

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

**IN RE: ROBERT HARMON & NATISHA HARMON-BELLE**

**(Case No. 12039)**

A hearing was held after due notice on October 16, 2017. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the side yard setback requirement.

Findings of Fact

The Board found that the Applicants are seeking a variance of 3.3 feet from the fifteen (15) feet side yard setback requirement on the northwest side for an existing dwelling and a variance of 7.3 feet from the fifteen (15) feet side yard setback requirement on the northwest side for an existing set of steps. This application pertains to certain real property located on the northeast side of Harbeson Road (Route 5), approximately 1,471 feet southeast of Rust Road (911 Address: 20401 Harbeson Road, Harbeson); said property being identified as Sussex County Tax Map Parcel Number 2-34-4.00-16.00.

1. The Board was given copies of the Application, a survey of the Property dated August 10, 2017, a building permit, 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 John Starke was sworn in to testify about the Application.
4. The Board found that Mr. Starke testified that he is the construction manager for Atlantis Homes.
5. The Board found that Mr. Starke testified that the home measures 30 feet by 76 feet. The home is a modular home and is set on a foundation.
6. The Board found that Mr. Starke testified that the Property is wooded and the lot had to be cleared for the house and septic system. Neighboring properties are also wooded.
7. The Board found that Mr. Starke testified that the home could not be turned to fit on the lot as it is too wide to fit within the building envelope and the home had to be placed on one side of the lot so that the equipment to set the home could safely maneuver on site and set the home.
8. The Board found that Mr. Starke testified that the surveyor set placement markers for the home.
9. The Board found that Mr. Starke testified that the surveyor placed the home in the wrong spot and he relied on the surveyor to determine the area where the home could be placed.
10. The Board found that Mr. Starke testified that the footers and foundation were inspected and the encroachment was only discovered after the home was placed on the Property.
11. The Board found that Mr. Starke testified that the Applicants were unaware of the encroachments until they sought a final inspection after the home was placed.
12. The Board found that Mr. Starke testified that the variances will not alter the essential character of the neighborhood.
13. The Board found that Mr. Starke testified that there are manufactured and modular homes in the area.
14. The Board found that Mr. Starke testified that, if the Property was slightly smaller, only a 10 feet side yard setback would be required – in which case no variance would be needed.

15. The Board found that no parties appeared in support of or in opposition to the Application.
16. The Board voted to leave the record open for the purpose of allowing the Applicant to submit a copy of the original survey showing the incorrect setback lines and other related documentation from the surveyor. Those documents were subsequently submitted to the Board and, on November 6, 2017, the Board discussed and voted on the Application.
17. 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 unrebutted, 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 is a long and narrow lot; as is clearly shown on the survey. The narrow width of the Property has created an exceptional practical difficulty for the Applicants and this difficulty is exacerbated by the fact that the Property is heavily wooded and portions needed to be cleared for the septic system and home. These conditions further limited the area where the home could be placed. These unique physical conditions have created an unusual and limited building envelope for the Applicant. Additionally, the Property is only 100.11 feet wide and, if it was 100 feet wide and created prior to 1971, the side yard setback requirement would be 10 feet rather than 15 feet and no variances would be needed. Furthermore, the situation is also unique because the Applicants relied on their builder to place the home in compliance with the Sussex County Zoning Code and the surveyor, whom the builder relied upon, made an error when placing the stakes where the home could be placed.
  - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The dwelling is a reasonably sized modular home which cannot be turned to fit on the lot because the lot is so narrow. The home is also located on a permanent foundation. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the dwelling and steps to remain on the Property. The Board is convinced that the shape and location of this dwelling and steps are reasonable, which is confirmed when reviewing the survey provided by the Applicants. If the Property was less than foot narrower and created prior to 1971, no variance would likely be needed for this home.
  - c. The exceptional practical difficulty was not created by the Applicants. The Property is a small, narrow, wooded lot. These unique physical conditions have resulted in a limited building envelope and have created the exceptional practical difficulty for the Applicants. Furthermore, the Applicants reasonably relied upon their builder and surveyor to place the home on the lot in compliance with the Sussex County Zoning Code only to find out after the home was placed that did not comply with the Code.
  - 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. Despite the location of the dwelling and steps 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. The home is also located on a heavily

wooded lot in a neighborhood where other lots are also wooded so the encroachment is likely not as noticeable as it would be in other instances.

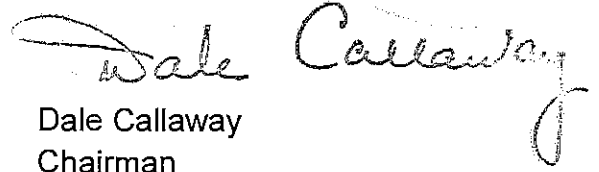
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to retain the existing dwelling and steps on the same footprint. No additions or modifications to the dwelling or steps 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, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, 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 with one (1)  
year from the date below the application  
becomes void.

Date January 9, 2018