

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: NICHOLAS MICHAEL

(Case No. 11613)

A hearing was held after due notice on August 3, 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 rear yard setback requirements.

Findings of Fact

The Board found that the Applicant is seeking a variance of three (3) feet from the five (5) feet rear yard setback requirement and a variance of 2.6 feet from the five (5) feet side yard setback requirement for a proposed shed. This application pertains to certain real property located on the north side of Janice Circle approximately 426 feet east of Oliver Drive within the Bayview Landing Subdivision (911 Address: 37572 Janice Circle, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-13.00-162.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, and a survey of the Property dated April 12, 2006.
2. The Board found that the Office of Planning & Zoning received had not received any correspondence in support of or in opposition to Application.
3. Nicholas Michael and Helmar Michael were sworn in to testify about the Application. The Applicant submitted pictures of the Property, drawings and schematics of the proposed shed, a letter of approval from the Architectural Review Committee, a letter of support from Peter Sigelakis, and an email of no objection from Audrey Pickup.
4. The Board found that Nicholas Michael testified that the proposed shed will measure 12 feet by 12 feet.
5. The Board found that Nicholas Michael testified that the Property is not square and has an angled property line. The Property abuts to common area owned by the community.
6. The Board found that Nicholas Michael testified that he plans to square the proposed shed with the existing dwelling.
7. The Board found that Nicholas Michael testified that the shed will be located eight (8) feet away from the dwelling so that they could access the rear of the dwelling if necessary. The proposed location of the shed will also allow room for a proposed sidewalk and flower bed between the existing dwelling and proposed shed.
8. The Board found that Nicholas Michael testified that the narrow lot and angled property line make the Property unique.
9. The Board found that Nicholas Michael testified that the shed will be on a permanent foundation.
10. The Board found that Nicholas Michael testified that he plans to retire and live there permanently and will need the storage space.
11. The Board found that Nicholas Michael testified that there are other similar sheds in the development.
12. The Board found that Nicholas Michael testified that his neighbors support the Application and the Architectural Review Board approves the proposed shed and location.

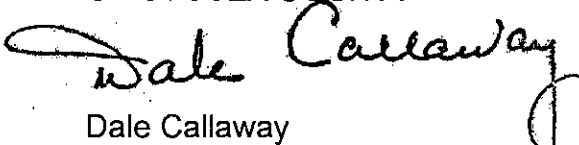
13. The Board found that Nicholas Michael testified that the proposed location is the only option for the shed.
14. The Board found that five (5) parties appeared in support of the Application.
15. The Board found that no parties appeared in opposition to the Application.
16. Based on the findings above 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 irregular shape. The Property has a uniquely angled property line which has created an unusual building envelope available to the Applicant. The unusual building envelope has created an exceptional practical difficulty for the Applicant who seeks to construct a new shed on the lot.
 - b. 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 shape and the buildable area thereof is limited due to its size, shape, and setback requirements. The Applicant seeks to construct a shed of a reasonable size 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 a reasonably sized shed to be constructed on the Property. The Applicant has testified that the shed is needed for storage purposes. The Board is convinced that the size, shape, and location of this shed are reasonable, which is confirmed when reviewing the survey and pictures provided by the Applicant.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the irregular shape of the Property. The unique lot size and shape have resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. The unique characteristics of the Property are clear when reviewing the survey. As such, the Board is convinced that the exceptional practical difficulty was not created by the Applicant.
 - 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 shed will have no effect on the character of the neighborhood. The un rebutted testimony confirms that there are other similar sheds in the neighborhood and the Applicant's neighbors who are most affected by the location of the shed have indicated that they do not object to its proposed location. The shed will also abut to common areas in the rear yard and those lands are used for drainage and common space with the community. 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 construct a reasonably sized shed on the Property while providing enough space to safely access the rear of the dwelling.

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

Date September 15, 2015.