

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: TIMOTHY RAMEY CONSTRUCTION, INC.

(Case No. 12550)

A hearing was held after due notice on April 12, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the side yard setback requirement for an existing structure.

Findings of Fact

The Board found that the Applicant is requesting a variance of 3.6 feet from the fifteen (15) feet side yard setback requirement on the south side for an existing dwelling. This property is located on the east side of East Trap Pond Road approximately 352 feet south of Phillips Hill Road (911 Address: 31205 East Trap Pond Road, Laurel) said property being identified as Sussex County Tax Map Parcel Number 2-32-20.00-20.25. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey of the Property dated February 15, 2021, 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 correspondence in support of or in opposition to the Application.
3. The Board found that Timothy Ramey was sworn in to testify about the Application.
4. The Board found that Mr. Ramey testified that he has been building in Sussex County since 1995 and this is the first time he has had to request a variance.
5. The Board found that Mr. Ramey testified that the lots were cut out at an angle.
6. The Board found that Mr. Ramey testified that the survey marker was not in the correct location and the back corner marker was marked in error for laying the foundation.
7. The Board found that Mr. Ramey testified that the front of the dwelling meets the setbacks.
8. The Board found that Mr. Ramey testified that the variance will not alter the essential character of the neighborhood as the dwelling is far away from the property line and is approximately 47 feet away from the existing house on the adjacent property.
9. The Board found that Mr. Ramey testified that there are no steps or HVAC on this side of the Property.
10. The Board found that Mr. Ramey testified that there is a farm ditch on the right side of the adjacent property which is parallel with the lot line on the subject property.
11. The Board found that no one 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 for the variance met the standards for granting a variance. The findings below further support the Board's decision to approve the Application for the variance.
 - a. The Property is unique due to its shape and development. The lot is a parallelogram and the Applicant built a dwelling on the lot based on a survey that had an incorrect marker. While the front corner of the house complies with the setback, the rear corner of the home does not. The surveying error and the odd angle of the lot line have created an unnecessary hardship and

exceptional practical difficulty for the Applicant who seeks to retain the existing dwelling on the site.

- b. The unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code.
- c. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has unique physical characteristics and the buildable area thereof is limited due to those characteristics. The Applicant seeks to retain an existing dwelling on the lot 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 this reasonably sized dwelling to remain on the lot. The Board is convinced that the shape and location of the structure is also reasonable, which is confirmed when reviewing the survey provided by the Applicant.
- d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. As previously stated, the Property has unique conditions and these conditions have resulted in a limited building envelope on the Property. These conditions have created the unnecessary hardship and exceptional practical difficulty. Furthermore, the Applicant relied on the location of the survey markers which were incorrectly placed.
- e. 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 dwelling is a significant distance from neighboring lands and the front corner of the dwelling complies with the setback requirements. Due to the odd angle of the lot line, it is unlikely that the encroachment would be noticed otherwise. No evidence was presented which demonstrates that the variance would somehow alter the essential character of the neighborhood.
- f. 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 a reasonably sized dwelling on the Property. No additions or modifications to the dwelling are proposed.
- g. The condition or situation of the Property and the intended use of the Property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.

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 of the Motion to approve the variance were Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. Travis Hastings, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



John Williamson
Chair

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

Date June 7, 2021