

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: PHYLLIS M. GOULDEN & GARY LANDIS GUARDIN

(Case No. 11736)

A hearing was held after due notice on March 21, 2016. 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 front yard and side yard setback requirements.

Findings of Fact

The Board found that the Applicants are seeking a variance of 4.9 feet from the ten (10) feet side yard setback requirement on the north side for an existing dwelling, a variance of 0.4 feet from the ten (10) feet side yard setback requirement on the south side for an existing dwelling, a variance of 0.6 feet from the thirty (30) feet front yard setback requirement for an existing dwelling, and a variance of 0.1 feet from the five (5) feet side yard setback requirement on the south side for an existing shed. This application pertains to certain real property is located on the northeast side of Woodland Court South approximately 560 feet west of Woodland Circle in Angola by the Bay (911 Address: 33121 Woodland Court South, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 2-34-11.20-386.00-387.00.

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 November 3, 2015.
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. James Goulden was sworn in to testify about the Application. Tim Willard, Esquire, presented the Application on behalf of the Applicants.
4. The Board found that Mr. Willard stated that the Applicant is a guardian of Phyllis Goulden. Ms. Goulden is in a nursing home and the dwelling must be sold to pay the nursing home expenses. The need for the variances was discovered when a survey was completed for settlement and showed the encroachments.
5. The Board found that Mr. Willard stated that the Property is located in Angola by the Bay and is heavily wooded.
6. The Board found that Mr. Willard stated that the dwelling was built in the 1970s and the dwelling and shed were on the Property when Ms. Goulden purchased it in the mid-1970s.
7. The Board found that Mr. Willard stated that the Property is unique as it is a pie shaped property and consists of only 5,123 square feet. The rear of the Property is only 18.87 feet wide.
8. The Board found that Mr. Willard stated that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
9. The Board found that Mr. Willard stated that the exceptional practical difficulty was not created by the Applicants.
10. The Board found that Mr. Willard stated that the variances will not alter the essential character of the neighborhood.
11. The Board found that Mr. Willard stated that the variances sought are the minimum variances to afford relief.
12. The Board found that Cindy Baker was sworn in and testified in support of the Application and testified that she is the realtor for the Property. The rear yard of

- the Property is adjacent to the common area in the development and that the common area is undevelopable.
13. The Board found that Mr. Goulden, under oath, affirmed the statements made by Mr. Willard.
 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 unrebutted, 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 as it is small and has a unique shape. The lot consists of only 5,123.87 feet +/-; which is a small lot as shown on the survey. The rear yard is also exceptionally narrow as it is only 18.87 feet wide. The situation is unique because the existing dwelling and shed were constructed in the 1970s and have been in their present location for many years and the encroachments have only recently been discovered. The Board finds that the unique conditions of the lot have created a unique building envelope which has created an exceptional practical difficulty for the Applicants who wish to keep the existing structures on the lot.
 - b. Due to the uniqueness of the lot and the situation, 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. The Applicants seek to retain the dwelling and shed at their existing locations 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 Applicants to retain the dwelling and shed on the lot. Those structures have been in their current locations since the 1970s. The Board is convinced that the size, shape, and location of the 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. The unique lot size and shape have resulted in a limited building envelope on the Property and the small and unique building envelope has created an exceptional practical difficulty. The unique characteristics of the Property are clear when reviewing the survey. Furthermore, the dwelling and shed were placed on the Property by a prior owner and have been in their present locations for approximately 40 years. 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 placement of the dwelling and shed by a 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 dwelling and shed will have no effect on the character of the neighborhood. The dwelling and shed have been on the Property for many years and, despite the longstanding location of the dwelling and shed, no complaints were noted in the record about their location. Ultimately, 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 Applicants have demonstrated that the variances sought will allow the Applicants to retain the dwelling and shed on the lot in their current locations. No variances for additions to these structures are being sought.

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 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 May 17, 2016