

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: NANCY KELLY

(Case No. 12094)

A hearing was held after due notice on February 5, 2018. 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 and rear yard setback requirements.

Findings of Fact

The Board found that the Applicant is seeking a variance of 9.4 feet from the ten (10) feet rear yard setback for an existing shed with deck, a variance of 1.7 feet from the ten (10) feet side yard setback requirement on the southwest side for an existing dwelling, and a variance of 1.3 feet from the ten (10) feet side yard setback requirement on the southwest side for an existing dwelling. This application pertains to certain real property located on the north side of Pine Place, approximately 280.19 feet from the intersection of Birdhaven Street and Pine Place. (911 Address: 31272 Pine Place, Millville); said property being identified as Sussex County Tax Map Parcel Number 1-34-8.00-98.00.

1. The Board was given copies of the Application, a survey of the Property dated September 29, 2017, assessment information, 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 Nancy Kelly was sworn in to testify about the Application. Chad Meredith, Esquire, presented the case on behalf of the Applicant and submitted exhibits into the record for the Board to review. The exhibits included pictures and the building permits of the existing shed.
4. The Board found that Mr. Meredith stated that the Applicant purchased the Property in October 2017 and the Applicant discovered the encroachments when she was presented with a survey of the Property shortly before settlement. The Applicant did not construct the improvements on the Property.
5. The Board found that Mr. Meredith stated that the dwelling is an older home and the attached garage was added to the home in 1997. A building permit was issued for the garage but no permits were located for the platform attached to the shed.
6. The Board found that Mr. Meredith stated that the attached garage encroaches into the side yard setback area.
7. The Board found that Mr. Meredith stated that deck to the rear of the home is a first-floor deck and is allowed to encroach into the side yard setback area and no variance is needed for that deck.
8. The Board found that Mr. Meredith stated that there is a platform which was constructed behind the shed. The shed meets the setback requirements but the attached platform does not meet those requirements. It is believed that the platform was used to store firewood for the home.
9. The Board found that Mr. Meredith stated that the platform is hardly noticeable and removal of the platform would pose no benefit to the neighborhood.
10. The Board found that Mr. Meredith stated that the prior owner is deceased.
11. The Board found that Mr. Meredith stated that there is a fence on neighboring property but the fence was not constructed on the border of the Property. The

- location of the fence makes the rear of the Property appear larger than it actually is. The rear of the Property is located adjacent to undeveloped wooded lots.
12. The Board found that Mr. Meredith stated that an exceptional practical difficulty exists but the Applicant did not create the exceptional practical difficulty.
 13. The Board found that Mr. Meredith stated that the variances are necessary to enable reasonable use of the Property.
 14. The Board found that Mr. Meredith stated that the variances will not alter the essential character of the neighborhood or impair the uses and development of adjacent properties.
 15. The Board found that Mr. Meredith stated that the variances will not be detrimental to the public welfare.
 16. The Board found that Mr. Meredith stated that the Applicant is unaware of any complaints about the structures.
 17. The Board found that Mr. Meredith stated that the requested variances represent the least modifications of the regulations at issue and the variances are necessary to afford relief.
 18. The Board found that Ms. Kelly affirmed that the statements made by Mr. Meredith as true and correct.
 19. The Board found that Ms. Kelly testified that there is a well on the Property and that the Property may have previously been served by a septic system.
 20. The Board found that no parties appeared in support of or in opposition to the Application.
 21. 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 clearly unique as the Applicant recently acquired the Property only to find out that structures which appear to have been on the Property for many years do not comply with the setback requirements. The Property is unique because it is adjacent to a lot which is improved by a fence but the fence is located off the property line thereby giving the false impression that the Property is larger than it actually is. The Property is also improved by a well and was previously improved by a septic system which likely limited the building envelope and restricted the area where the structures could be placed. These unique conditions have created an exceptional practical difficulty for the Applicant.
 - 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 structures were constructed years ago and the Applicant seeks to retain the structures on the Property 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 the 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. The structures cannot be moved into compliance and are necessary for Applicant's use of the Property.
 - 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. These conditions pre-existed the Applicant's acquisition of the Property.
 - 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. 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.

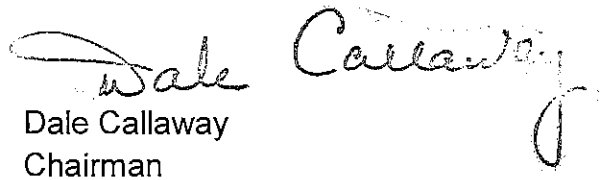
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain the existing structures on the 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

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

Date March 20, 2018