

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MARTHA SULLIVAN & VIRGINIA FORNILLO

(Case No. 11667)

A hearing was held after due notice on November 16, 2015. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicants are seeking a variance of 3.5 feet from the five (5) feet side yard setback requirement for an existing shed. This application pertains to certain real property located on the south side of Point Circle in the Mill Pond Acres subdivision (911 Address: 31408 Point Circle, Lewes); said property being identified as Sussex County Tax Map Parcel Number 3-34-1.00-92.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, and an undated survey of the Property.
2. The Board found that the Office of Planning & Zoning received one (1) letter in support of the Application and had not received any correspondence in opposition to the Application.
3. The Board found that Martha Sullivan was sworn in to testify about the Application. Chad Meredith, Esquire, appeared on behalf of the Applicants.
4. The Board found that Mr. Meredith stated that the Property is located in Mill Pond Acres.
5. The Board found that Mr. Meredith stated that the Applicants purchased the Property in July 2015 and a survey completed for settlement showed the encroachment.
6. The Board found that Mr. Meredith stated that the dwelling was built in 1976. An addition to the dwelling was built in 2003 and a deck was built in 2004. The previous owner remembers the shed being built in 2003 to store construction material for the addition built in 2003.
7. The Board found that Mr. Meredith stated that the shed is under 600 square feet and was placed on a concrete pad.
8. The Board found that Mr. Meredith stated that the rear yard slopes down from the rear of the house towards the pond.
9. The Board found that Mr. Meredith stated that the Property is keystone-shaped making it unique. The Property is also heavily wooded.
10. The Board found that Mr. Meredith stated that it would difficult to place the shed in the rear yard due to the slope of the lot and the existing trees on the lot.
11. The Board found that Mr. Meredith stated that the variance will not adversely affect the uses of the neighboring and adjacent properties since the neighboring properties are already developed.
12. The Board found that Mr. Meredith stated that there have been no previous complaints from neighbors about the shed.
13. The Board found that Mr. Meredith stated that the difficulty was not created by the Applicants because the shed was located on the Property when the Applicants purchased the lot.
14. The Board found that Mr. Meredith stated that the variance will not alter the character of the neighborhood.

15. The Board found that Mr. Meredith stated that there are other sheds in the neighborhood in side yards.
16. The Board found that Mr. Meredith stated that the use is not detrimental to the public welfare.
17. The Board found that Mr. Meredith stated that the variance requested is the least modification of the regulation at issue and that the variance requested is the minimum variance to afford relief.
18. The Board found that Ms. Sullivan, under oath, affirmed the statements made by Mr. Meredith.
19. The Board found that no parties appeared in support of or in opposition to the Application.
20. 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 unique shape and topography. The Property is shaped like a keystone and is located on a curve along Point Drive. The Property also slopes in the rear yard towards Red Mill Pond. The Board is convinced that the uniqueness of the Property has created an exceptional practical difficulty for the Applicants who wish to retain a shed on the Property.
 - 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 topography which greatly limit the area where a shed can reasonably be placed on the Property. The slope of the rear yard of the Property particularly limits the placement options for the shed. The Applicants seek to retain a shed of a reasonable size but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow a reasonably sized shed to remain on the Property. The shed is also located on a concrete slab and cannot be moved into compliance. The Board is convinced that the size, shape, and location of this shed are reasonable, which is confirmed when reviewing the survey provided by the Applicants.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants only recently purchased the Property and did not create the odd shape of the lot nor did they place the shed on the Property. Furthermore, the topography of the rear yard, which is also heavily wooded, makes it difficult, if not impossible, to place a shed in the rear yard. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created the lot's unique characteristics and by the prior owner placing the shed on a concrete slab within the setback area.
 - 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 Board is convinced that the shed will have no effect on the character of the neighborhood. The shed is reasonable in size and the un rebutted testimony confirms that there are other similar sheds in the neighborhood. Furthermore, 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. Rather, neighbors appear to support the Application.

- 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 Applicants have demonstrated that the variance sought will allow the Applicants to retain a reasonably sized shed on the Property. No additions are being proposed to the 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 member 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 January 5, 2016.