

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: LUKE AARON NEISWANDER**

**(Case No. 11821)**

A hearing was held after due notice on August 15, 2016. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Norman Rickard, 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 four (4) feet from the ten (10) feet side yard setback requirement on the east side for an existing dwelling. This application pertains to certain real property located on the north side of Forest Road approximately 0.51 miles northeast of Stockley Road (911 Address: 20492 Forest Road, Milton); said property being identified as Sussex County Tax Map Parcel Number 2-34-5.00-8.00.

1. The Board was given copies of the Application, pictures of the Property, an aerial photograph of the Property, assessment records, a survey of the Property dated June 8, 2016, and a portion of the tax map.
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 Luke Neiswander was sworn in to testify about the Application.
4. The Board found that Mr. Neiswander testified that the Property is unique as it is exceptionally narrow. The Property is only forty (40) feet wide and is only 125 feet deep.
5. The Board found that Mr. Neiswander testified that the lot was created in 1965, which was prior to the enactment of the Sussex County Zoning Code.
6. The Board found that Mr. Neiswander testified that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
7. The Board found that Mr. Neiswander testified that the dwelling has been on the Property since at least November 1973 and the dwelling cannot be relocated elsewhere on the Property. There is an existing drive on the west side of the dwelling and there are numerous large trees on the Property. Some of these trees are within one foot of the dwelling. The house is also located on cinder blocks.
8. The Board found that Mr. Neiswander testified that the previous owner inherited the Property from his parents and they purchased the Property from a sheriff's sale in 1977.
9. The Board found that Mr. Neiswander testified that the exceptional practical difficulty was not created by the Applicant.
10. The Board found that Mr. Neiswander testified that the variance will not alter the essential character of the neighborhood and the use is not detrimental to the public welfare.
11. The Board found that Mr. Neiswander testified that adjacent lots are also exceptionally narrow and shallow.
12. The Board found that Mr. Neiswander testified that the requested variance is the minimum variance to afford relief.
13. The Board found that Mr. Neiswander testified that he purchased the Property three (3) months ago.

14. The Board found that Mr. Neiswander testified that the existing dwelling measures 20 feet by 20 feet and he plans to use the structure for storage of surfboards.
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 clearly unique as it is a small lot. The Property was created and developed prior to the enactment of the Sussex County Zoning Code and consists of only 5,000 square feet; as is clearly shown on the survey. The small size of the Property has created an exceptional practical difficulty for the Applicant and this difficulty is exacerbated by the narrowness of the rear of the Property which is only 40 feet wide. These unique physical conditions have created an unusual and limited building envelope 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 dwelling was constructed many years ago and the Applicant seeks to retain the existing dwelling in its existing footprint 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 dwelling to remain on the Property. The Board is convinced that the shape and location of this dwelling are reasonable, which is confirmed when reviewing the survey provided by the Applicant.
  - c. The exceptional practical difficulty was not created by the Applicant. The Property was created and developed prior to the enactment of the Sussex County Zoning Code and is an undersized lot with a narrow shape. The Applicant did not build the dwelling or create the size and shape 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 dwelling has been on the Property for many years without recorded complaints and the Applicant proposes no modifications to the dwelling. Despite the longstanding location of the dwelling 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.
  - 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 dwelling on the same footprint.

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 October 18, 2016