

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: CHARLIE CLARK

(Case No. 11994)

A hearing was held after due notice on July 24, 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 front yard and rear yard setback requirements.

Findings of Fact

The Board found that the Applicant is seeking a variance of 17.6 feet from the thirty (30) feet front yard setback requirement for a dwelling and a variance of 0.7 feet from the ten (10) feet rear yard setback requirement for a dwelling. This application pertains to certain real property located on the east side of Wynikako Avenue approximately 260 feet +/- north of River Road (911 Address: 28467 Wynikako Avenue, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 2-34-34.00-84.00-55598.

1. The Board was given copies of the Application, an aerial photograph of the Property, a portion of the tax map of the area, a survey of the Property dated June 1, 2017, a placement survey dated April 13, 2017, a building permit, and manufactured home placement permits.
2. The Board found that the Office of Planning & Zoning received no letters of opposition to the Application and one (1) letter of support to the Application.
3. The Board found that Charles Clark and Gil Fleming were sworn in to testify about the Application.
4. The Board found that Mr. Clark testified that Riverdale Park is a family-owned operation and has been in business for over 110 years. The Property is identified as Lot 258 in Riverdale and is 77 feet wide by 99 feet dep. Lots in Riverdale, however, are different sizes.
5. The Board found that Mr. Clark testified that the proposed dwelling will improve the neighborhood.
6. The Board found that Mr. Clark testified that the Property was previously improved by a small trailer that was improved with an addition.
7. The Board found that Mr. Clark testified that the Property is not usable without a variance.
8. The Board found that Mr. Clark testified that a home that would be placed parallel to Wynikako Avenue would not meet the side yard setback requirements. The placement of the proposed dwelling, however, will provide approximately 30 feet on either side from neighboring properties.
9. The Board found that Mr. Clark testified that other homes in the neighborhood are similarly situated.
10. The Board found that Mr. Clark testified that the variances will not negatively impact the neighborhood and neighbors have not expressed objection to the Application.
11. The Board found that Mr. Fleming testified that the manufactured home measures 72 feet deep but there is some discrepancy as to the width of the home. Mr. Fleming testified that the home is 16 feet wide but the survey indicates that the home is 13.9 feet wide. He believes the surveyor made an error.
12. The Board found that Mr. Fleming testified that any additions to the home will be made on the sides and within the building envelope.

13. The Board found that Mr. Clark testified that the dwelling has been placed on the Property and he relied on the installer for the placement of the home. He was unaware of the encroachment issue until after the home was placed.
14. The Board found that Mr. Fleming testified that he received the permit approval but did not receive the setback information. He contacted a surveyor and received a placement survey showing setback of ten (10) feet on all sides of the Property, which is not unusual for manufactured home lots, and, that, prior to placement of the home, he believed the surveyor correctly showed the setback areas.
15. The Board found that Mr. Clark testified that the rear variance requested is needed due to a mistake made by the installer.
16. The Board found that Mr. Clark testified that the front yard variance poses no safety concern because Wynykako Avenue is a road where the speed limit is only 25 miles per hour.
17. The Board found that two (2) parties appeared in support of the Application.
18. The Board found that no parties appeared in opposition to the Application.
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 variance. The findings below further support the Board's decision to approve the Application.
 - a. The Property is unique due to its unique size, shape, and history. The Property is a lot in the Riverdale Park; a community of manufactured homes which has been in existence for over 110 years. The lots in Riverdale typically house manufactured homes on rented land and the Applicant intended to replace an older home with a newer manufactured home. The Applicant contracted with a surveyor and a manufactured home company to place the home and, based on representations made by those professionals, the Applicant reasonably believed that a manufactured home could be placed on the lot in compliance with the Sussex County Zoning Code. The Applicant later discovered, however, after the placement of the home, that the home violated the setback requirements. The Property is too short and narrow to allow for the placement of a manufactured home within the setback areas even though the Property has been used for this purpose for many years. The unique characteristics of this Property limit the buildable area available to the Applicant and have created an exceptional practical difficulty for the Applicant who seeks to retain an existing manufactured home.
 - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique size and shape and the buildable area thereof is limited due to its size and shape. The Applicant seeks to retain an existing manufactured home of a reasonable size 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 a reasonably sized manufactured home to remain on the Property. The Board is convinced that the shape and location of this home is also reasonable, which is confirmed when reviewing the survey and pictures provided by the Applicant.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual size and shape of the Property. The lot was created many years ago and the park pre-dates the Sussex County Zoning Code. The unique lot size and shape has resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. The Property has historically

been used for the placement of a mobile home but the Applicant is unable to fit a mobile home on the lot in compliance with the Code. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created the lot's unique characteristics.

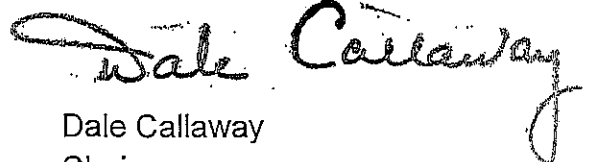
- d. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the existing manufactured home will have no effect on the character of the neighborhood. The manufactured home is similarly situated to other homes in the neighborhood. 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 retain the manufactured home on the Property. No additions or modifications to the home are proposed.

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 of the motion 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
Chairman

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

Date September 19, 2017