

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ESTATE OF JOANNE C. EMKEY

(Case No. 11824)

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, 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 Applicant is seeking a variance of 13.6 feet from the thirty (30) feet front yard setback requirement for an existing deck, a variance of 2.4 feet from the thirty (30) feet front yard setback requirement for an existing dwelling, and a variance of 5.0 feet from the five (5) feet side yard setback requirement on the east side for an existing shed. This application pertains to certain real property is located on the southeast corner of Apache Pass and Pocahontas Road in the Blackwater Subdivision (911 Address: 34129 Pocahontas Road, Dagsboro); said property being identified as Sussex County Tax Map Parcel Number 1-34-11.00-385.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, and a survey of the Property dated May 23, 2016.
2. The Board found that the Office of Planning & Zoning no correspondence in support of or in opposition to the Application.
3. The Board found that Timothy Meadowcraft and Joseph Emkey were sworn in to testify about the Application.
4. The Board found that Mr. Emkey testified that the Property is unique because it is a corner lot and the Property is narrow.
5. The Board found that Mr. Emkey testified that the septic system is in the rear yard.
6. The Board found that Mr. Emkey testified that the dwelling and deck were built in 1993 by his parents and the Property must be sold per his mother's will. The Property needs to be sold in order to settle the estate.
7. The Board found that Mr. Emkey testified that the variances are necessary to enable reasonable use of the Property as the deck cannot be maintained on the Property without a variance.
8. The Board found that Mr. Emkey testified that the difficulty was not created by the Applicant.
9. The Board found that Mr. Emkey testified that the variances will not alter the character of the neighborhood and the variances will not impair the uses of neighboring properties.
10. The Board found that Mr. Emkey testified that the variances are the minimum variances necessary to afford relief.
11. The Board found that Mr. Emkey testified that there have been other variances granted in the development.
12. The Board found that Mr. Emkey testified that there have been no complaints about the Property.
13. The Board found that Mr. Emkey testified that the neighboring property is a vacant lot.
14. The Board found that Mr. Meadowcraft testified that he is a local real estate agent.

15. The Board found that Mr. Meadowcraft testified that the homeowners association supports the Application.
16. The Board found that Mr. Meadowcraft testified that there was no previous survey of the Property but a survey completed for the planned settlement showed the encroachments.
17. The Board found that Mr. Meadowcraft testified that they believe the shed can be moved into compliance with the Sussex County Zoning Code.
18. The Board found that Mr. Meadowcraft testified that a new septic system had to be installed on the Property.
19. The Board found that no parties appeared in support of or in opposition to the Application.
20. 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 for the front yard variances met the standards for granting a variance. The findings below further support the Board's decision to approve the front yard variance requests.
 - a. The Property is a unique lot as it is narrow and is located on a corner; as is clearly shown on the survey provided by the Applicants. These conditions have left a limited building envelope which is further limited by the septic system in the rear yard. These unique conditions and the small building envelope have created an exceptional practical difficulty for the Applicant who wishes to keep a reasonably sized dwelling and deck on the Property.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The dwelling and deck constructed many years ago and the Applicant seeks to retain these structures in their present location 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 dwelling and deck to remain in their present location on the Property. The Board is convinced that the shape and location of the dwelling and deck 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 is narrow and has a small building envelope. The limitations of the building envelope are exacerbated by the corner side yard setback requirements. Furthermore, these structures were constructed over twenty (20) years ago and the Property needs to be sold pursuant to a will. It cannot be sold without the necessary variances. These unique physical conditions have resulted in a limited building envelope and have created the exceptional practical difficulty for the Applicant.
 - 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 deck will have no effect on the character of the neighborhood. These structures have been on the Property for many years and, despite their longstanding location, no complaints were noted in the record about their location. Rather, the unrebutted testimony indicates that neighbors support the Application. Furthermore, no evidence was presented 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 Applicant has demonstrated that the variances

sought will allow the Applicant to retain the dwelling and deck in their current location and that no additions to those structures are being proposed.

21. 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 for the side yard variance failed to meet the standards for granting a variance. The findings below further support the Board's decision to deny the side yard variance request.

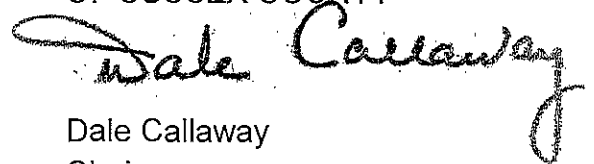
- a. The Applicant has testified that the shed can be moved into compliance with the Sussex County Zoning Code. Since the shed can be moved into compliance with the Sussex County Zoning Code, the variance is not necessary to enable reasonable use of the Property. The shed can be easily moved elsewhere on the Property.
- b. Since the shed can be easily moved elsewhere on the Property, the side yard variance request is not the minimum variance necessary to afford relief. Rather, no variance is needed for the shed.

The Board granted the front yard variance requests and denied the side yard variance requests finding that the variance application met the standards for granting a variance in part and failed to meet the standards for granting a variance in part.

Decision of the Board

Upon motion duly made and seconded, the variance application was approved in part and denied in part. The Board Members in favor of the motion to approve the variance application in part and to deny the variance application in part 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 in part and to deny the variance application in part.

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.