

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JOHN H. MOULDER & LORRAINE O. MOULDER

(Case No. 11672)

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 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 Applicants are seeking a variance of 3.3 feet from the ten (10) feet side yard setback requirement for an existing dwelling, a variance of 5.2 feet from the twenty (20) feet rear yard setback requirement for an existing dwelling, a variance of 6.6 feet from the ten (10) feet side yard setback requirement for an existing dwelling, a variance of 4.8 feet from the five (5) feet side yard setback requirement for an existing shed, and a variance of 2.2 feet from the five (5) feet rear yard setback requirement for an existing shed. This application pertains to certain real property located on the northeast side of Elmwood Avenue West approximately 947 feet south of Woodland Circle. (911 Address: 23611 Elmwood Avenue West, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-17.08-227.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, a letter from Angola by the Bay Property Owners Association, a survey of the Property dated July 30, 1975, a letter from John Moulder, pictures of the Property, a survey of the Property dated September 1, 2015, a letter from the Angola Building Control Committee, and a letter from Scott and Heather Fremont.
2. The Board found that the Office of Planning & Zoning received one (1) letter of opposition to the Application and had not received any correspondence in support to the Application.
3. The Board found that Donna Kelly was sworn in to testify about the Application.
4. The Board found that Ms. Kelly testified that her parents own the Property and the dwelling is approximately forty (40) years old.
5. The Board found that Ms. Kelly testified that her parents now live in assisted living and need to sell the Property.
6. The Board found that Ms. Kelly testified that the Applicants built two (2) additions and obtained the proper building permits.
7. The Board found that Ms. Kelly testified that the Applicants were unaware of the encroachments.
8. The Board found that Ms. Kelly testified that the neighbors support the Application.
9. The Board found that Ms. Kelly testified that the shed has been on the lot since the 1970s and is on a cement slab.
10. The Board found that Ms. Kelly testified that the lot is adjacent to common area in the subdivision and that the other neighboring property has an existing dwelling.
11. The Board found that no parties appeared in support of or in opposition to the Application.
12. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, 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 size and shape, which is apparent when reviewing the survey. The rear of the Property is particularly narrow as it is only 42.72 feet wide. The unique size and shape of the lot limit the building envelope for the dwelling. The Property's unique characteristics have created an exceptional practical difficulty for the Applicants who seek to retain a dwelling 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 size and shape and the buildable area thereof is limited due to its size and shape. The Applicants seek to retain a reasonably sized dwelling and shed but are 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 the dwelling and shed to remain on the Property. The Board is convinced that the size, shape, and location of this dwelling and 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 did not create the unusual size and shape of the Property. This unusual building envelope has created an exceptional practical difficulty for the Applicants.
- 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 dwelling and shed will have no effect on the character of the neighborhood. The neighborhood is a residential area and the dwelling has been on the lot since for approximately 40 years and the shed has been on the lot for many years as well. No complaints about the location of the dwelling and shed have been submitted into the record. Furthermore, no evidence was presented which convinced the Board 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 represents the least modifications possible of the regulations at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to retain the dwelling and shed on the Property. No additions to the dwelling and shed are being proposed which would require additional variances.

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 January 5, 2016