

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DAVID RITTER

(Case No. 11670)

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, and 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 5.1 feet from the twenty (20) feet side yard setback requirement, a variance of 10.4 feet from the twenty (20) feet side yard setback requirement, a variance of 10 feet from the twenty (20) feet side yard setback requirement, a variance of 10.6 feet from the twenty (20) feet side yard setback requirement, a variance of 10.7 feet from the twenty (20) feet side yard setback requirement, and a variance of 15.7 feet from the twenty (20) feet side yard setback requirement for an addition to an existing building. This application pertains to certain real property located on the south side of Long Neck Road approximately 82 feet west of Radie Kay Lane (911 Address: 26246 Kathy's Way, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 2-34-24.00-46.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, a survey dated August 25, 2015, findings of fact for Case No. 4820-1992 and Case No. 10753-2011, and a letter from Robert W. Tunnell, III.
2. The Board found that the Office of Planning & Zoning received one (1) letter of support to the Application and had not received any correspondence in opposition to the Application.
3. The Board found that David Ritter was sworn in to testify about the Application.
4. The Board found that Mr. Ritter testified that the existing building was built three (3) years ago and variances were granted for the existing building.
5. The Board found that Mr. Ritter testified that the business is growing and he needs additional space. The proposed additions will also create more jobs.
6. The Board found that Mr. Ritter testified that the State Fire Marshal requires a ten (10) feet access way along one side of the Property.
7. The Board found that Mr. Ritter testified that the Property is only sixty-six (66) feet wide. The existing building is thirty (30) feet wide and the proposed addition will be thirty (30) feet wide.
8. The Board found that Mr. Ritter testified that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
9. The Board found that Mr. Ritter testified that he did not create the size and shape of the lot, therefore the difficulty was not created by the Applicant.
10. The Board found that Mr. Ritter testified that the variances will not alter the essential character of the neighborhood.
11. The Board found that Mr. Ritter testified that there is a tree buffer and drainage ditch between his property and the neighbor's property. There are other businesses in the area as well.
12. The Board found that Mr. Ritter testified that he operates a golf cart business. He cannot expand the business without the variances.
13. The Board found that Mr. Ritter testified that the variances are the minimum variances to afford relief.

14. The Board found that Mr. Ritter testified that two (2) existing sheds will be removed.
15. The Board found that no parties appeared in support of or 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 unique shape and size. The Property is very narrow but unusually deep. The uniqueness of the Property has created a limited building envelope for the Applicant in the construction of an addition to his existing golf cart business. The Board is convinced that the uniqueness of the Property has created an exceptional practical difficulty for the Applicant. The Applicant is also required to have an access way per the State Fire Marshal regulations which further limits the building envelope 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 size and shape and the buildable area thereof is limited due to its size and shape. The Applicant seeks to construct an addition 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 addition to be constructed on the Property. The Board is convinced that the size, shape, and location of this addition are reasonable, which is confirmed when reviewing the site plan provided by the Applicant.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual size or shape of the Property. The unique lot size has 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. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created the lot's unique characteristics.
 - 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 addition will have no effect on the character of the neighborhood. In fact, the owner of neighboring lands submitted a letter supporting the Application. The proposed addition is reasonable in size and the un rebutted testimony confirms that there are other similar businesses in the neighborhood. The Property is also separated from neighboring residential properties by a tree buffer and drainage ditch. Furthermore, 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 addition on the Property.

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.