

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

**IN RE: YOUNG J. PARK, et al**

**(Case No. 12675)**

A public hearing was held after due notice on April 4, 2022. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. Jordan Warfel and Mr. John Williamson.

Nature of the Proceedings

This is an application for a variance from the 200 ft. poultry building setback requirement from a residence.

Findings of Fact

The Board found that the Applicant is requesting a variance of 71.3 feet from the 200 feet separation requirement for a poultry house from a neighboring dwelling. This application pertains to certain real property that is a through lot located on the southeast side of Mount Pleasant Road at Scala Lane (911 Address: 31312 Mount Pleasant Road, Laurel); said property being identified as Sussex County Tax Map Parcel Number 432-7.00-2.00 ("the Property"). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, aerial photographs of the Property, a proposed subdivision plan 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 the Application.
3. The Board found that Steve Adkins, who is the Applicant's surveyor, and Yong Park were sworn in to give testimony about the Application.
4. The Board found that Mr. Adkins testified that Mr. Park is looking to separate the chicken house from the farm and he is unable to subdivide the Property without a variance.
5. The Board found that Mr. Adkins testified that there were two (2) chicken houses on the Property but one chicken house has been removed. He noted that the permit was pulled for the chicken houses in 1979.
6. The Board found that Mr. Adkins testified that, at the time the chicken houses were placed on the lot, there was a mobile home but there is now a house on the lot which was built a prior owner.
7. The Board found that Mr. Adkins testified that the Property was in compliance at the time the buildings were constructed.
8. The Board found that Mr. Adkins testified that the lot was surveyed and proposed to be the minimum relief necessary to be in compliance with Sussex County Zoning Code.
9. The Board found that Mr. Adkins testified that the Applicant has not created the issue.
10. The Board found that Mr. Adkins testified that there is no development to be done but a separation of the Property.
11. The Board found that Mr. Adkins testified that the chicken house is still under an agricultural loan and is still a functioning poultry house but he does not believe the poultry house will remain in use much longer.

12. The Board found that Mr. Adkins testified that the neighborhood is an agricultural area with other poultry houses nearby.
13. The Board found that Mr. Adkins testified that the rear of the Property is accessed from Scala Lane which has been added as an ingress / egress of 50 feet wide to accommodate for the trucks to enter and exit.
14. The Board found that Mr. Adkins testified that he does not believe there to be any other dwellings close enough to require variance.
15. The Board found that Mr. Adkins testified that the house is greater than 200 feet from the houses to the west and that there are trees to the east.
16. The Board found that Mr. Park testified that he does not plan to rebuild a chicken house once the existing poultry house is removed.
17. The Board found that Bruce Hill and Joyce Stevens were sworn in to give testimony about the Application. Neither opposed the Application.
18. The Board found that two (2) persons appeared in support of the Application and no one appeared in opposition to the Application.
19. 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 as it is a large, unusually shaped parcel developed with a poultry house and home. The structures have been the Property for many years and the Applicant seeks to subdivide the Property to separate the lot where the poultry house is located from the lot where the dwelling is located. The Applicant makes no proposal to add a poultry house. These conditions are unique and it is clear to the Board that the lot's unique characteristics have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to retain an existing poultry house on the Property.
  - 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 is an oddly shaped but large parcel which was previously developed with a poultry house and dwelling. At the time these structures were placed on the Property, the Code allowed for the structures to be located so close to each other. The Applicant seeks to subdivide the Property to separate the two structures on different lots 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 the Applicant to subdivide the Property as proposed. The Board is convinced that the shape and location of these structures are also reasonable, which is confirmed when reviewing the survey provided by the Applicant.
  - d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicant. The Applicant did not create the lot or enact the separation distance requirements which have limited the building envelope of the lot. The Applicant also did not construct the house or place the poultry house on the lot. Those structures were placed on the lot by a prior owner years ago. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the unnecessary exceptional practical difficulty were not created by the Applicant but was created the lot's unique characteristics.

- 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 structures will have no effect on the character of the neighborhood. There are other similar structures in the community and the poultry house has been on the Property since 1979 without complaints noted in the record. 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. Rather, the Board received notice from two neighbors that they do not object to the relief sought by the Applicant.
- 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 subdivide the Property without moving any structures. No changes in the location or type of structures is 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.
- h. The Board's approval is subject to the condition that the Applicant obtain site plan approval from the Sussex County Planning & Zoning Commission.

The Board granted the variance application with conditions 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 with conditions. The Board Members in favor were Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the motion to approve the Application with conditions.

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 6, 2022