

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: STUART ORTEL

(Case No. 11826)

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 a variance from the side yard setback requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 11.7 feet from the fifteen (15) feet corner side yard setback requirement on the west side for an existing shed. This application pertains to certain real property located on the northeast corner of Dodd Avenue and Elizabeth Avenue in the Ann Acres Subdivision (911 Address: 21108 Elizabeth Avenue, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-20.13-103.00.

1. The Board was given copies of the Application, a letter from the Applicant, a letter of support from neighbors, a drawing of the Property, a survey of the Property dated June 10, 2016, pictures of the Property, an aerial photograph of the Property, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received one (1) letter of support to the Application and one (1) letter of concern to the Application. There was no correspondence in opposition to the Application.
3. The Board found that Stuart Ortel was sworn in to testify about the Application.
4. The Board found that Mr. Ortel testified that he purchased the Property in 2015 and, when he acquired the Property, a larger shed was located one (1) foot from the rear yard property line and two (2) feet from the side yard property line. He planned to relocate the previous shed from the northeast side of the Property to the northwest side of the Property.
5. The Board found that Mr. Ortel testified that, when he contacted the Planning & Zoning office for setback requirements, he was told the shed needed to be three (3) feet from the side and rear property lines.
6. The Board found that Mr. Ortel testified that the previous shed was too large and he purchased a smaller shed.
7. The Board found that Mr. Ortel testified that the setback requirements given to him for the new shed were five (5) feet from the side and rear property lines.
8. The Board found that Mr. Ortel testified that the Property has a unique shape and is a corner lot and the Property line angles in.
9. The Board found that Mr. Ortel testified that the Applicants constructed the dwelling on the Property and the survey completed for the dwelling showed the encroachment of the shed.
10. The Board found that Mr. Ortel testified that he contacted the Planning & Zoning department and was told that the lot is a corner lot and the shed needed to be fifteen (15) feet from the corner side yard and he was previously unaware of the fifteen (15) feet side yard setback requirement.
11. The Board found that Mr. Ortel testified that the fence and landscaping of the lot have been completed and that to move the shed into compliance would be costly. The landscaping, irrigation, and fence would have to be moved in order to move the shed.

12. The Board found that Mr. Ortel testified that there are mature trees on the lot along Dodd Avenue and the shed cannot be seen from Dodd Avenue and the shed does not obstruct any views.
13. The Board found that Mr. Ortel testified that the shape and design of the Property make it unique.
14. The Board found that Mr. Ortel testified that the variance is necessary to enable reasonable use of the Property.
15. The Board found that Mr. Ortel testified that the exceptional practical difficulty was not created by the Applicant. He relied on Sussex County Planning & Zoning and his contractor to place the shed correctly.
16. The Board found that Mr. Ortel testified that the use is not detrimental to the public welfare and the variance does not alter the character of the neighborhood. The neighbors have no objection to the Application.
17. The Board found that Mr. Ortel testified that the variance sought is the minimum variance to afford relief.
18. The Board found that no parties appeared in support of or in opposition to the Application.
19. 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 clearly unique as it has a unique shape as is clearly shown on the survey. The Property is a corner lot and the rear yard is 45.04 feet narrower than the front yard. As such, the building envelope is unusually shaped as well. This narrow building envelope is exacerbated by the corner setback requirements. 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. When the Applicant acquired the Property, a shed was located well within the setback requirements and the Applicant removed the shed and built a new one only to later discover that the shed also violated the setback requirements. The Applicant relied on a contractor to place the shed on the Property and the Applicant appeared to have received incorrect setback information from staff at the Planning & Zoning Department. After placement of the shed and development of the Property (including the construction of fence and installation of landscaping and irrigation), the Applicant discovered that the shed violates 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 Board is convinced that the size, shape, and location of this shed are reasonable, which is confirmed when reviewing the survey provided by the Applicant. The Board is also convinced that it would be difficult to move the shed elsewhere on the Property.
 - c. The exceptional practical difficulty was not created by the Applicant. The Property is quite unusually shaped. The Board notes that the rear yard is particularly narrow which greatly limits the building envelope of the lot. The Applicant did not 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. The Applicant consulted with the Planning & Zoning Department and his contractor prior to the installation of the shed only to later learn after the

Property was fully developed that the shed was not placed in compliance with the Sussex County Zoning Code. The Applicant relied on the contractor and the Planning & Zoning Department to his detriment.

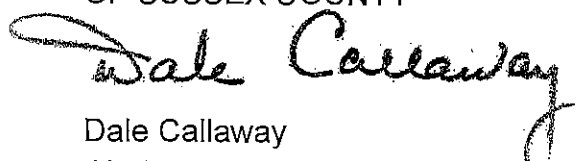
- d. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Applicant replaced a shed which encroached farther into the setback requirements than the new shed yet no complaints were noted in the record about the shed's location. The Applicant has testified that he spoke with neighbors and they do not object to the variance. 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 also notes that the edge of paving for Dodd Avenue does not match the corner yard property line and there appears to be a significant distance between them. This discrepancy gives the illusion that the corner side yard is larger than it actually is. As such, it is unlikely that the encroachment would even be noticed by neighbors.
- 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 retain the shed in its existing location. No additions to the shed are being 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 October 18, 2016.