

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY  
IN RE: RAY W. MCGAHA**

**(Case No. 12107)**

A hearing was held after due notice on February 19, 2018. The Board members present were: Mr. Dale Callaway, 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 2.0 feet from the fifteen (15) feet side yard setback requirement on the west side for an existing dwelling, a variance of 1.0 foot from the fifteen (15) feet side yard setback requirement on the west side for an existing dwelling, a variance of 5.4 feet from the fifteen (15) feet side yard setback requirement on the east side for an existing building, a variance of 5.7 feet from the fifteen (15) feet side yard setback requirement on the east side for an existing building, and a variance of 14.1 feet from the twenty (20) feet rear yard setback requirement for an existing building. This application pertains to certain real property located on the south side of Hoot Owl Lane, approximately 1,107 feet east of the intersection of Irons Lane (Road 348) and Hoot Owl Lane. (911 Address: 35032 Hoot Owl Lane, Dagsboro); said property being identified as Sussex County Tax Map Parcel Number: 1-34-7.00-202.00.

1. The Board was given copies of the Application, a survey of the Property dated December 2, 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 one (1) letter in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Ray McGaha and Jaclyn Matsin were sworn in to testify about the Application.
4. The Board found that Mr. McGaha testified that he purchased the Property 14 years ago and the dwelling and shed were located on the Property at that time. Additions were made to the existing shed to create a larger building.
5. The Board found that Ms. Mastin testified that she was unaware the existing house and shed encroached into the setback area.
6. The Board found that Ms. Mastin testified that the addition on the west side of the house existed at the time the Applicant purchased the Property.
7. The Board found that Ms. Mastin testified that the shed backs up to chicken houses and the rear of the Property is heavily wooded so the shed cannot be seen.
8. The Board found that Ms. Mastin testified that the variances will not alter the essential character of the neighborhood.
9. The Board found that Ms. Mastin testified that the dwelling is a single-family home and the addition was added to the dwelling prior to the Applicant's purchase of the Property.
10. The Board found that Ms. Mastin testified that there are other sheds in the neighborhood.
11. The Board found that Ms. Mastin testified that the shed cannot be moved into compliance with the Sussex County Zoning Code.
12. The Board found that Mr. McGaha testified that he added lean-tos to the existing shed but did not obtain a building permit. He did not think he needed a building permit because the lean-tos were small.

13. The Board found that Mr. McGaha testified that they have received no complaints from neighbors.
14. The Board found that Mr. McGaha testified that the lean-tos do not encroach farther into the rear yard setback area than the existing shed.
15. The Board found that Mr. McGaha testified that the lean-tos have been enclosed.
16. The Board found that Mr. McGaha testified that there is a well on the Property in the rear yard.
17. The Board found that Ms. Mastin testified that the encroachments were discovered when the buyers obtained a survey as part of the settlement process.
18. The Board found that Mr. McGaha testified that the lean-tos were added to the east side of the shed and the lean-tos did not encroach into the side yard setback area.
19. The Board found that Mr. McGaha testified that the original shed measures 16 feet by 20 feet and that the lean-tos measure 20 feet by 20 feet.
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 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 situation is clearly unique as the Applicant acquired the Property years ago only to find out that structures which appear to have been on the Property for many years do not comply with the setback requirements. While the Applicant added onto the existing shed, the additions were made west side of the shed and those additions do not encroach into the side yard setback area or farther into the rear yard setback area than did the existing shed. The Board also notes that the rear yard is serviced by a well and is heavily wooded, which thereby limits the building area of the lot. 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. Both the shed and the dwelling 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, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Ms. Ellen Magee 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 two (2) years from the date below the application becomes void.

Date April 17, 2018