

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY
IN RE: MELANIE SHELLY, REBECCA CLEMMER, AND JOAN TEDESCHI
(Case No. 11863)

A hearing was held after due notice on October 17, 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 Applicants are seeking a variance of 6.3 feet from the ten (10) feet side yard setback requirements for both sides for a proposed dwelling. This application pertains to certain real property located on the north side of Seagrass Court, Dagsboro (911 Address: None Available); said property being identified as Sussex County Tax Map Parcel Number 1-34-7.00-101.00.

1. The Board was given copies of the Application, a conceptual layout plan, a picture of the proposed dwelling, a survey of the Property dated April 27, 2005, assessment records, an aerial photograph of the Property, 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 Christopher Woolson was sworn in to testify about the Application.
4. The Board found that Mr. Woolson testified that his cousins own the Property and he is purchasing the lot.
5. The Board found that Mr. Woolson testified that the existing dwelling sits level with the ground and has flooding issues.
6. The Board found that Mr. Woolson testified that the existing dwelling has no heat and minimal plumbing. There is no indoor shower. The existing dwelling is twenty (20) feet wide and is only five (5) feet from the side property lines.
7. The Board found that Mr. Woolson testified that the existing dwelling must be demolished and he proposes to construct a new home on the Property.
8. The Board found that Mr. Woolson testified that the Property is unique. The Property measures 36.92 feet wide at the road and at the rear property line it measures only 33.6 feet wide. The building envelope would allow him to build a dwelling that is only thirteen (13) feet wide.
9. The Board found that Mr. Woolson testified that the Property is small and prone to flooding.
10. The Board found that Mr. Woolson testified that the difficulty was not created by the Applicants.
11. The Board found that Mr. Woolson testified that the proposed dwelling will fit with the character of the neighborhood.
12. The Board found that Mr. Woolson testified that he has spoken with his neighbors and the neighbors do not object to the Application.
13. The Board found that Mr. Woolson testified that he has explored other homes to possibly build on the Property and he tried to find a proposed dwelling that would fit with the character of the neighborhood.
14. The Board found that Mr. Woolson testified that there are townhouses nearby which are 26 feet wide.

15. The Board found that Mr. Woolson testified that neighboring homes are two stories tall and the proposed dwelling will be two stories tall.
16. The Board found that Mr. Woolson testified that the Property is located in a flood zone per the Army Corps of Engineers. The proposed dwelling must be on pilings to comply with the flood zone requirements.
17. The Board found that Mr. Woolson testified that two (2) parking spaces will be provided on the Property.
18. The Board found that Mr. Woolson testified that the proposed dwelling will be 1,500 square feet in size, 27 feet wide, and two (2) stories tall.
19. The Board found that Mr. Woolson testified that the existing shed will be removed.
20. The Board found that no parties appeared in support of or in opposition to the Application.
21. 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, narrow lot with flooding issues. The existing dwelling located on the Property has no heat and minimal plumbing. The dwelling has also experienced problems associated with flooding and needs to be demolished. The Applicant plans to build a reasonably sized home on pilings but is unable to do so while meeting the setback requirements. The Property is exceptionally narrow as it is only 33.60 feet wide in the rear and only slightly wider in the front yard. The narrowness of the Property has clearly created an exceptional practical difficulty for the Applicant and this difficulty is exacerbated by the flooding of the Property which necessitates that the home be elevated. 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 Applicant seeks to build a reasonably sized home on the Property but is 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 to be constructed on the Property. In order to build a dwelling which would otherwise meet the setback requirements, the Applicant would have to build a home that is approximately 13 feet wide, which is an unreasonably narrow home – particularly since the home would have to be elevated to meet flood requirements thereby using some of the footprint of the home for stairs. 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 is an exceptionally narrow lot prone to flooding. The narrowness of the Property greatly limits the building envelope of the lot. The building envelope is further limited by the flooding problems associated with the Property which necessitate that the home be elevated. It is clear to the Board that 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 dwelling

will replace an existing dwelling on the Property which needs to be demolished. The existing dwelling also encroaches into the setback area. The proposed dwelling will be similar in size and character to other homes in the neighborhood. The Applicant has spoken with his neighbors and they support the Application. Importantly, no complaints were noted in the record about the location of the proposed dwelling. Furthermore, no evidence was presented which would indicate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.

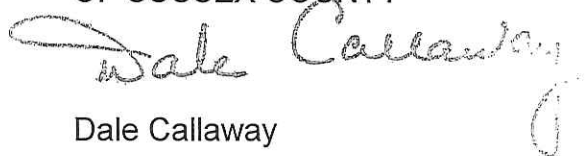
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulation at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to build a reasonably sized home on the Property that will be elevated to avoid flooding problems. The Board notes that the Applicant has explored other options for constructing the home in an attempt to minimize the size of the variance requests.
- f. The Board also notes that the shed on the Property will be removed.

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 December 20, 2016.