

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: LAWRENCE JOHN HEFNER

(Case No. 12074)

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 a variance from the side yard setback requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 1.5 feet from the five (5) feet side yard setback on the southeast side for an existing shed. This application pertains to certain real property located on the west side of Oak Street, approximately 800 feet northwest of the intersection of Road 351 and Oak Street (911 Address: 31382 Oak Street, Ocean View); said property being identified as Sussex County Tax Map Parcel Number 1-34-12.00-121.00.

1. The Board was given copies of the Application, a survey of the Property dated September 29, 2003, a picture of the shed, an aerial photograph of the Property, 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 Laurie McFeal, who is the Applicant's realtor, was sworn in and testified about the Application.
4. The Board found that Ms. McFeal testified that the Applicant purchased the Property in 2003 and the shed was located on the Property at that time.
5. The Board found that Ms. McFeal testified that the Applicant is selling the Property but is unable to consummate the transaction because of the shed's encroachment.
6. The Board found that Ms. McFeal testified that neighboring properties have sheds.
7. The Board found that Ms. McFeal testified that the shed has a permanent foundation and contains utilities.
8. The Board found that Ms. McFeal testified that the shed has been on the Property for approximately 20 years and the shed cannot be moved into compliance with the Sussex County Zoning Code.
9. The Board found that Ms. McFeal testified that the Applicant did not create the encroachment into the setback area and the variance will not alter the essential character of the neighborhood.
10. The Board found that Ms. McFeal testified that the variance requested is the minimum variance necessary to afford relief.
11. The Board found that Ms. McFeal testified that there is a well on the Property which serves the shed.
12. The Board found that no parties appeared in support of or in opposition to the Application.
13. 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 situation is unique because the Applicant purchased the Property in 2003 with a small shed located in the corner of the lot. Unbeknownst to the Applicant, the shed encroached into the side yard setback area by

approximately 18 inches. The shed is located on a foundation and is serviced by a well. As such, it cannot be moved into compliance. This unique situation has, thus, created an exceptional practical difficulty for the Applicant who seeks to keep the shed on the Property.

- b. Due to the uniqueness of the Property and situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The shed was constructed approximately 20 years ago and the Applicant seeks to retain the existing shed on the Property but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the shed to remain on the Property. The Board is convinced that the shape and location of this shed are reasonable, which is confirmed when reviewing the survey provided by the Applicant. The shed cannot be moved into compliance and is necessary for storage of the Applicant's belongings.
- c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not develop the Property and the existing physical conditions of the Property have created a unique situation. The shed was placed on the Property by a prior owner and the Applicant discovered many years later that the shed did not comply with the Code's requirements.
- 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 shed has been on the Property for many years without recorded complaints. Despite the longstanding location of the shed and notification to neighbors, no complaints were noted in the record about its location. 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 regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to retain the existing shed on the same footprint. No additions or modifications to the shed 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

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

Date February 20, 2018.