

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: LISA A. RUGGERI & STEPHEN R. CULBERT

(Case No. 11935)

A hearing was held after due notice on April 3, 2017. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Norman Rickard, Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicants are requesting a variance of 1.7 feet from the five (5) feet side yard setback requirement on the west side for an existing carport, a variance of 3.5 feet from the five (5) feet side yard setback requirement on the west side for an existing shed, a variance of 3.2 feet from the five (5) feet side yard setback requirement on the west side for an existing oil drum platform, and a variance of 3.4 feet from the five (5) feet side yard setback requirement on the west side for an existing oil drum platform. This application pertains to certain real property located on the north side of Clay Road (Route 269) approximately 1,700 feet east of Marsh Road (Route 276) (911 Address: 34067 Clay Road, Lewes); said property being identified as Sussex County Tax Map Parcel Number 3-35-12.06-64.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, pictures of the Property, a survey of the Property dated August 10, 2016, a survey of the Property dated October 12, 1992, 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 Lisa Ruggeri was sworn in to testify about the Application. Bill Schab, Esquire, presented the case on behalf of the Applicants.
4. The Board found that Mr. Schab stated that the Property is unique as it slopes to the east.
5. The Board found that Mr. Schab stated that the existing dwelling and other structures are built on the west side of the lot.
6. The Board found that Mr. Schab stated that the Applicants purchased the Property from previous owners who bought the lot in 1992. The dwelling and shed have existed on the lot since at least 1992.
7. The Board found that Mr. Schab stated that the previous owners believed that the shed complied with the Sussex County Zoning Code.
8. The Board found that Mr. Schab stated that the previous owners added the carport.
9. The Board found that Mr. Schab stated that the cantilevered joists off the shed have since been removed.
10. The Board found that Mr. Schab stated that the structures were constructed by the previous owners.
11. The Board found that Mr. Schab stated that the Property is wooded and the structures have no effect on neighboring properties.
12. The Board found that Mr. Schab stated that the variances do not alter the character of the neighborhood. The Property has looked this way for 25 plus years with no issues from the neighbors.
13. The Board found that Mr. Schab stated that the variances requested are the minimum variances necessary to afford relief.

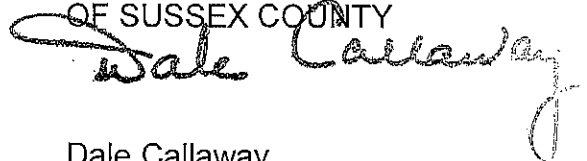
14. The Board found that Ms. Ruggeri, under oath, affirmed the statements made by Mr. Schab.
15. The Board found that no parties appeared in support of or in opposition to the Application.
16. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, 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 unique due to its unique topography. The Property is located adjacent to Ebenezer Branch and slopes towards the east side of the Property. The unique topography of the Property limits the buildable area available to the Applicants and has created an exceptional practical difficulty for the Applicants who seek to retain shed and carport on the lot.
 - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique topography and the buildable area thereof is limited due to its topography. The Applicants seek to retain a carport and shed of reasonable size 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 a reasonably sized carport and shed to remain on the Property. The Board is convinced that the shape and location of the carport and shed are also reasonable, which is confirmed when reviewing the survey provided by the Applicants.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual topography of the Property. The unique lot topography has resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. The unique characteristics of the Property are clear when reviewing the survey. Additionally, the Applicants did not place the structures on the Property. Those structures were placed on the Property by prior owners. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created the lot's unique characteristics and by the placement of the structures in the setback areas by prior owners.
 - 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 carport and shed will have no effect on the character of the neighborhood. The structures have been on the Property for at least twenty-five (25) years yet no complaint has been noted in the record. If the structures had some negative impact on the neighborhood, the Board would expect evidence demonstrating such effect to be introduced into the record. 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 Applicants have demonstrated that the variances sought will allow the Applicants to retain a reasonably sized carport and shed on the Property. No additions or modifications to the carport and 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 Members 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 May 16, 2017