

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: CAROL WALKER

(Case No. 11778)

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 a variance from the side yard setback requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 1.8 feet from the five (5) feet side yard setback requirement on the south side and a variance of 2.4 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 located on the southwest side of Council Lane approximately 40 feet west of Herring Landing (911 Address: 35480 Council Lane, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-24.00-25.00.

1. The Board was given copies of the Application, a survey of the Property dated October 1, 2015, a letter from Timothy Willard, Esquire, an aerial photograph of the area, and a portion of the tax map.
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 Carol Walker was sworn in to testify about the Application. Timothy Willard, Esquire, presented the case to the Board on behalf of the Applicant and submitted exhibits for the Board to review.
4. The Board found that Mr. Willard stated that in 1991 the Applicant purchased the Property and her husband built the shed. The Applicant's husband passed away in 2009.
5. The Board found that Mr. Willard stated that Property is a long, skinny lot which slopes towards Herring Creek.
6. The Board found that Mr. Willard stated that the shed encroaches into the setback area and the Applicant was unaware of the setback violation.
7. The Board found that Mr. Willard stated that, in August 2015, she was notified by an inspector in Planning and Zoning that the shed did not comply with the setback requirements.
8. The Board found that Mr. Willard stated that the Property is unique due to its narrowness and slope.
9. The Board found that Mr. Willard stated that the original cottage was replaced with a larger dwelling after the shed was constructed.
10. The Board found that Mr. Willard stated that the fence blocks the view of the shed from the road.
11. The Board found that Mr. Willard stated that the variance is necessary to enable reasonable use of the Property.
12. The Board found that Mr. Willard stated that the shed provides storage for tools and outdoor furniture.
13. The Board found that Mr. Willard stated that a shed located closer to Herring Creek was destroyed in a storm.
14. The Board found that Mr. Willard stated that the shed cannot be located elsewhere on the Property and is stick built making it difficult to move.

15. The Board found that Mr. Willard stated that the difficulty was not created by the Applicant.
16. The Board found that Mr. Willard stated that the shed does not alter the character of the neighborhood and there have been no complaints from the neighbors.
17. The Board found that Mr. Willard stated that the variances are the minimum to afford relief.
18. The Board found that Ms. Walker, under oath, affirmed the statements made by Mr. Willard.
19. The Board found that Ms. Walker testified that the rear yard slopes in the rear making it difficult to access and a shed cannot be placed in the rear yard due to the slope.
20. The Board found that Ms. Walker testified that there are other sheds in the neighborhood.
21. The Board found that James Walls was sworn in and testified in support of the Application.
22. The Board found that Mr. Walls testified that he has been a neighbor of the Applicant for approximately thirty (30) years.
23. The Board found that Mr. Walls testified that the shed is attractive and is in an ideal location. The shed can only be seen from their two (2) houses. Mr. Walls submitted a letter of support to the Board.
24. The Board found that John Hughes was sworn in and testified in opposition to the Application.
25. The Board found that Mr. Hughes testified that he can see the shed from his property.
26. The Board found that Mr. Hughes testified that he was unable to enlarge his existing garage due to setback requirements and he feels the shed should conform with the required setbacks. His lot is 100 feet wide.
27. The Board found that Mr. Hughes testified that he believes the shed can be moved.
28. The Board found that Mr. Hughes testified that he has lived next door to the Applicant for twenty-five (25) years but he was unaware the shed did not comply until the hearing.
29. The Board found that Mr. Hughes testified that the rear of the Property is sloped.
30. The Board found that one (1) party appeared in support of the Application.
31. The Board found that one (1) party appeared in opposition to the Application.
32. 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 clearly unique as it is a narrow lot. The Property is also unique as it is adjacent to Herring Creek and slopes towards the creek at a steep angle. The narrowness of the lot and the steep slope of the rear yard limit the buildable area and have created an exceptional practical difficulty for the Applicant.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The shed was constructed many years ago and the Applicant seeks to retain the shed but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the shed to remain on the Property. The shed is used for outdoor storage and has served the Applicant for approximately 25 years. The Board is convinced that the shape and location of this shed are also reasonable, which is confirmed when reviewing the survey and pictures provided by the

Applicant. The Board also finds that the shed, due to its age and construction as well as the unique conditions of the Property, cannot be moved into compliance (as was suggested by the opposition).

- c. The exceptional practical difficulty was not created by the Applicant. The Property is a narrow lot with an unusual slope. The slope of the rear yard poses a particular challenge as it renders much of the rear yard unbuildable. The shed was built on the side of the Property on flatter ground. The Applicant did not create the size and slope of the lot. Rather, those conditions pre-existed the Applicant's acquisition of the Property. These unique physical conditions have resulted in a limited building envelope 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 shed has been on the Property for many years without recorded complaints. The opposition testified that he was unaware of the encroachment until receiving notice of the Application. He presented no evidence which convinced the Board that the existence of the shed has somehow altered the character of the neighborhood or be detrimental to the public welfare. Rather, he complained that the shed should comply with the zoning regulations because he built his garage in compliance with the Sussex County Zoning Code. The Board notes that the opposition admitted that the Property was sloped and that his lot is 100 feet wide, which is significantly wider than the Applicant's property. The Board found the testimony of Mr. Walls persuasive that the shed will have no effect on the Property. He testified that the shed was attractive and is an ideal location. Notably, Mr. Walls owns the Property which would most be affected by the location of the shed.
- 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 existing shed at its current location. No additions to the shed are proposed.

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.