

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: TINA E. WINDSOR

(Case No. 11776)

A hearing was held after due notice on June 6, 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 side yard setback requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 0.6 feet from the five (5) feet side yard setback requirement on the west side for an existing shed. This application pertains to certain real property located on the south side of Club House Road approximately 19 feet west of Bay Haven Street (911 Address: 37400 Club House Road, Ocean View); said property being identified as Sussex County Tax Map Parcel Number 1-34-8.00-74.00.

1. The Board was given copies of the Application, an aerial photograph of the area, a portion of the tax map, and a survey of the Property dated March 1, 2016.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of or in opposition to the Application.
3. The Board found that Shannon Carmean Burton, Esquire, presented the case on behalf the Application and submitted an affidavit of Cheryl Martin, Executrix of the Estate of Lemuel J. Wingate, Sr., and a survey of the Property dated February 8, 2016.
4. The Board found that Mrs. Burton stated that the Applicant is the current owner of the Property and purchased the Property from the Estate of Lemuel Wingate in March 2016.
5. The Board found that Mrs. Burton stated that Cheryl Martin is the Executrix of the Estate of Lemuel Wingate, Sr. Ms. Martin's mother inherited the Property in 2006 and later transferred the Property to herself and her husband Lemuel Wingate. The dwelling and shed existed on the Property at that time and research shows that the dwelling and shed were constructed in the 1960s. Ms. Martin's mother and father have since passed away and the Property was to be sold per her father's will.
6. The Board found that Mrs. Burton stated that, in February 2016, a survey completed for settlement showed that the shed encroached into the rear yard setback area as well as onto adjacent property.
7. The Board found that Mrs. Burton stated that, in an effort to bring the shed into compliance, the rear yard boundary line was adjusted. The side yard, however, could not be adjusted to bring the shed into compliance because the Applicant did not own the adjacent property.
8. The Board found that Mrs. Burton stated that the irregularly shaped lot and age of the shed make this Property unique.
9. The Board found that Mrs. Burton stated that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code due to the age and condition of the shed. The shed is usable but would not withstand a relocation.
10. The Board found that Mrs. Burton stated that the exceptional practical difficulty was not created by the Applicant or Ms. Martin's parents. Ms. Martin believed

that the shed was in compliance with the Sussex County Zoning Code until the survey was completed.

11. The Board found that Mrs. Burton stated that the variance will not alter the essential character of the neighborhood and the variance will not be detrimental to the public welfare.
12. The Board found that Mrs. Burton stated that the use does not impair the use or development of adjacent and neighboring properties.
13. The Board found that Mrs. Burton stated that Ms. Martin is unaware of any complaints about the location of the shed.
14. The Board found that Mrs. Burton stated that the variance requested is the minimum variance necessary to afford relief.
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 odd shape and unique history. The un rebutted evidence demonstrates that the shed has been on the Property since the 1960s and, only recently, has been discovered to encroach into the rear yard and side yard setback areas. Upon discovery of the encroachment, the prior owner was able to move the rear property line to bring the shed into compliance with the rear yard setback requirement but could not bring the shed into compliance with the side yard setback requirement. The situation is quite unique as it appears as though the previous owner also owned the Property adjacent to the rear yard and the existence of the shed may have pre-dated the creation of the Sussex County Zoning Code. It is clear to the Board that the exceptional practical difficulty was created by the unique history of the shed and the Property.
 - b. Due to the uniqueness of the Property and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The shed was constructed prior to the Applicant's purchase of the Property and the Applicant seeks to retain the shed but is unable to do so without violating the Sussex County Zoning Code. The shed has been on the Property since the 1960s and, while usable, cannot be moved into compliance due to its condition. 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 Board is convinced that the shape and location of this shed are reasonable, which is confirmed when reviewing the survey provided by the Applicant. Notably, the shed encroaches into the side yard setback area by mere inches.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not build the shed. Rather, the shed was placed on the Property many years ago by a prior owner – perhaps even prior to the enactment of the Sussex County Zoning Code. The Property and the situation are unique and have created the exceptional practical difficulty for the Applicant.
 - 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 has been on the Property since the 1960s and,

despite the longstanding location of the shed and notification to neighbors, no complaints were noted in the record about its location. 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. The Board notes that the daughter of the previous owner indicated that she was also unaware of any complaints about the shed. The shed also encroaches only inches into the side yard setback area and is unlikely to be noticed as encroaching.

- 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 Applicant has demonstrated that the variance sought will allow the Applicant to retain the shed on the Property. No additions to the shed are proposed. The Board notes that the previous owner has taken measures to minimize the need for variances by adjusting the rear yard lot line so that the shed no longer encroached into that setback area. The Board is also convinced that the shed could not be moved into compliance due to its condition.

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 August 2, 2016.