

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY
IN RE: COMMERCIAL JOINT VENTURES, LLC / GERALD HOCKER
(Case No. 12250)

A hearing was held after due notice on January 7, 2019. 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 separation distance, the front, side and rear yard setback requirements for existing structures.

Findings of Fact

The Board found that the Applicants are seeking blanket variances for the Bethany Crest Manufactured Home Park ("the Park") which would apply to all lots within the Park. The blanket variances include a variance of 5 feet from the twenty (20) feet separation distance between units in a manufactured home park requirement, a variance of 3 feet from the five (5) feet front yard setback requirement for structures, a variance of 2 feet from the five (5) feet rear yard setback requirement for structures, a variance of 10 feet from the twenty (20) feet separation distance requirement between dwellings and other accessory structures on adjacent lots in a manufactured home park, and a variance of 5 feet from the five (5) feet side yard setback requirement for accessory structures. This application pertains to certain real property located on the south of Atlantic Avenue approximately 943 feet east of Roxana Road (911 Address: Bethany Crest Mobile Home Park, Clarksville); said property being identified as Sussex County Tax Map Parcel Number 1-34-12.00-335.00.

1. The Board was given copies of the Application, a right-of-way plan for the Property dated October 26, 2018, a survey for Lot 3 dated September 10, 2018, an aerial photograph of the Property, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received no letters in support of the Application and one (1) letter in opposition to the Application.
3. The Board found that Gerald Hocker was sworn in to give testimony about the Application. Mr. Hocker is the owner of the Park.
4. The Board found that Mr. Hocker testified that the Park was created in the early 1960s. He later purchased the Park and has made improvements to the Park such as the installation of a new water system and central sewer. The park previously had failing septic systems but he connected the park to the Millville Sewer District. He also paved roads within the Park.
5. The Board found that Mr. Hocker testified that he owns adjacent commercial lands.
6. The Board found that Mr. Hocker testified that he recently tried to sell a manufactured home in the Park but the sale fell through because setback issues were discovered. Most homes in the Park are tenant-owned.
7. The Board found that Mr. Hocker testified that, if the variances are denied, he will be unable to use 19 lots in the Park.
8. The Board found that Mr. Hocker testified that the Park is unique because the lots are small and angled.
9. The Board found that Mr. Hocker testified that only a small corner of the houses encroach into the setback areas due to the angling.
10. The Board found that Mr. Hocker testified that newer manufactured homes will not fit on the lot within the building envelope. He has been unable to find smaller model homes which will fit the length of the lot.

11. The Board found that Mr. Hocker testified that the right-of-way also cuts into the buildable area of the lots even though there is a gap between the edge of paving and the front property line.
12. The Board found that Mr. Hocker testified that the lots are particularly shallow on one side of the Park.
13. The Board found that Mr. Hocker testified that he plans to place sheds on all lots.
14. The Board found that no parties appeared in support of or in opposition to the Application.
15. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered, 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 because it was developed as a manufactured home park prior to the enactment of the Sussex County Zoning Code. Lots in the Park are shallow and angled, which greatly limits the buildable area of the lots. Furthermore, many lots in the Park are further limited due to a right-of-way easement which exacerbates the exceptional practical difficulty created by the shallowness of the lot. The lots are also quite narrow, which poses challenges with placement of newer manufactured homes which are larger than older models. 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 develop the lots in the Park with manufactured homes and accessory structures but is unable to do so without violating the Sussex County Zoning Code.
 - b. Due to the uniqueness of the Park, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique size, shape, and shallowness and the buildable area thereof is limited due to these conditions. The Applicant seeks to develop the lots in the Park with dwellings and accessory structures of 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 the Applicant to continue using the Park as a manufactured home park in a manner consistent with its historical use. The Board is convinced that the shape and location of these structures are also reasonable.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual size, shape, and shallowness of the lots in the Park. These unique conditions have resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. Furthermore, the Park was created many years ago by a prior owner and has existing tenants; most of whom own their own homes. 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 variances will have no adverse effect on the character of the neighborhood. The variances will allow the Applicant to develop the lots within the Park in a manner consistent with its historical use. The Board was not convinced by arguments by the opposition and no evidence was presented which convinced the Board that the variances would somehow

alter the essential character of the neighborhood or be detrimental to the public welfare. The Board also notes that there is a gap between the edge of paving of Bethany Crest Lane and the front property line. As such, the front yard encroachments are likely not as noticeable as they would otherwise be. Furthermore, the Board notes that only portions of the dwellings will encroach into the front yard and rear yard setback areas due to the angling of the lots.

- 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 develop the Park with newer manufactured homes and accessory structures in a reasonable manner consistent with the development of the neighborhood. The Board is convinced that the Applicant took measures to reduce the encroachments and otherwise minimize the size of the variance requests.

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


John Mills
Chairman

If the use is not established within two (2) years from the date below the application becomes void.

Date March 5, 2019