

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: GERALD FOREMAN, JR.

(Case No. 11920)

A hearing was held after due notice on February 20, 2017. The Board members present were: Mr. John Mills, Mr. Jeff Hudson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the side yard and rear yard setback requirements.

Findings of Fact

The Board found that the Applicant is seeking a variance of 2.2 feet from the fifteen (15) feet side yard setback requirement on the northwest side for a dwelling, a variance of 1.9 feet from the five (5) feet rear yard setback requirement for a shed, and a variance of 1.6 feet from the five (5) feet rear yard setback requirement for a shed. This application pertains to certain real property located on the southwest side of Iron Branch Road approximately 875 feet northwest of Power Plant Road (911 Address: 30670 Iron Branch Road, Dagsboro); said property being identified as Sussex County Tax Map Parcel Number 2-33-6.00-76.00.

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 an undated survey of the Property.
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 Gerald Foreman was sworn in to testify about the Application.
4. The Board found that Mr. Foreman testified that the Property is unique because it has many large oak trees.
5. The Board found that Mr. Foreman testified that the Property originally had a garage and a large concrete pad and he built a shed on the concrete pad. He believed the concrete pad conformed with the zoning requirements and he only learned of the encroachment after a new shed was constructed.
6. The Board found that Mr. Foreman testified that he purchased the Property in 2001 and the dwelling was on the Property at that time in the same location.
7. The Board found that Mr. Foreman testified that the variances will not alter the essential character of the neighborhood.
8. The Board found that Mr. Foreman testified that his neighbor does not have an issue with the request.
9. The Board found that Mr. Foreman testified that the variances requested are the minimum variances necessary to afford relief.
10. The Board found that Mr. Foreman testified that the concrete pad was on the Property when he purchased the Property and he placed a shed on the concrete pad in 2005. He relied on a contractor to place the shed on the Property and the contractor obtained the permit for the shed.
11. The Board found that Mr. Foreman testified that he moved the shed and then built a building on the pad. He believed the old shed was in compliance with the Code since he relied on his contractor. He came to the County to obtain a permit for the new shed and learned after it was constructed that the new shed did not comply with the Code.
12. The Board found that Mr. Foreman testified that the new shed is on the same footprint as the previous shed. There was no shed on the pad when he purchased the Property in 2005.

13. The Board found that one (1) party appeared in support of the Application.
14. The Board found that no parties appeared in opposition to the Application.
15. 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 unique due to its unique shape. The Property is wider in the front yard and narrows to the rear yard. This unique shape has created an oddly shaped building envelope. The situation is also unique because the Applicant did not place the dwelling on the Property and he relied on his contractor to place a shed on a concrete pad in 2005 only to later discover that the shed was placed too close to the rear property line. The Applicant replaced the shed in the same location with a newer structure and learned at that time that the shed violated the rear yard setback requirement. The Board finds that the unique characteristics of this Property and the unique situation in this case have created an exceptional practical difficulty for the Applicant who seeks to retain a dwelling and sheds on the lot.
 - b. Due to the uniqueness of the lot and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a wider front yard than rear yard and this odd shape has led to an unusually shaped building envelope. The dwelling, which was not constructed by the Applicant, is located partially in the side yard setback area. From a review of the survey, if the Property did not narrow as it went to the rear, the dwelling would only minimally encroach into the setback area, if at all. The situation regarding the sheds are unique because the Applicant relied on a contractor to install a shed in compliance with the Code only to later learn of the encroachments. The sheds cannot be moved into compliance. The Applicant seeks to retain a dwelling and sheds of reasonable size 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 a reasonably sized dwelling and sheds to remain on the Property. The Board is convinced that the shape and location of the dwelling and sheds are also reasonable, which is confirmed when reviewing the survey provided by the Applicant.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual shape of the Property nor did the Applicant place the dwelling on the Property. Rather, the dwelling has been on the Property since he purchased the lot in 2001. The Applicant also did not create the exceptional practical difficulty as it pertains to the shed. The Applicant reasonably relied upon a contractor to place a shed on an existing concrete pad in the rear yard only to later discover that the shed was placed too close to the rear property line. The Applicant relied on the representations of his contractor to his detriment. The Board finds that the unique conditions in this matter have created an 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 sheds will have no effect on the character of the neighborhood. The structures have been in their present location for many years without complaint noted in the record. The Board notes that the shed has recently been replaced but is located in the same location as

the previous shed. 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 regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicants to retain a reasonably sized dwelling and sheds on the Property.

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. Jeff Hudson, Mr. John Mills, and Mr. Brent Workman. No Board Members voted against the Motion to approve the variance application. Mr. Dale Callaway and Mr. Norman Rickard did not participate in the discussion or vote on this 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 April 4, 2017