

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JOHN L. HARRISON

(Case No. 11577)

A hearing was held after due notice on May 18, 2015. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the side yard and front yard setback requirements.

Findings of Fact

The Board found that the Applicant was seeking a variance of 6.8 feet from the ten (10) feet side yard setback requirement for an attached shed and a variance of 0.3 feet from the thirty (30) feet front yard setback requirement for an existing dwelling. This application pertains to certain real property located south of Route 54 (Lighthouse Road) and being northwest of Maple Lane, approximately 300 feet south of Cedar Road and being more specifically Lot 55 Subdivision No. 5 within Kee-wik Subdivision (911 Address: 38290 Maple Lane, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-20.09-26.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, and a survey dated February 12, 2015.
2. The Board found that the Office of Planning & Zoning received one (1) letter in support of the Application and one (1) letter in opposition to the Application. The supporter did not oppose the front yard variance and said it would not object to a side yard variance of 5 feet.
3. John Harrison was sworn in to testify about the Application and he submitted pictures for the Board to review.
4. The Board found that Mr. Harrison testified that he purchased the Property in November 2013. The dwelling was built in 1985.
5. The Board found that Mr. Harrison testified that he obtained a building permit to build a detached shed.
6. The Board found that Mr. Harrison testified that the restrictive covenants allow for a side yard setback of 5 feet. He measured from his neighbor's fence and intended to place the shed 5 feet from the property line but he was not aware the fence was not on the property line.
7. The Board found that Mr. Harrison testified that during construction he decided to attach the shed to the existing dwelling.
8. The Board found that Mr. Harrison testified that a recent survey showed the encroachment.
9. The Board found that Mr. Harrison testified that the attached shed is currently partially constructed and that he stopped building once he realized the attached shed was encroaching.
10. The Board found that Mr. Harrison testified that he has removed a portion of the siding from the existing dwelling to attach the shed and that he would like to still attach the shed to the dwelling but he will deconstruct 1.8 feet of the shed to comply with the five (5) feet setback required by the Homeowners Association.
11. The Board found that Mr. Harrison testified that the narrow lot makes the Property unique.

12. The Board found that Mr. Harrison testified that there is no other outside storage on the Property and that there is no other location to place a shed on the Property.
13. The Board found that Mr. Harrison testified that the variances will not alter the essential character of the neighborhood. There are other similar sheds in the neighborhood.
14. The Board found that Mr. Harrison testified that the variances will enable reasonable use of the Property.
15. The Board found that Mr. Harrison testified that the shed is substantially built and will appear aesthetically pleasing.
16. The Board found that Mr. Harrison testified that he spoke with his neighbor and she does not object to the shed.
17. The Board found that Mr. Harrison testified that there is no access to the shed from inside the dwelling.
18. The Board found that Edward Brady was sworn in and testified about the Application.
19. The Board found that Mr. Brady testified that he represents the Homeowners Association and the Homeowners Association has no objection to the front yard variance request for the existing dwelling. They oppose the 6.8 feet variance request for the attached shed but would agree to a five (5) feet variance request for the attached shed.
20. The Board found that Mr. Brady testified that since the siding on the dwelling has been removed and would create a hardship to detach the shed at this point and that the five (5) feet variance request is reasonable.
21. The Board found that one (1) party appeared in support of the Application.
22. The Board found that one (1) party appeared in opposition to the Application.
23. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, the Board determined that the application, as amended, 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 small size. The Property is narrow and is located adjacent to a lagoon. The unique characteristics of this Property limit the buildable area available to the Applicant and have created an exceptional practical difficulty for the Applicant. The uniqueness of the Property is evident when reviewing the survey submitted by the Applicant.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The existing dwelling, as shown on the survey, is of a reasonable size and shape and has been located on the Property since 1985. The Applicant seeks the requested front yard variance in order keep the dwelling on the Property. The Applicant also seeks to construct an attached shed of reasonable size but is unable to do so without violating the Sussex County Zoning Code. The small size of the lot greatly limits the building envelope from which the Applicant can place the shed. The Applicant has no other outside storage and the shed will provide such storage. The Board is convinced that the variances are necessary to enable the reasonable use of the Property. The Board is convinced that the size, shape and location of the dwelling and shed are reasonable.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual size of the Property. The limited building envelope of the Property has created the exceptional practical difficulty. The unique characteristics of the Property are clear when reviewing the survey. The prior owner placed the dwelling on the Property and the placement thereof is in violation of the Sussex County Code and

also limits the area upon which the Applicant can place a reasonably sized shed. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created by the size of the lot and the placement of the dwelling by a prior owner.

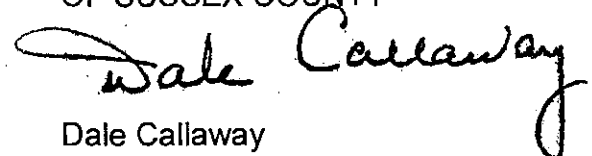
- d. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the dwelling and shed will not have a negative impact on the neighborhood. The dwelling has been in its present location since 1985 and is only inches into the front yard setback area. 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 homeowners association supports the variance application, as amended, and the Applicant has testified that his neighbor supports the application as well. The pictures and testimony further confirm that there are other similarly situated sheds in the neighborhood which indicates that the shed will not alter the character of the neighborhood.
- 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 dwelling to remain in its current location and the shed to be constructed and that no additional variances are being sought.
- f. The Board approved the variance request for a side yard variance of 5 feet and a front yard variance of 0.3 feet.

The Board granted the variance application for a front yard variance of 0.3 feet and a for a side yard variance of 5 feet finding that the application, as amended, met the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application, as amended, was approved. The Board Members in favor were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Members voted against the Motion to approve the variance application, as amended.

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 July 7, 2015