

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

**IN RE: ALVIN BAILEY**

**(Case No. 12424)**

A hearing was held after due notice on March 16, 2020. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front yard and side yard setback requirements for existing structures and for a lot width variance for a proposed lot.

Findings of Fact

The Board found that the Applicant is requesting is requesting the following variances: 1) a variance of 6.9 feet from the fifteen (15) feet side yard setback requirement on the south side for an existing manufactured home on the Residual Lands as shown on a minor subdivision plan dated December 17, 2019; 2) a variance of 8.1 feet from the fifteen (15) feet side yard setback requirement on the south side for an existing manufactured home on the Residual Lands as shown on a minor subdivision plan dated December 17, 2019; 3) a variance of 10 feet from the thirty (30) feet front yard setback requirement for an existing manufactured home on the Residual Lands as shown on a minor subdivision plan dated December 17, 2019; 4) a variance of 60 feet from the 150 foot lot width requirement for proposed Residual Lands as shown on a minor subdivision plan dated December 17, 2019; and 5) a variance of 39.73 feet from the 150 foot lot width for proposed Parcel "A" as shown on a minor subdivision plan dated December 17, 2019. The Applicant seeks to subdivide the parcel into the 2 lots shown on the aforesaid subdivision plan. This application pertains to certain real property that is located on the northeast corner of Bailey Lane and Doddtown Road approximately 0.24 miles north of Anderson Corner Road (911 Address: 26155 Bailey Lane, Harbeson); said property being identified as Sussex County Tax Map Parcel Number 2-34-4.00-2.00. 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 December 17, 2019, 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 Alvin Bailey was sworn in to give testimony about the Application.
4. The Board found that Mr. Bailey testified that the Property is one lot and he proposes to subdivide the Property into 2 lots.
5. The Board found that Mr. Bailey testified that the existing manufactured home on the rear of the lot is too close to the side property line.
6. The Board found that Mr. Bailey testified that there is a house in the front of the lot as well which is identified as "existing improvements" on the survey.
7. The Board found that Mr. Bailey testified that the Property is unique as it is angled.
8. The Board found that Mr. Bailey testified that the Property cannot otherwise be developed as the manufactured home has been on the Property for twenty-four years.
9. The Board found that Mr. Bailey testified that the manufactured house is 42 years old and was originally located to the front of the lot but was moved to the rear of the lot many years ago.

10. The Board found that Mr. Bailey testified that the garage and sheds on the proposed Parcel "A" have been on the Property for many years as well.
11. The Board found that Mr. Bailey testified that there have been no issues since recently.
12. The Board found that Mr. Bailey testified that the exceptional practical difficulty was not caused by the Applicant as he inherited the Property in 2009 and was unaware that it was not in compliance with County Code.
13. The Board found that Mr. Bailey testified that he did not place the structures on the lot.
14. The Board found that Mr. Bailey testified that the variances will not alter the essential character of the neighborhood as the house has been in existence for twenty-four years and is set back off the road.
15. The Board found that Mr. Bailey testified that each lot is served by well and septic.
16. The Board found that Mr. Bailey testified that the variances requested are the minimum variances to afford relief and bring the house into conformity.
17. The Board found that Vina Bailey was sworn in to give testimony in opposition to the Application. Ms. Bailey submitted an exhibit to the Board to review.
18. The Board found that Ms. Bailey testified that she owns the neighboring property to the south and there is a dispute over the property boundary and the location of a driveway.
19. The Board found that Ms. Bailey testified that she has no issue with the location of the manufactured house other than the lack of a permit.
20. The Board found that Ms. Bailey testified that she previously had a manufactured house on her lot but it has been removed.
21. The Board found that Peter Lowenstein and Vernon Walsh, surveyors with Atlantic Surveying and Mapping were sworn in to give testimony about the Application. They provided insight into the driveway issue, which is not the issue before the Board.
22. The Board found that one person appeared in support of and eight people appeared in opposition to the Application and that no additional comments were submitted electronically.
23. 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 due to its size, shape, and historical use. The Property consists of 1.62 acres and is large enough to be subdivided into 2 lots but the Property is too narrow. While there will be no reduction in the width of the Property, variances from the lot width requirement are needed in order to subdivide the Property. These unique characteristics of this Property have created an exceptional practical difficulty and unnecessary hardship for the Applicant who seeks to retain an existing dwelling on the Property and to subdivide the Property. The Board also finds that the Property has been used for 2 homes for many years and the proposed subdivision is consistent with the historical use of 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 has a unique size, shape, and historical use and the buildable area thereof is limited due to its size, shape, and physical conditions. The Applicant seeks to retain an existing dwelling on the proposed residual lands but is unable to do so without violating the Sussex County Zoning Code. Likewise, the Applicant seeks to subdivide Parcel "A" and the Residual Lands from the

Property but is unable to do so without violating the Code. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variance will allow a reasonably sized, existing dwelling to remain on the lot and for the Property to be subdivided in a manner consistent with its historical use. The Board is convinced that the shape and location of this structure are also reasonable, which is confirmed when reviewing the survey provided by the Applicant.

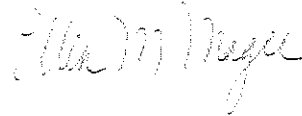
- d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. The Applicant did not create the unusual size, shape, and historical use of the Property. These conditions have resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. The Applicant did not place the existing structures on the lot either. Rather, the Applicant inherited the Property in this condition. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the unnecessary hardship and exceptional practical difficulty were not created by the Applicant but were created by the lot's unique characteristics and its historical use.
- e. 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 existing dwelling will have no effect on the character of the neighborhood. The dwelling has been on the Property for many years and the neighbor to the south (who would be most affected by the encroachment into the setback area) did not object to the location of the house and the variances needed. The opposition's main concern appeared to be focused on the use of a driveway which encroaches onto neighboring lands. This issue, however, is not germane to the issues before the Board. The opposition presented no evidence as to why the variances for the existing house and for the lot width reductions would alter the essential character of the neighborhood. The lack of evidence is telling since, if the dwelling and the lot width had somehow altered the essential character of the neighborhood, the Board would expect some evidence thereof. This is particularly so since the house has been in its location for many years and the lot width as proposed will be no different than the current lot width of the Property. Importantly, the Property had been used for 2 lots for many years as well so the proposed use is consistent with the historical use.
- f. 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 him to retain a dwelling on the proposed Residual Lands while also subdividing the Property to be consistent with its historical use. No additions or modifications to the dwelling are proposed and the proposed lots will not be narrower than the existing property. The variances for the lot width requirement are consistent with the historical use of the Property and do not narrow the Property.
- 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 were Dr. Kevin Carson, Mr. Jeffrey Chorman, Ms. Ellen Magee, 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



Ellen M. Magee  
Chair

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

Date May 5, 2020.