

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

**IN RE: HORIZON LAND CO., LLC**

**(Case No. 12045)**

A hearing was held after due notice on October 16, 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 variances from the separation requirement between units.

Findings of Fact

The Board found that the Applicant is seeking a variance of two (2) feet from the twenty (20) feet separation distance requirement from the dwelling on Lot 22 for a covered porch, a variance of 1.7 feet from the twenty (20) feet separation distance requirement from a dwelling on Lot 22 for a dwelling, and a variance of 1.9 feet from the twenty (20) feet separation distance requirement from a dwelling on Lot 22 for a dwelling. This application pertains to certain real property located at Lot 23, on Kings Lane, off Knight Lane (911 Address: 25879 Kings Lane, Millsboro); said property being identified as Sussex County Tax Map Parcel 2-34-23.00-307.01-54108.

1. The Board was given copies of the Application, a portion of the tax map of the area, a building permit application, and a survey of the Property dated June 21, 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 George Russell was sworn in to testify about the Application.
4. The Board found that Mr. Russell testified that he is the park manager of Enchanted Acres.
5. The Board found that Mr. Russell testified that the home on Lot 23 encroaches into the separation distance area.
6. The Board found that Mr. Russell testified that Ruben Perez did not own the house when the process started. The project was started, but not completed, by a prior owner who obtained the building permit and inspection. Footers were dug by a prior owner and Sussex County officials approved the addition. The prior owner sold the house to Mr. Perez and Mr. Perez assumed that he could complete the construction because it had been approved.
7. The Board found that Mr. Russell testified that the inspector missed the separation distance requirement when inspecting the addition and Mr. Perez was unaware of the encroachment until the construction was complete.
8. The Board found that Mr. Russell testified that the lot is narrow and the home already exists on the lot.
9. The Board found that Mr. Russell testified that the variances requested are the minimum variances necessary to afford relief.
10. The Board found that Mr. Russell testified that the permit was issued for an addition and the permit was issued to the builder.
11. The Board found that Mr. Russell testified that the shed on Lot 24 is located near the shared property line.
12. The Board found that Mr. Russell testified that the house has been on the Property since the 1970s and the home cannot be moved into compliance with the Code.
13. The Board found that Mr. Russell testified that there was previously a porch attached to the house which was removed and expanded.

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 finds 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 narrow. The Property is also unique because the shed on the adjacent Lot 24 is located close to the shared property line thereby significantly reducing the building envelope of the Property. The closeness of the shed on Lot 24 particularly limits the building on that side of the lot thereby encouraging building on closer to Lot 22. It is clear to the Board that the lot's unique characteristics have resulted in a limited building envelope and have created an exceptional practical difficulty for the Applicant who seeks to retain an addition and dwelling on the Property.
  - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property is narrow and the shed on the neighboring property is located exceptionally close to the property line. These conditions have created an exceptionally limited building envelope. The Applicant seeks permission to retain a dwelling and addition 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 structures to remain on the Property. The Board is convinced that the shape and location of these structures are reasonable, which is confirmed when reviewing the survey provided by the Applicant. The home has been on the lot for many years and cannot be moved into compliance.
  - c. The exceptional practical difficulty was not created by the Applicant. The Property is a narrow lot with a small building envelope which is exacerbated by the shed on the adjacent lot. The Board is convinced that these unique physical conditions and this situation have resulted in a limited building envelope and have created the exceptional practical difficulty for the Applicants. The Board also notes that the Applicant reasonably relied upon a previously approved inspection and work performed by a contractor for a prior owner.
  - 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 structures encroach only a small distance into the setback area and still provide ample distance from the home on Lot 22. No evidence was presented which would indicate that the variances 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 that the variances sought will allow the Applicant to retain the structures on the Property. No additions to these structures are proposed.

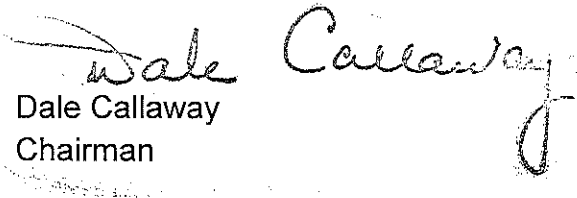
The Board granted the variance application finding that it met the standards for granting a variance.

#### 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

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

Date December 19, 2017.