

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: LOIS E. KELLY

(Case No. 11841)

A hearing was held after due notice on September 19, 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 1.7 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 located on the south side of Bayshore Drive approximately 328 feet south of Ashcroft Drive, in the Bayshore Subdivision (911 Address: 32332 Bayshore Drive, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 2-34-23.00-925.00.

1. The Board was given copies of the Application, a Certificate of Compliance dated May 10, 2010, a survey of the Property dated June 29, 2016, an aerial photograph of the Property, and a portion of the tax map.
2. The Board found that the Office of Planning & Zoning received one (1) letter of support to the Application and received no correspondence in opposition to the Application.
3. The Board found that Shannon Carmean Burton, Esquire, presented the case on behalf of the Applicant and submitted exhibits for the Board to review.
4. The Board found that Mrs. Burton stated that the Applicant recently purchased the Property and the previous owner acquired the Property in 2005.
5. The Board found that Mrs. Burton stated that the previous owner retained a contractor to install a shed on the Property. A Certificate of Compliance was issued for the shed in 2010.
6. The Board found that Mrs. Burton stated that a survey completed for settlement showed the encroachment of the shed into the side yard setback area.
7. The Board found that Mrs. Burton stated that the previous owners were unaware of the encroachment until a survey was completed for settlement.
8. The Board found that Mrs. Burton stated that the Property has a unique shape.
9. The Board found that Mrs. Burton stated that the Property is located along a cul-de-sac in the Bayshore subdivision. The unique conditions of the Property have created an exceptional practical difficulty.
10. The Board found that Mrs. Burton stated that the Property cannot be developed in strict conformity with the Sussex County Zoning Code.
11. The Board found that Mrs. Burton stated that the shed has been on the Property for approximately nine (9) years and is built on a permanent foundation.
12. The Board found that Mrs. Burton stated that the exceptional practical difficulty was not created by the Applicant or the prior owners. The prior owners relied on their contractor to build the shed in compliance with the Sussex County Zoning Code and obtained Homeowners Association approval and a Certificate of Compliance for the shed.
13. The Board found that Mrs. Burton stated that the variance will not be detrimental to the public welfare and the variance does not alter the essential character of the neighborhood.

14. The Board found that Mrs. Burton stated that there have been no complaints from the neighbors.
15. The Board found that Mrs. Burton stated that the variance requested is the minimum variance necessary to afford relief and the variance requested represents the least modification of the regulation at issue.
16. The Board found that one (1) party appeared in support of the Application.
17. The Board found that no parties appeared in opposition to the Application.
18. 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 an oddly shaped lot located on a cul-de-sac. The odd shape of the Property has created an exceptional practical difficulty for the Applicant because the unique physical conditions have created an unusual and limited building envelope for the Applicant. Additionally, the Applicant did not place the shed on the Property so close to the side yard property line. A previous owner placed the shed in that location and reasonably believed it complied with the Sussex County Zoning Code only to find out later that it did not comply with the Code.
 - 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 approximately nine (9) years ago by a prior owner and the Applicant seeks to retain the shed in its existing location 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 Board is convinced that the shape and location of this shed are reasonable, which is confirmed when reviewing the survey provided by the Applicant. The shed is on a permanent foundation and cannot be moved. The shed is also a very small structure.
 - c. The exceptional practical difficulty was not created by the Applicant. The Property has a unique shape which has created an oddly shaped building envelope. Furthermore, the Applicant did not build the shed. Rather, the shed was placed on the Property by a prior owner who reasonably relied upon his contractor to place the shed in compliance with the Code. The prior owner reasonably believed that the shed complied with the Code because a Certificate of Compliance was issued only to later find out the shed did not comply with the Code. The Board finds that the previous owner relied on this Certificate of Compliance to his detriment. Since the Property has a unique shape and the Applicant did not place the shed on the Property, the Board find that the Applicant did not create the exceptional practical difficulty.
 - 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 approximately nine (9) years without recorded complaints and the encroachment into the setback area is quite minor. 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.

- 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 in its existing location. No additions to the shed are being proposed.
- f. The Board notes that the statements made by Mrs. Burton are confirmed by a sworn affidavit submitted into the record by a prior owner; thus the Board finds Mrs. Burton's statements to be credible recitations of the statements made in the affidavit.

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 November 22, 2016.