

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: 1995 PROPERTY MANAGEMENT, LLC**

**(Case No. 12032)**

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 side yard setback requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 1.1 feet from the ten (10) feet side yard setback requirement on the north side for an existing dwelling. This application pertains to certain real property located on the northeast side of Avalon Drive, approximately 295 feet southwest of Durham Street (911 Address: 27741 Avalon Drive, Georgetown); said property being identified as Sussex County Tax Map Parcel Number 2-34-15.00-105.00.

1. The Board was given copies of the Application, a survey of the Property dated August 8, 2017, property record information, 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 Board found that Shawn Silva was sworn in to testify about the Application.
4. The Board found that Mr. Silva testified that the manufactured home was placed on the Property by a prior owner in 2003 and Sussex County issued a Certificate of Compliance after the home was placed.
5. The Board found that Mr. Silva testified that the home is located on a foundation and is considered a Class "C" structure.
6. The Board found that Mr. Silva testified that he purchased the Property in February 2017 at a sheriff's sale and the encroachment was discovered in August 2017 when a survey was completed.
7. The Board found that Mr. Silva testified that the home cannot be moved into compliance with the Sussex County Zoning Code.
8. The Board found that Mr. Silva testified that the septic system is located to the rear of the home.
9. The Board found that Mr. Silva testified that he did not create the exceptional practical difficulty.
10. The Board found that Mr. Silva testified that he has received no complaints from neighbors about the home's location.
11. The Board found that no parties appeared in support of or in opposition to the Application.
12. 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 irregular shape and odd building envelope. The front part of the lot is angled thereby making the south side of the Property deeper than the north side of the Property. The unique shape of the Property has created an oddly shaped building envelope for the Applicant and has created an exceptional practical difficulty. The lot is also

unique because a septic system in the rear yard limits the buildable area of the Property. Furthermore, the Property, which is not large, borders two roads and is, thus, a through lot with an even smaller building envelope than would otherwise exist for a property of this size. The situation is also unique because the Applicant only recently purchased the Property and a prior owner placed the home on the lot. Further complicating the situation is the fact that a Certificate of Compliance was issued thereby erroneously indicating that the home met the Sussex County Zoning Code. Ultimately, the Board finds that the uniqueness of the Property and the situation have created an exceptional practical difficulty for the Applicant.

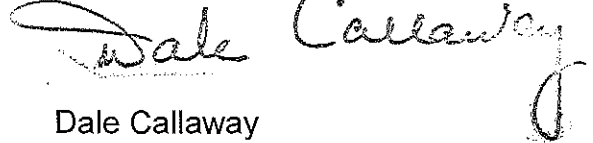
- b. Due to the uniqueness of the Property and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The dwelling was incorrectly placed on the Property. The home is a Class "C" structure and cannot be moved into compliance with the Code. The previous owner received all necessary approvals and permits for the placement of the home only for the Applicant to later learn that it did not actually meet the Code's requirements. Ultimately, the Applicant seeks to retain the home in its existing location 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 home to remain 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.
- c. The exceptional practical difficulty was not created by the Applicant. The Applicant only recently acquired the Property and did not place the home on the lot. Rather, the home was placed on the lot by a prior owner and the Applicant reasonably believed that the home complied with the Code only to find out later that the home encroached into the setback area. The Property also has a unique building envelope due to its odd shape, small size, and border along two roads. The building envelope is further reduced by the location of a septic system servicing the home. These unique physical conditions have created the exceptional practical difficulty for the Applicant and the Board finds that this error was not self-created by the Applicant.
- 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 has been on the Property in its current location for some time without complaint. 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 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 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 of 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 applications  
becomes void.

Date December 12, 2017