

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MELISSA BOWEN & ANITA KUREK

(Case No. 12013)

A hearing was held after due notice on August 21, 2017. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. Norman Rickard and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the front yard setback requirement on a through lot.

Findings of Fact

The Board found that the Applicants are seeking a variance of 30 feet from the forty (40) feet front yard setback requirement on a through lot for a proposed shed. The variance request is for the front yard of the Property along Old Mill Road. This application pertains to certain real property located at the west side of Naomi Drive approximately 990 feet southeast of Bridge Lane and at the northeast side of Old Mill Road (SCR 349) approximately 990 feet southeast of Bridge Lane (911 Address: 123 Naomi Drive, Ocean View); said property being identified as Sussex County Tax Map Parcel Number 1-34-12.00-1482.00. After a hearing, the Board made the following findings of fact.

1. The Board was given copies of the Application, a survey dated March 23, 2017, a proposed site plan, copies of the minutes for Case No. 11378, pictures, a building permit application, and a portion of the tax map of the area.
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 Melissa Bowen and Anita Kurek were sworn in to testify about the Application.
4. The Board found that Ms. Bowen testified that the Applicants purchased the Property in April 2017.
5. The Board found that Ms. Bowen testified that the Property is considered a through lot and narrows to the Old Mill Road side of the lot
6. The Board found that Ms. Bowen testified that the Property is unique because it is a through lot.
7. The Board found that Ms. Bowen testified that, if the shed was placed in compliance with the Sussex County Zoning Code, the shed would be close to the home and would make it difficult to use the yard to the rear of the dwelling.
8. The Board found that Ms. Bowen testified that the Applicants are constrained with the placement of the shed due to the location of a mature tree and the sewer lines.
9. The Board found that Ms. Bowen testified that the shed is needed for storage of lawn equipment. The homeowners association does not allow boats or trailers to be visible for more than 24 hours so the Applicants will use their garage for the storage of their small boat. There is no space for the storage of lawn equipment.
10. The Board found that Ms. Bowen testified that the need for the variance was not created by the Applicants.
11. The Board found that Ms. Bowen testified that the variance will not alter the essential character of the neighborhood as there are other sheds along Naomi Drive that are close to the property line.
12. The Board found that Ms. Bowen testified that there is approximately 10-15 feet from the property line to the edge of Old Mill Road. The Applicants do not have direct vehicular access to Old Mill Road.

13. The Board found that Ms. Bowen testified that the homeowners association requires the structure to be 10 feet from the property line.
14. The Board found that no parties appeared in support of or 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 as it is a lot with road frontages on two roads and the lot is not particularly large. These conditions greatly restrict the building envelope on the Property. While the Property is considered a through lot, the Applicants do not have direct access to Old Mill Road and only access the Property from Naomi Drive. The Property is also unique in that it narrows towards the Old Mill Road side of the Property and the Applicants are constrained in the placement of the shed due to the location of sewer lines and mature trees. It is clear to the Board that the lot's unique characteristics have created an exceptional practical difficulty for the Applicants who seek to place a shed 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 is bordered on two sides by roads and has unique setback requirements even though the Applicants can only access the Property from one of those roads. The Applicants seek to place a 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 the Applicants to place a shed on the Property. The Board is convinced that the shape and location of the shed are also reasonable, which is confirmed when reviewing the survey provided by the Applicants. The Board notes that the shed will be used for the storage of lawn equipment which cannot otherwise be stored on the Property.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the shape and size of the lot or enact the setback requirements which have limited the building envelope of the lot. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created the lot's unique characteristics.
 - 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 Board is convinced that the shed will have no effect on the character of the neighborhood. The testimony confirms that there are other similarly situated sheds in the community and this shed will meet requirements set forth by the homeowners association. The Board also notes that, based on review of the tax map, this is one of the few properties in the community which is considered a through lot. Other lots within the neighborhood are not through lots and would have significantly reduced setback requirements for the location of the shed. The Board also notes that the pictures produced by the Applicants demonstrate that there is a significant distance from the property line to the edge of paving of Old Mill Road thereby giving the appearance that the shed is farther away from the property line than it actually is. 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.

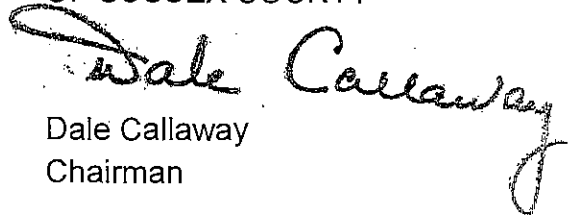
- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulations at issue. The Applicants have demonstrated that the variance sought will allow the Applicants to construct a reasonably sized shed on the Property that will be a safe distance from Old Mill Road, the house, existing trees, and the sewer lines.

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, Ms. Ellen Magee, 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 October 17, 2017