

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: PENTECOSTAL CHURCH OF GOD OF LINCOLN, INC.

(Case No. 11980)

A hearing was held after due notice on June 19, 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 variances from the side yard setback requirement and a special use exception to use a manufactured home type structure for an office.

Findings of Fact

The Board found that the Applicant is seeking a special use exception to use a manufactured home type structure as an office, a variance of 5.05 feet from the fifteen (15) side yard setback requirement on the southeast side for a proposed addition, and a variance of 5.35 feet from the fifteen (15) feet side yard setback requirement on the southeast side for a proposed addition. This application pertains to certain real property located on the northeast side of Bethesda Road (Route 326) approximately 1,580 feet south of Doe Bridge Lane (911 Address: 27071 Bethesda Road, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 1-33-11.00-40.01.

1. The Board was given copies of the Application, an aerial photograph of the Property, a survey of the Property dated March 31, 2017, and a portion of the tax map.
2. The Board found that the Office of Planning & Zoning received no correspondence in supports of or in opposition to the Application.
3. The Board found that Medford Freshwater was sworn in to testify about the Application.
4. The Board found that Mr. Freshwater testified that the structure on the northwest side of the Property measures 24 feet by 20 feet. No variance is needed for that structure because it consists of less than 600 square feet.
5. The Board found that Mr. Freshwater testified that the church is seeking to make additions to make the church accessible for its handicapped members.
6. The Board found that Mr. Freshwater testified that the Applicant received a permit for the manufactured home and structure has been on the Property since the 1990s for Sunday School classes and meetings.
7. The Board found that Mr. Freshwater testified that the Applicant has not received complaints from neighbors about the manufactured home.
8. The Board found that Mr. Freshwater testified that there are homes in the area. The Applicant's neighbor does not oppose the Application.
9. The Board found that Mr. Freshwater testified that a tax ditch runs along the northwest border of the Property.
10. The Board found that Mr. Freshwater testified that the Property is unique because of its shape and the location of the tax ditch.
11. The Board found that Mr. Freshwater testified that the Property slopes toward the tax ditch and that the rear of the Property consists of unbuildable wetlands.
12. The Board found that Mr. Freshwater testified that the handicap ramp cannot be built elsewhere and the handicap ramp is necessary to enable reasonable use of the Property.
13. The Board found that Mr. Freshwater testified that the exceptional practical difficulty was created by the uniqueness of the Property.

14. The Board found that Mr. Freshwater testified that the ramp will not alter the essential character of the neighborhood.
15. The Board found that Mr. Freshwater testified that the variances are the minimum variances necessary to afford relief.
16. The Board found that six (6) parties appeared in support of the Application.
17. The Board found that no parties appeared in opposition to the Application.
18. 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 clearly unique as it has a unique shape and is adjacent to the Mirey Branch Tax Ditch. The rear of the Property is also unique because it consists of wetlands and is unbuildable. The unique conditions of the Property have created a limited and unusually shaped building envelope. These conditions have, thus, created an exceptional practical difficulty for the Applicant who seeks to make a reasonable addition to the Property for a handicap ramp.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The church was constructed many years ago and the Applicant seeks to make a reasonable addition thereto to provide handicap access to the church for its members but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the ramp to be constructed on the Property. The Board is convinced that the shape and location of this ramp are reasonable, which is confirmed when reviewing the survey provided by the Applicant. The Board is also convinced that the unusual physical characteristics of the Property have restricted the Applicant's ability to place this handicap ramp.
 - c. The exceptional practical difficulty was not created by the Applicant. The Property has an unusual shape and a significant portion of the building envelope is unbuildable due to the existing wetlands and tax ditch. These unique physical conditions have resulted in a limited building envelope and have created the exceptional practical difficulty for the Applicant.
 - d. The variances 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 church has been on the Property for many years without recorded complaints and the ramp will simply provide a safe way for its handicapped members to access the church. Despite the longstanding location of the church and notification to neighbors, no complaints were noted in the record about its location. Furthermore, no evidence was presented which would indicate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
 - e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to construct a reasonably sized handicap ramp on the Property. No other location for the ramp appears feasible.
 - f. The Board also finds that the variance approval for the proposed handicap ramp represents a reasonable accommodation for the church's handicapped members.

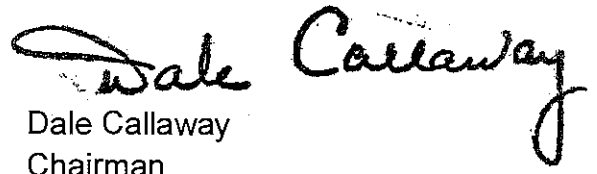
19. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board found credible, persuasive, and un rebutted, the Board determined that the application met the standards for granting a special use exception because the manufactured home-type structure will not substantially affect adversely the uses of neighboring and adjacent properties. The findings below further support the Board's decision to approve the Application.
- a. The Property is used as a church and the manufactured home-type structure has been used since the 1990s as a meeting place and for Sunday School classes.
 - b. The Property is a reasonably sized lot as it consists of approximately 43,520 square feet and is bordered by a tax ditch.
 - c. The unit has been on the Property for many years without complaint.
 - d. No evidence was presented which would demonstrate that the structure will have a substantial adverse effect on neighboring and adjacent properties. The lack of evidence is notable since the Applicant operated its church with the manufactured home-type structure on the Property for many years. If the existence of a manufactured home-type structure had some substantial adverse effect on neighboring and adjacent properties, the Board would expect some evidence to that effect to be submitted to the Board yet no evidence was provided. Rather, the Applicant submitted substantial evidence to the contrary and the Board finds that evidence credible and persuasive.

The Board granted the variance application and the special use exception application finding that it met the standards for granting a variance and a special use exception.

Decision of the Board

Upon motion duly made and seconded, the variance application and the special use exception application were 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 and the special use exception 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.

A placement permit must be obtained before the manufactured home is placed on the property.

Date August 22, 2017