

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: GREGORY N. JOHNSON

(Case No. 12082)

A hearing was held after due notice on January 8, 2018. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, and Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicant is seeking a variance of 4.9 feet from the ten (10) feet side yard setback requirement on the south side for an existing shed, a variance of 6.2 feet from the ten (10) feet rear yard setback requirement for an existing shed, and a variance of 6.3 feet from the ten (10) feet rear yard setback requirement for an existing shed. This application pertains to certain real property located on the east side of Mt. Pleasant Road, approximately 1,594 feet south of the intersection of Phillips Landing Road and Mt. Pleasant Road. (911 Address: 31297 Mt. Pleasant Road, Laurel); said property being identified as Sussex County Tax Map Parcel Number 4-32-6.00-16.00.

1. The Board was given copies of the Application, a survey of the Property dated May 23, 2017, 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 Gregory Johnson was sworn in to testify about the Application.
4. The Board found that Mr. Johnson testified that he owned the Property for a brief time until recently selling the Property. A survey prepared for the settlement showed the encroachments.
5. The Board found that Mr. Johnson testified that the shed was constructed by a prior owner in 1984. The previous owner applied for a building permit and a Certificate of Compliance was issued in 1985.
6. The Board found that Mr. Johnson testified that the previous owner mistakenly believed that the shed complied with the Sussex County Zoning Code.
7. The Board found that Mr. Johnson testified that the shed has been on the Property for 34 years. The shed has been renovated and its appearance has been improved but there have been no additions to the shed.
8. The Board found that Mr. Johnson testified that the shed is used strictly for storage.
9. The Board found that Mr. Johnson testified that the surrounding area is rural and there are many poultry houses nearby.
10. The Board found that Mr. Johnson testified that the shed is located on a concrete pad and is served by electric.
11. The Board found that Mr. Johnson testified that the shed cannot be moved into compliance.
12. The Board found that Mr. Johnson testified that the panhandle portion of the Property is difficult to use because it is so narrow.
13. The Board found that Mr. Johnson testified that he is unaware of any complaints about the shed.
14. The Board found that Mr. Johnson testified that the Property is served by well and septic. The septic system is located in the front yard and the well is located between the house and the shed.

15. The Board found that one (1) person appeared in support of the Application and no persons appeared 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 shape. The rear portion of the Property is significantly wider than the front portion of the lot but the rear portion of the Property is shaped like a panhandle. This unique shape, as is clearly shown on the survey, has created an unusually shaped building envelope. As such, a significant portion of the rear yard is likely unbuildable due to this shape. The shed, which was placed on the Property in 1984, is located in the rear yard away from the panhandle. The unique characteristics of this Property have created an exceptional practical difficulty for the Applicant who seeks to retain the existing shed on the lot. The Property is also serviced by well and septic which further limit the building area of 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 shape and the buildable area thereof is limited due to its shape. The buildable area is also limited by the location of the well and septic system on the lot. The Applicant seeks to retain a shed of reasonable size but is 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 shed to remain 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 Applicant. The Board also notes that the shed is located on a concrete pad, is serviced by electricity, and is aged. Due to these conditions, it is unlikely that the shed could be moved into compliance with the Code.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual size of the Property. The Applicant only recently acquired (and later sold) the Property. The unique lot shape has resulted in a limited building envelope on the Property and the uniquely shaped building envelope has created the exceptional practical difficulty. 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 Applicant but was created the lot's unique characteristics. The Board also notes that the shed was placed on the Property by a prior owner who obtained a Certificate of Compliance from Sussex County and the prior owner reasonably believed that the shed thus complied with the zoning requirements.
 - 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 shed will have no effect on the character of the neighborhood. Despite the fact that the shed has been on the Property for 34 years and neighbors have been notified of this Application, no evidence was presented that the variances would somehow alter the essential character of the neighborhood. The Board also notes that the surrounding area is a rural area with poultry houses and similar outbuildings nearby.
 - e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of

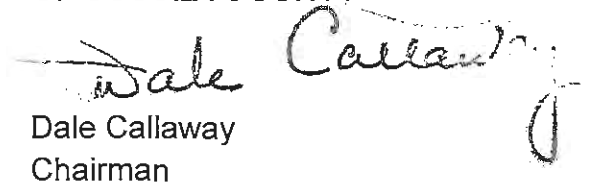
the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain a reasonably sized shed on the Property. The shed cannot be moved into compliance with the zoning requirements and the Applicant does not propose to make any additions or modifications to the shed.

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, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Mr. John Mills did not participate in the discussion or vote on this 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 March 6, 2018