

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

**IN RE: TERRY R. LOWE**

**(Case No. 11600)**

A hearing was held after due notice on July 6, 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 setback requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 3.2 feet from the five (5) feet side yard setback requirement for an existing shed, a variance of 4.3 feet from the five (5) feet side yard setback requirement for an existing shed, and a variance of 3.7 feet from the ten (10) feet side yard setback requirement for an existing dwelling. This application pertains to certain real property located on the south side of Piney Point Road, 0.22 miles west of Cedar Neck Road (911 Address: 38211 Piney Point Road, Ocean View); said property being identified as Sussex County Tax Map Parcel Number 1-34-9.00-52.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, a property information statement, and a survey of the Property dated May 6, 2015.
2. The Board found that the Office of Planning & Zoning received had not received any correspondence regarding the Application.
3. Terry Lowe was sworn in to testify about the Application.
4. The Board found that Mr. Lowe testified that his parents purchased the Property in 1977. No survey was completed at time of purchase. Two (2) of the sheds and the dwelling existed on the Property at the time of purchase.
5. The Board found that Mr. Lowe testified that the dwelling was built in approximately 1960.
6. The Board found that Mr. Lowe testified that, in 1990, his father obtained a permit for the third shed. His father made a mistake when placing the shed as he failed to account for the roof overhang.
7. The Board found that Mr. Lowe testified that the sheds cannot be moved into compliance due to existing trees on the Property.
8. The Board found that Mr. Lowe testified that his mother's will directs that the Property be sold and the variances are necessary in order to sell the Property.
9. The Board found that Mr. Lowe testified that he does not seek to add any structures to the Property.
10. The Board found that Mr. Lowe testified that the variances will not alter the character of the neighborhood since the structures have been on the Property for over twenty-five (25) years.
11. The Board found that Mr. Lowe testified that the difficulty was not created by the Applicant.
12. The Board found that Mr. Lowe testified that the variances are the minimum variances to afford relief.
13. The Board found that Mr. Lowe testified that the structures have no adverse effect on neighboring properties. Neighbors have structures close to their property lines as well.
14. The Board found that Mr. Lowe testified that the shed closest to the house is the newest shed.

15. The Board found that Mr. Lowe testified that the lot is only sixty (60) feet wide making it unique in size.
16. The Board found that no parties appeared in support of or in opposition to the Application.
17. 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 due to its narrowness. The Property is only 60 feet wide and borders a lagoon. The uniqueness of the Property is evident when reviewing the survey submitted by the Applicant. The situation is also unique because the dwelling and sheds were constructed by a prior owner. It is clear to the Board that the narrowness of the Property and the situation have created an exceptional practical difficulty for the Applicant.
  - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property is narrow and the buildable area thereof is limited. The Applicant seeks to retain the dwelling and sheds but is unable to do so without violating the Sussex County Zoning Code. The structures cannot be moved into compliance with the Code. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow a reasonably sized dwelling and sheds to be retained on the Property. The Board is convinced that the size, shape, and location of the dwelling and sheds are reasonable, which is confirmed when reviewing the survey.
  - c. The exceptional practical difficulty was not created by the Applicant. The Property is narrow and this narrowness has greatly limited the placement of the dwelling and sheds. The narrowness of the lot has created an exceptional practical difficulty. Furthermore, the dwelling and two of the sheds were placed on the Property prior to the purchase of the Property by the Applicant's parents in 1977. The other shed was placed on the property in 1990 and a mistake was made by the Applicant's father when placing that shed. Nevertheless, the Applicant's father obtained a Certificate of Compliance for the shed when it was placed and the encroachment was only recently discovered. This mistake was made in placing the shed and was also made by the Planning & Zoning Department when issuing a Certificate of Compliance. None of these structures were placed by the Applicant and most of the structures were placed on the Property by an owner outside of the Applicant's family. 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 dwelling and sheds have been in their present location for over 25 years with no complaint about the encroachments having been submitted into the record. Rather, it appears as though the dwelling and sheds are likely part of the character of the neighborhood. The un rebutted testimony confirms that other sheds in the neighborhood are also similarly situated. Additionally, 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.

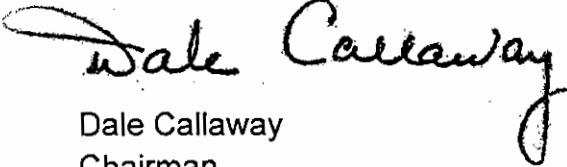
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the dwelling and sheds to remain in their existing locations. No variance is being sought for an addition to the existing dwelling or shed.

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, Mr. Norman Rickard, 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 not established within one (1)  
year from the date below the application  
becomes void.

Date August 18, 2015.