

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JAMES E. HUDSON, JR.

(Case No. 12071)

A hearing was held after due notice on December 18, 2017. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicant is seeking a variance of 44.4 feet from the fifty (50) feet setback requirement on the south side for an existing stable and a variance of 4.9 feet from the five (5) feet side yard setback requirement on the south side for an existing playhouse. This application pertains to certain real property located on the east side of Gravel Hill Road approximately 650 feet southeast of the intersection of Shingle Point Road and Gravel Hill Road (911 Address: 18315 Gravel Hill Road, Georgetown); said property being identified as Sussex County Tax Map Parcel Number 2-35-25.00-43.02.

1. The Board was given copies of the Application, an aerial photograph of the Property, a building permit receipt, a survey of the Property dated September 19, 2017, 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 James Hudson, Lori Hudson, and Theresa Rogers were sworn in to testify about the Application. Mr. Hudson submitted exhibits into the record, including a letter of support from a neighbor.
4. The Board found that Mr. Hudson testified that the stable and playhouse encroach into the setback areas.
5. The Board found that Mr. Hudson testified that he believed the side yard setback requirement was 15 feet when the structures were built.
6. The Board found that Mr. Hudson testified that he consulted with a surveyor when he built the structures and believed that there was additional room from the proposed location of the structures and the property line. He believed the structures were at least 15 feet from the side yard property line.
7. The Board found that Mr. Hudson testified that the woods on the Property are thick.
8. The Board found that Mr. Hudson testified that the variances will not alter the essential character of the neighborhood.
9. The Board found that Mrs. Hudson testified that the issue arose because the Property is being sold. She testified that the Applicants spoke with Elwood Wilson and Bessie Wilson, who are their neighbors, about the variances and the Wilsons do not object to the requests.
10. The Board found that Mr. Hudson testified that the stable has been on the Property since 1979 and the playhouse was constructed in 2002. He was not aware the 50 feet setback requirement for the stable until the late 1990s.
11. The Board found that Mrs. Hudson testified that the playhouse does not encroach onto neighboring lands.
12. The Board found that Mr. Hudson testified that the playhouse cannot be moved into compliance and that there are thick trees nearby.
13. The Board found that Mr. Hudson testified that the Property is served by well and septic. The well is located in the front yard and the septic system is located in the rear yard within the building envelope.

14. The Board found that Mr. Hudson testified that there is a portable manure dumpster on the Property which will be moved.
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 in shape as the rear of the Property is less than half as wide as the front of the Property. The Property is also populated with thick trees which make it difficult to develop and to easily identify the property lines. These conditions are clear on the survey and aerial photograph. These unique physical conditions have created an unusual and limited building envelope for the Applicant. The building envelope is further limited by the location of the well and septic system within the building envelope. Ultimately, the unique physical characteristics of the Property have created an exceptional practical difficulty 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 stable was constructed in 1979 and the playhouse was constructed in 2002. The Applicant seeks to retain these structures on the Property 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 existing structures to remain on the Property. The Board is convinced that the shape and location of these structures are reasonable, which is confirmed when reviewing the survey provided by the Applicant. Due to the age of these structures, they cannot be moved into compliance with the Sussex County Zoning Code.
 - c. The exceptional practical difficulty was not created by the Applicant. The Property's unique physical conditions have created an oddly shaped and limited building envelope, particularly as the lot narrows towards the rear yard. The Property is also thickly wooded and is served by well and septic which further limit the building area. These conditions have, thus, 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 structures have been on the Property for many years without recorded complaints. Despite the longstanding location of the structures and notification to neighbors, no complaints were noted in the record about their location. Rather, the neighbors most affected by the variances support the Application. 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 Applicant to retain the structures on the same footprint. No additions or modifications to the structures are sought or planned.

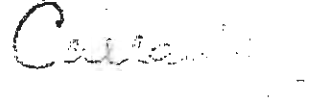
The Board granted the variance application finding that it met the standards for granting a variance.

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. Bruce Mears, Mr. John Mills, 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


Ellen Magee
Member

If the use is not established within one (1)
year from the date below the application
becomes void.

Date February 20, 2018.