

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: S & S PROPERTY HOLDINGS, LLC

(Case No. 12027)

A hearing was held after due notice on October 2, 2017. The Board members present were: Mr. Dale Callaway, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicant is seeking a variance of 31.6 feet from the 40 feet front yard setback requirement for an existing dwelling. This application pertains to certain real property located on the southeast side of Sharon's Road (Road 641), approximately 152 feet northeast of DuPont Boulevard (Route 113) (911 Address: 18010 Sharon's Road, Ellendale); said property being identified as Sussex County Tax Map Parcel Number 2-30-26.00-117.00.

1. The Board was given copies of the Application, a survey of the Property dated August 15, 2017, a portion of an undated survey with a notation, minutes and findings of fact for Case No. 8263, property record cards, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of or in opposition to the Application.
3. The Office of Planning & Zoning noted that a previous variance had been approved in 2003 for the existing dwelling but the variance approval appears to have incorrectly stated the size of the variance needed. The original variance approval was for 21.6 feet from the front yard setback requirement but the house is 8.4 feet from the front property line and the front yard setback requirement is 40 feet. Staff noted that the error may have resulted from a misunderstanding of whether Sharon's Road – which is off the front yard – was a numbered road or not. The front yard setback requirement off numbered roads is 40 feet rather than 30 feet for other roads. Sharon's Road is classified as a numbered road.
4. The Board found that Clayton Snead and Devin Scott were sworn in to testify about the Application.
5. The Board found that Mr. Snead testified that the home was built 73 years ago.
6. The Board found that Mr. Snead testified that a variance was originally granted for 21.6 feet.
7. The Board found that Mr. Snead testified that the Applicants purchased the Property in 2017 and discovered that the variance was incorrect.
8. The Board found that Mr. Snead testified that the exceptional practical difficulty was not created by the Applicants.
9. The Board found that no parties appeared in support of or in opposition to the Application.
10. 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 long and narrow property with an odd shape as evidenced by the survey. This shape has created an oddly shaped building envelope and has created an exceptional practical difficulty for the

Applicant who seeks to retain an existing dwelling on the lot. The situation is also unique because the Property was developed prior to the enactment of the Sussex County Zoning Code and the dwelling was placed near the front of the lot. The uniqueness of the situation is further exacerbated by an apparent error in the findings of fact issued by the Board in Case No. 8263 where the size of the variance was incorrectly stated.

- b. Due to the uniqueness of the lot and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique shape and the buildable area thereof is limited due to its shape. The Applicant seeks to retain a dwelling of reasonable size 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 a reasonably sized dwelling to remain on the Property. This structure has been in its current location for approximately 73 years and predates the enactment of the Sussex County Zoning Code. The Board is convinced that the shape and location of the dwelling are reasonable, which is confirmed when reviewing the survey provided by the Applicant.
- c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual shape of the Property. The unique lot shape has resulted in a limited building envelope on the Property and the oddly shaped building envelope has created the exceptional practical difficulty. The unique characteristics of the Property are clear when reviewing the survey. Furthermore, the dwelling was placed on the Property by a prior owner and have been in its present location for many years. The Applicant only recently acquired the Property and did not place the home on the lot. Rather, the dwelling was constructed 73 years ago and prior to the enactment of the Sussex County Zoning Code. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created the lot's unique characteristics and by the placement of the dwelling by a prior owner.
- 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 dwelling will have no effect on the character of the neighborhood. The home has been on the Property in its present location for many years and, despite its longstanding location, no complaints were noted in the record about its location. 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.
- 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 retain the existing home on the Property. No additions or modifications to the dwelling 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 were Mr. Dale Callaway, Mr. Bruce Mears, Mr. John Mills,

and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Ms. Ellen Magee did not participate in the discussion or vote on this 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 December 12, 2017.