured home that has been placed consists of two bedrooms but most homeowners want a three bedroom home.
22. The Board found that Mr. Betts testified that the manufactured home that was replaced was torn down prior to Mr. Betts becoming Park Manager but was comparable in size to the newly placed manufactured home.
23. The Board found that Mr. Betts testified that he was not aware that the twenty (20) feet separation distance requirement also applied to accessory structures.
24. The Board found that Mr. Betts testified that the manufactured home meets the rear yard setback and would meet the separation distance requirements if not for the accessory structures on neighboring lots.
25. The Board found that Mr. Betts testified that he has received no complaints from direct neighbors to Lot C-16.
26. The Board found that Mr. Betts testified that the goal is to clean up the Park.
27. The Board found that Mr. Betts testified that the home is currently vacant but the neighboring lots are occupied.
28. The Board found that James McCarty, Terry Saunders, Sam Saunders, and Sharon Ashe were sworn in to testify in opposition to the Application.
29. The Board found that Ms. Ashe testified that she lives in the rear neighboring lot and the new manufactured home that was placed is very close to her shed. Her elbow even hit the HVAC system on the home on Lot C-16 when she went to start up her lawn mower.
30. The Board found that Ms. Ashe testified that she bought her home in October 2013.
31. The Board found that Ms. Ashe testified that the previous manufactured home was removed by the family that owned it.
32. The Board found that Ms. Ashe testified that there is no room for storage and accessory structures with the new manufactured homes being placed.
33. The Board found that Ms. Ashe testified that the new manufactured homes have large HVAC systems whereas the older ones do not.
34. The Board found that Ms. Ashe testified that the previous manufactured home measured 12 feet by 50 feet.
35. The Board found that Dr. Saunders submitted exhibits for the Board to review and testified that her shed caught on fire and melted the neighbors siding even though the shed was more than twenty (20) feet away from the neighbor. She is concerned with how to safely improve the Park.

36. The Board found that Dr. Saunders testified that her home is 12 feet wide and is an older home that has been renovated.
37. The Board found that Dr. Saunders testified that there are manufactured homes located in the park that are vacant and have been for sale for two to three years.
38. The Board found that Mr. McCarty testified that he is concerned about the safety issues and possible fire hazards from the closeness of the manufactured homes.
39. The Board found that Mr. McCarty testified that other tenants are concerned about retaliation from the Applicant if they were to oppose the Application.
40. The Board found that Mr. Saunders testified that he is concerned with the safety.
41. The Board found that Mr. Saunders testified that he agrees the older manufactured homes need to be removed but there are other places where the newer manufactured homes could be placed.
42. The Board found that no parties appeared in support of the Application.
43. The Board found that five (5) parties appeared in opposition to the Application.
44. The Board tabled the matter until May 1, 2017, at which time the Board discussed and voted on the Application.
45. 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 C-16 but needs 2 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 and accessory structures thereby shrinking the available separation distances normally required between units. The homes on Lots C-15 and C-17 are 13.7 feet and 13.9 feet wide respectively. Lot C-15 has a shed and a deck; the latter of which is too close to the proposed home on Lot C-16. The home on the lot to the rear of Lot C-16 is 19.4 feet wide and has a shed which is too close to the proposed home on Lot C-16. 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 C-15 and C-17 or refused to allow the placement of accessory structures thereon, the proposed manufactured home would likely fit comfortably on Lot C-16 and no variance would be needed. The Board is also not convinced that a smaller manufactured home could not be placed on the lot. The previous manufactured home measured 12 feet by 50 feet, as testified by a neighbor, and the home on Lot C-15 is approximately 8.3 feet shorter and 0.2 feet narrower.
 - 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 the placement of other structures such as decks and sheds on neighboring lots and otherwise permitted the

overdevelopment of the community, perhaps a home could be placed on Lot C-16. Notably, however, the park owner has allowed those structures to be placed on adjacent lots thereby shrinking the available space for the placement of the home. The home placed on Lot C-16 would otherwise fit thereon if the homes and structures on Lots C-15 and C-17 were smaller. The Applicant's failure to restrict the size and placement 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 structures on 2 other lots. 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