

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: HARRY S. RYLEE**

**(Case No. 11942)**

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 front yard and side yard setback requirements.

Findings of Fact

The Board found that the Applicant is requesting a variance of 10 feet from the fifteen (15) feet side yard setback requirement on the west side for a shed, a variance of 21 feet from the thirty (30) feet front yard setback requirement for a deck, a variance of 2.9 2.4 feet from the five (5) feet side yard setback requirement on the east side for a shed, a variance of 4.2 feet from the five (5) feet side yard setback requirement on the east side for a shed, a variance of 1 foot from the fifteen (15) feet corner front setback requirement on the west side for a dwelling, a variance of 2.5 feet from the fifteen (15) feet corner front setback requirement on the west side for a dwelling, and a variance of 2.8 feet from the fifteen (15) feet corner front setback requirement on the west side for a porch. This application pertains to certain real property at the northeast corner of North Bayshore Drive and Virginia Avenue approximately 745 feet north of Broadkill Road (Route 16) (911 Address: 302 North Bayshore Drive, Milton); said property being identified as Sussex County Tax Map Parcel Number 2-35-4.13-47.00.

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 a survey of the Property dated January 24, 2017.
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 Douglas Annand and Harry Rylee were sworn in to testify about the Application.
4. The Board found that Mr. Annand testified that he is the Applicant's surveyor.
5. The Board found that Mr. Annand testified that the shed and deck were placed on the Property in 2012. The shed was placed in the front corner of the lot and was actually located partially in the right-of-way of North Bay Shore Drive.
6. The Board found that Mr. Annand testified that the Applicant proposes to move the shed and deck 5 feet from North Bay Shore Drive and 9 feet from Virginia Avenue.
7. The Board found that Mr. Annand testified that the existing shed has been moved but the Applicant is willing to move it more.
8. The Board found that Mr. Annand testified that the shed is in good condition.
9. The Board found that Mr. Rylee testified that he uses the shed for storage.
10. The Board found that Mr. Rylee testified that the house was built in 1955.
11. The Board found that Mr. Rylee testified that neighbors have no complaints.
12. The Board found that Mr. Annand testified that the Property is small as it measures 50 feet by 100 feet.
13. The Board found that Mr. Rylee testified that he would need at least 4-5 feet between the screen porch and the shed.
14. The Board found that Mr. Rylee testified that the other shed on the northeast side of the Property was constructed in 1958-1960.

15. The Board found that Mr. Rylee testified that the shed on southwest side of the Property will be moved to the southeast side of the Property and will be 5 feet from the southeast side property line.
16. The Board found that Mr. Annand testified that the Property is unique in size.
17. The Board found that Mr. Annand testified that structures will not alter the essential character of the neighborhood and there are similar sheds in the neighborhood.
18. The Board found that Mr. Annand testified that property lines do not match the edge of paving for North Bay Shore Drive and Virginia Avenue. There is approximately 7 feet between the property line and the edge of paving from Virginia Avenue.
19. The Board found that no parties appeared in support of or in opposition to the Application.
20. 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, as amended, 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 as it is a small, corner lot consisting of only 5,000 square feet. The size of the lot has created a small building envelope which is exacerbated by the corner setback requirements. The Applicant did not construct the dwelling or shed on the northeast side of the Property. Those structures were constructed prior of the enactment of the Sussex County Zoning Code. Since the Property is a corner lot, it is subject to a greater setback requirement which limits the building envelope on the Property. The Property's unique characteristics combined with the development of the Property prior to the enactment of the Sussex County Zoning Code has created an exceptional practical difficulty for the Applicant.
  - 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 is quite small and the building envelope is very limited. The building envelope is further limited by the corner setback requirements. The Applicant seek to retain two existing sheds, a deck, a dwelling, and porch which encroach into the setback area but are unable to do so without violating the Code. Several of these improvements were constructed prior to the enactment of the Sussex County Zoning Code. The new shed is needed for additional storage; particularly for the Applicant's grandchildren. It is clear to the Board that, due to the unique conditions of the lot, the variances are necessary to enable reasonable use of the Property as a reasonably sized sheds, deck, dwelling, and porch cannot be retained on the Property without a variance. The Board is convinced that the shape and location of the sheds, deck, dwelling, and porch 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 Applicant did not create the small size of the lot and the small building envelope. These conditions have greatly limited the Applicant's ability to retain the sheds, deck, dwelling, and porch on the Property in compliance with the Sussex County Zoning Code. Moreover, the Applicant did not place the dwelling, porch, or shed on the Property. Those structures were constructed by a prior owner. The Board is convinced that the exceptional practical difficulty was not created by 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 structures will have no effect on the character of the neighborhood. No complaints were noted in the record about the location

of the structures and 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. The Board notes that most of these structures have been in their present location for decades. The Board also notes that the encroachments into the side yard setback area along North Bay Shore Drive are unlikely to be noticed because the property line does not match the edge of paving for North Shore Drive. There is a gap of 12.2 feet from the property line and the edge of paving. Likewise, there is a gap of approximately 7 feet between the property line along Virginia Avenue and the edge of paving. This gap also reduces the impact of an encroachment into the setback area.

- 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 Applicant to retain reasonably sized sheds, deck, dwelling, and porch on the Property. No additions to these structures are proposed. The Applicant is also moving the shed and deck to minimize the encroachments into the setback areas.
- f. The shed and deck on the southwest corner of the Property will be moved to the southeast corner of the Property and the shed shall be located 5 feet from the side yard property line and 9 feet from Virginia Avenue. ~~The deck shall be located no closer than 19 feet from Virginia Avenue.~~ Due to the new proposed location of the shed, the variances along North Bay Shore Drive for the shed are not needed.

The Board granted the variance application, as amended, finding that it met the standards for granting a variance.

#### Decision of the Board

Upon motion duly made and seconded, the variance application, as amended, 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, as amended.

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.

Revised: December 11, 2017

Date December 12, 2017.