

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MICHAEL BRITTINGHAM

(Case No. 11586)

A hearing was held after due notice on June 8, 2015. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the rear yard setback requirement.

Findings of Fact

The Board found that the Applicant was seeking a variance of 1.3 feet from the five (5) feet rear yard setback requirement for an existing shed. This application pertains to certain real property located on the north side of Mary Road approximately 241 feet west of Breasure Road (911 Address: 25140 Mary Road, Georgetown); said property being identified as Sussex County Tax Map Parcel Number 1-33-6.00-201.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, a survey of the Property dated December 8, 1993, and an email from Lorne Breasure.
2. The Board found that the Office of Planning & Zoning had not received any correspondence in support of or in opposition to the Application.
3. Michael Brittingham was sworn in to testify about the Application and he submitted pictures to the Board to review.
4. The Board found that Mr. Brittingham testified that the shed measured 12 feet by 14 feet and was constructed in 1986 by a prior owner. The shed was later expanded by removing a lean-to and adding onto the size of the shed.
5. The Board found that Mr. Brittingham testified that there is an existing right of way at the rear of the Property and that the shed does not adversely affect the surrounding properties.
6. The Board found that Mr. Brittingham testified that the difficulty was not created by the Applicant. He became an owner of the Property in 1994. A survey completed in 1993 showed the encroachment and he discovered the encroachment when reviewing the survey.
7. The Board found that Mr. Brittingham testified that he plans to remodel the existing shed. The size of the shed will not be expanded.
8. The Board found that Mr. Brittingham testified that the variance will not alter the character of the neighborhood.
9. The Board found that Mr. Brittingham testified that the shed is on an existing concrete pad and has electricity.
10. The Board found that Mr. Brittingham testified that there is an existing septic system in the rear yard.
11. The Board found that Mr. Brittingham testified that that the shed cannot be moved into compliance.
12. The Board found that one (1) party appeared in support of the Application.
13. The Board found that no parties appeared in opposition to the Application.
14. 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.

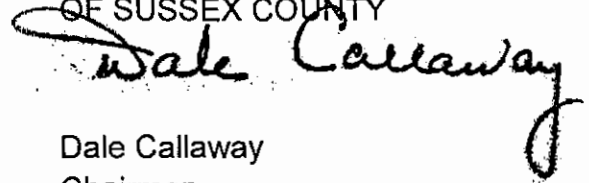
- a. The Property is unique as it has a septic system and trees which limit the placement options for a shed. The uniqueness of the Property and the situation has created an exceptional practical difficulty for the Applicant who seeks to retain an existing shed on the Property.
- b. Due to the uniqueness of the Property and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks the requested variance in order to retain the existing shed on the Property and no additional variances are requested. The shed is located on a concrete pad and is serviced by electricity and cannot be moved into compliance. The pictures evidence that the Property is wooded and the location of existing trees and the septic system limit the placement of the shed. 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 retain a reasonably sized shed on the Property. The Board is convinced that the shape and location of the shed are also reasonable; which is confirmed when reviewing the survey and pictures.
- c. The exceptional practical difficulty was not created by the Applicant. The location of the septic system and the trees on the Property limit the placement of the shed. The Applicant also did not place the shed on the Property nor did the Applicant expand the shed. Rather, a prior owner was responsible for the placement of the shed and expansion thereof. The Applicant only recently learned of the encroachment in preparation of remodeling the structure. As such, it is clear to the Board that the exceptional practical difficulty was not created by the Applicant.
- d. 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 shed encroaches into the rear yard setback area which is adjacent to a right-of-way. No residential property is located to the rear of the Property. Furthermore, the shed has been in its present location since at least 1993 and no complaints about its location have been submitted into the record. Rather, the Board has received correspondence from the owner of the right-of-way stating that he does not object to the variance. Ultimately, 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.
- e. 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 existing shed to remain on the Property as shown on the survey and that no additional variances are being requested.

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, Mr. Jeff Hudson, 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 July 21, 2015