

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

**IN RE: CHARLES HUDSON**

**(Case No. 12057)**

A hearing was held after due notice on November 20, 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 a variance from the separation distance requirement from a poultry building and residence.

Findings of Fact

The Board found that the Applicant is seeking a variance of 58.9 feet from the two hundred (200) feet separation requirement between a poultry house and a dwelling and a variance of 67.2 feet from the two hundred (200) feet separation requirement between a poultry house / manure shed and a dwelling. This application pertains to certain real property located on the south side of Laurel Road (Route 24), approximately 20 feet southeast of Christ Church Road (911 Address: 12254 Laurel Road, Laurel); said property being identified as Sussex County Tax Map Parcel 2-32-18.00-8.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, aerial photographs of the Property, and a survey of the Property dated September 15, 2017.
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 Charles Hudson was sworn in to testify about the Application. Tim Willard, Esquire, presented the case on behalf of the Applicant.
4. The Board found that Mr. Willard stated that the Property consists of approximately 25 acres near the American Legion and the Property is proposed to be subdivided into two lots. The poultry houses will be located on a parcel separate from the parcel where the dwelling will be located.
5. The Board found that Mr. Willard stated that the Applicant purchased the Property in 1980 and he constructed the dwelling with a basement. The poultry houses were also constructed at that time.
6. The Board found that Mr. Willard stated that the Property has a unique shape and is bordered by the James Branch. The Property has unique topography as it slopes dramatically behind the house and the poultry houses.
7. The Board found that Mr. Willard stated that the Applicant is retired and wants to sell the poultry houses so the Property would be subdivided into two parcels with the dwelling on one lot and the poultry houses on the other lot.
8. The Board found that Mr. Willard stated that the setback requirements will be met with the proposed subdivision but the separation distance requirement cannot be met.
9. The Board found that Mr. Willard stated that the 200 feet separation distance requirement was established in 1994.
10. The Board found that Mr. Willard stated that the exceptional practical difficulty was not created by the Applicant.
11. The Board found that Mr. Willard stated that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
12. The Board found that Mr. Willard stated that the variances will not alter the essential character of the neighborhood.

13. The Board found that Mr. Willard stated that the variances requested represent the minimum variances necessary to afford relief.
14. The Board found that Mr. Hudson affirmed the statements made by Mr. Willard as true and correct.
15. The Board found that one (1) party appeared in support of the Application.
16. The Board found that no parties appeared in opposition to 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, which consists of approximately 25 acres as shown on the survey, is unique as it a large but unusually shaped lot with an odd topography. The Property slopes greatly to the rear yard. The Property is improved by a dwelling, poultry houses, and a manure shed. The Applicant proposes to subdivide the Property into two lots so as to separate the dwelling from the poultry houses and the manure shed. While the Applicant is able to meet the setback requirements, he cannot meet the separation requirements between poultry houses and dwellings. These unique characteristics of the Property have created an exceptional practical difficulty for the Applicant who seeks to subdivide the lot.
  - b. Due to the Property's unique conditions, the Property cannot be subdivided in strict conformity with the Sussex County Zoning Code. The Applicant seeks to subdivide the Property into two lots but is unable to do so without violating the Sussex County Zoning Code due to the unique physical conditions of the lot. The Board is convinced that the proposed subdivision of the Property is reasonable and that the variances requested are necessary to enable the reasonable use of the Property as the variance will allow the Applicant to reasonably subdivide the Property. The survey attached to the Application confirms that the subdivision is reasonable.
  - c. The exceptional practical difficulty was not created by the Applicant. The Property is quite large and could easily service two separate lots but the house is too close to the poultry houses to meet the separation distance requirement. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that these unique conditions have created an exceptional practical difficulty for the Applicant. Furthermore, the structures were constructed prior to the enactment of the Sussex County Zoning Ordinance which created the separation distance requirement.
  - 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 Property will be subdivided into two lots but there is no change to the nature of how the properties will be used. The existing structures will remain in their current locations. No evidence was presented that the proposed subdivision of the Property 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 the variances will allow the Property to be subdivided into two lots and for the existing structures to remain on the Property. No additions or modifications to those structures are proposed.

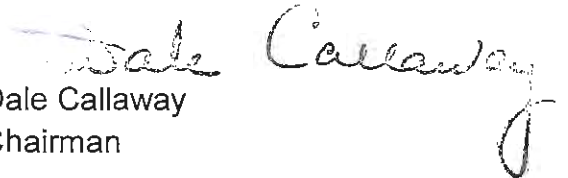
The Board granted the variance application finding that it met the standards for granting a variance.

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 Members voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY

Dale Callaway  
Chairman

A handwritten signature in blue ink that reads "Dale Callaway". The signature is written in a cursive style with a long, sweeping tail on the last letter of the last name.

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

Date January 23, 2018.