

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: GEORGE V. HAUGHNEY

(Case No. 11955)

A hearing was held after due notice on June 5, 2017. The Board members present were Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the front yard setback requirement for a through lot.

Findings of Fact

The Board found that the Applicant is seeking a variance of 4.0 feet from the forty (40) feet front yard setback requirement for a proposed dwelling along Railway Road. This application pertains to certain real property at southeast corner of Railway Road (SCR 350) and Denton Woods Road (911 Address: 30973 Oakwood Road, Ocean View); said property being identified as Sussex County Tax Map Parcel Number 1-34-8.00-375.00.

1. The Board was given copies of the Application, an aerial photograph of the Property, an undated Conceptual Layout Plan, a survey of the Property dated August 6, 2013, and a portion of the tax map.
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 Planning & Zoning Director Janelle Cornwell stated that the Property has three road frontages and there are separate setback requirements for each of those road frontages. Denton Woods Road is on the corner side of the Property with a setback requirement of fifteen (15) feet. Railway Road is adjacent to the front of the Property with a setback requirement of forty (40) feet. Oakwood Road is adjacent to the front of the Property with a setback of thirty (30) feet. The east side of the Property has a side yard setback requirement of ten (10) feet.
4. The Board found that John Starke and George Haughney were sworn in to testify about the Application.
5. The Board found that Mr. Starke testified that he represents the builder of the proposed dwelling.
6. The Board found that Mr. Starke testified that the lot is unique because it has three front yards.
7. The Board found that Mr. Starke testified that the proposed dwelling meets the setback requirements from Oakwood Road, Denton Woods Road, and the side yard.
8. The Board found that Mr. Starke testified that the variance requested is the minimum variance necessary to afford relief.
9. The Board found that Mr. Starke testified that it is unusual for a lot to have three front yard setbacks.
10. The Board found that Mr. Starke testified that Railway Road eventually ends when it approaches water to the northeast.
11. The Board found that Mr. Starke testified that the Property has a small building envelope.
12. The Board found that Mr. Starke testified that the home will face Denton Woods Road and the shape of the lot does not allow the turning of the proposed dwelling to otherwise fit on the lot.
13. The Board found that Mr. Starke testified that the Property is not an interior lot and has an extra setback requirement that other homes in the neighborhood do not have.

14. The Board found that Mr. Starke testified that the exceptional practical difficulty was not created by the Applicant as the Applicant only recently purchased the lot.
15. The Board found that Mr. Starke testified that the variance will not alter the essential character of the neighborhood as the proposed dwelling is consistent with the neighboring homes.
16. The Board found that Mr. Starke testified that the Property is a very restricted lot and he was not aware, at the time he purchased the Property, that the setback requirements take up more than 50% of the lot.
17. The Board found that Mr. Starke testified that the proposed home measures 28 feet by 70 feet.
18. The Board found that Mr. Starke testified that, if the lot did not have these restrictions that the neighboring lots do not have, the home could be built without the need for a variance.
19. The Board found that Mr. Haughney testified that the proposed dwelling was chosen because it was a lot model that was on sale. The home is a single-story dwelling and the home is a doublewide manufactured home which is comparable to other homes in the neighborhood.
20. The Board found that Mr. Starke testified that other homes in the neighborhood are singlewide or doublewide manufactured homes. The previous home on the Property was a singlewide manufactured home which has been removed.
21. The Board found that Mr. Starke testified that the Property will be accessed from Oakwood Road. There is no access to Railway Road. Other lots in the neighborhood do not access Railway Road.
22. The Board found that Mr. Starke testified that drainage is located between the proposed dwelling and Railway Road within the utility setback.
23. The Board found that Mr. Starke testified that there is about ten to fifteen feet from the edge of paving of Railway Road to the property line.
24. The Board found that no parties appeared in support of or in opposition to the Application.
25. 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 as it is a lot with road frontages on three roads and the lot is not particularly large. These conditions greatly restrict the building envelope on the Property. While the Property is considered a through lot, the Applicants do not have direct access to Railway Road and primarily access the Property from Oakwood Road like other lots in the neighborhood. It is clear to the Board that the lot's unique characteristics have created an exceptional practical difficulty for the Applicant who seek to place a manufactured home on the lot.
 - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property is bordered on three sides by roads and has unique setback requirements even though the Applicant only accesses the Property from one of those roads. The Applicant seeks to construct a reasonably sized manufactured home of a similar character as other homes in the neighborhood but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the Applicant to place a reasonably sized home on the Property. The Board is convinced that the shape and location of the home are also reasonable, which is confirmed when reviewing the survey provided by the Applicant. Notably, the home will be located closer to the

northeast side of the Property and away from nearby intersections of the adjacent roads.

- c. The exceptional practical difficulty was not created by the Applicant. The Applicant only recently acquired the Property and did not create the shape and size of the lot or enact the setback requirements which have limited the building envelope of the lot. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created the lot's unique characteristics.
- 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 home will have no effect on the character of the neighborhood. The home will be similar to other homes in the neighborhood and no complaints about the proposal were noted in the record. Furthermore, 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. The Board also notes that there is approximately 10-15 feet from edge of paving of Railway Road and the property line thereby giving the impression that the north side of the Property is larger than it actually is. Due to this discrepancy, it is unlikely that the encroachment would be noticeable without a survey.
- 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 Applicant has demonstrated that the variance sought will allow the Applicant to construct a reasonably sized home on the Property. The Board notes that the home will otherwise comply with the setback requirements.

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, Ms. Ellen Magee, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY

Dale Callaway
Dale Callaway
Chairman

If the use is not established within one (1) year from the date below the application becomes void.

Date August 8, 2017.