

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DOUGLAS B. COOPER AND RACHEL A. COOPER

(Case No. 11683)

A hearing was held after due notice on December 21, 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 variances from the side yard and rear yard setback requirements.

Findings of Fact

The Board found that the Applicants are seeking a variance of 11.3 feet from the twenty (20) feet rear yard setback requirement and a variance of 6.2 feet from the fifteen (15) feet side yard setback requirement on the southwest side for an existing shed. This application pertains to certain real property located on the northwest side of Oyster Rocks Road approximately 125 feet east of Osprey Road (911 Address: 14530 Oyster Rocks Road, Milton); said property being identified as Sussex County Tax Map Parcel Number 2-35-16.00-43.09.

1. The Board was given copies of the Application, a portion of the tax map of the area, and an undated survey.
2. The Board found that the Office of Planning & Zoning had not received any correspondence in support of or in opposition to the Application.
3. The Board found that Rachel Cooper was sworn in to testify about the Application and William Schab, Esquire, appeared on behalf of the Applicants. Mr. Schab submitted photographs of the Property and a letter of support to the Board to review.
4. The Board found that Mr. Schab stated that the Applicants just purchased the Property which was in foreclosure and a survey completed for settlement showed the encroachments.
5. The Board found that Mr. Schab stated that the shed is used as a pool house and was built in 2001.
6. The Board found that Mr. Schab stated that a Certificate of Compliance was issued for all the structures, including the shed, on the Property.
7. The Board found that Mr. Schab stated that Applicants acquired the Property in 2015.
8. The Board found that Mr. Schab stated that the adjacent neighbor has no objection to the Application.
9. The Board found that Mr. Schab stated that the short sale purchase creates a unique situation.
10. The Board found that Mr. Schab stated that the difficulty was not created by the Applicants.
11. The Board found that Mr. Schab stated that the variances do not alter the character of the neighborhood and existing trees block any view of the shed from the neighboring properties.
12. The Board found that Mr. Schab stated that the shed has been on the lot for fifteen (15) years without complaint.
13. The Board found that Mr. Schab stated that the shed would have to be removed from the Property if this application was denied. The shed is an integral part of the Property.

14. The Board found that Ms. Cooper, under oath, affirmed the statements made by Mr. Schab.
15. The Board found that Ms. Cooper testified that she has not made any changes to the Property.
16. The Board found that Ms. Cooper testified that without a variance approval the shed would have to be torn down.
17. The Board found that Ms. Cooper testified that she is a realtor and that the variances will not affect property values of the surrounding properties.
18. The Board found that Ernest Tramosch testified in opposition to the Application.
19. The Board found that Mr. Tramosch testified that he is the President of the Homeowners Association for Osprey Landing.
20. The Board found that Mr. Tramosch testified that the shed is a large structure and looks more like a cottage.
21. The Board found that Mr. Tramosch testified that the existing trees and shrubs block the view of the shed but, if trees come down, it would adversely affect the adjacent property. The lot to the rear of the Applicants' property is currently vacant. He feels it would be reasonable to stipulate that the trees and shrubbery remain or must be replaced if ever removed.
22. The Board found that Mr. Tramosch testified that the Applicants' property is not within the Osprey Landing Subdivision.
23. The Board found that no parties appeared in support of the Application.
24. The Board found that one (1) party appeared in opposition to the Application.
25. 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 situation and conditions are unique because the previous owner was issued a Certificate of Compliance in 2001 indicating that the shed complied with the Sussex County Zoning Code. This unique situation has created an exceptional practical difficulty for the Applicants who seek to retain the shed on the lot and reasonably believed the shed to be in compliance with the setback requirements.
 - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. 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 variances are necessary to enable the reasonable use of the Property as the variances will allow a reasonably sized shed to remain on the Property. The Board is convinced that the shape and location of this shed are also 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 place the shed on the Property. Rather, the Applicants purchased the Property from a prior owner who built the shed and obtained a Certificate of Compliance from Sussex County. The Applicants reasonably believed that the shed complied with the setback requirements only to find out that portions of the shed encroached into the setback areas. 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 Applicants but was created by the placement of the shed thereon by the prior owner.
 - 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 shed has been on the Property since approximately 2001. The Board was not convinced by the opposition that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board also notes that an adjacent neighbor supports the Application.

- 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 Applicants have demonstrated that the variances sought will allow the Applicants to retain a reasonably sized shed on the Property. The Applicants do not intend to make any additions to the shed and only seek the variance to allow the existing shed to remain in its current location.

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 March 1, 2016