

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: VINCENT PASSANNANTE

(Case No. 12142)

A hearing was held after due notice on May 21, 2018. The Board members present were: Mr. Dale Callaway, Mr. Bruce Mears, Ms. Ellen Magee, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front yard setback, side yard setback, and maximum fence height requirements on a through lot for existing and proposed structures.

Findings of Fact

The Board found that the Applicant is seeking a variance of 20.6 feet from the thirty (30) feet front yard setback requirement along Chestnut Lane for an existing shed, a variance of 19.8 feet from the thirty (30) feet front yard setback requirement from Chestnut Lane for an existing shed, a variance of 9.1 feet from the ten (10) feet side yard setback requirement on the east side for an existing shed, and a variance of 2.5 feet from the 3.5 feet maximum fence height requirement for a proposed 6 feet tall chain link fence. This application pertains to certain real property located on the north side of Camp Arrowhead Road, approximately 132 feet east of Skyler Drive, and a second front of Chestnut Lane. (911 Address: 22901 Camp Arrowhead Road, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-12.00-200.00.

1. The Board was given copies of the Application, property assessment records, photographs of the Property, a building permit application, a survey of the Property dated February 13, 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 Brittany Alexander and Vincent Passannante were sworn in to testify about the Application.
4. The Board found that Mr. Passannante testified that he owns 3 dogs and the fence is needed to contain the dogs in the rear yard. The proposed chain-link fence will measure 6 feet tall.
5. The Board found that Mr. Passannante testified that the sheds existed on the Property when he purchased the lot and he was unaware, at that time, that the sheds violated the setback requirements.
6. The Board found that Mr. Passannante testified that the well and water pump are located in the smaller shed. The sheds cannot be moved into compliance.
7. The Board found that Mr. Passannante testified that there is no access to the property from Chestnut Lane and that Chestnut Lane is an unused road.
8. The Board found that Mr. Passannante testified that he has received no complaints from neighbors about the sheds.
9. The Board found that Mr. Passannante testified that there are no concerns with visibility for traffic from the fence or sheds.
10. The Board found that Mr. Passannante testified that the Property is unique because it is shaped like a trapezoid and that, due to the shape of the land, if they were to build thirty (30) feet away from Chestnut Lane then there would be no room in the backyard to do anything.
11. The Board found that Mr. Passannante testified that he did not create the shape of the Property and that he purchased the Property in its current state.

12. The Board found that Mr. Passannante testified that the fence will not alter the character of the neighborhood.
13. The Board found that Pat Alexander was sworn in to testify in support of the Application.
14. The Board found that Ms. Alexander testified that Chestnut Lane is wooded and that there is no visible lane.
15. The Board found that Ms. Alexander testified that the Applicants have three dogs that need to be contained.
16. The Board found that one (1) party appeared in support of the Application.
17. The Board found that no parties appeared in opposition to the Application.
18. 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 clearly unique as it is shaped like a trapezoid with an odd building envelope as is shown on the survey. This unique shape greatly limits the building envelope of the Property. The building envelope is further limited because the Property is considered a through lot with two road frontages. The Property abuts Chestnut Lane, which is a wooded paper street with no vehicular access to the Property. Due to the lack of access from Chestnut Lane, the portion of the Property closest to Chestnut Lane is treated by the Applicant as the rear yard even though it is technically a front yard. These unique physical conditions have created an unusual and limited building envelope for the Applicant and 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 unique shape of the Property and the two road frontages greatly limit the building envelope. The Applicant seeks to retain two sheds of a reasonable size and to construct a reasonably sized chain-link fence to contain his dogs but is unable to do so without violating the Sussex County Zoning Code. The sheds have been in their present location for many years and cannot be located elsewhere on the lot. There is also no other location where the fence could reasonably be located so as to provide the Applicant with space for his dogs to roam. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the sheds to remain on the Property and for the Applicant to construct the fence. 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.
 - c. The exceptional practical difficulty was not created by the Applicant. The Property has an unusual shape and is further subject to building limitations due to the two road frontages. These conditions have greatly constrained the building envelope on the Property and these unique physical conditions have created the exceptional practical difficulty for the Applicant. The Applicant also did not construct the sheds. Rather, those structures were placed on the Property by a prior owner.
 - 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. Chestnut Lane is not a typical road as it is a dirt lane that is heavily wooded. Chestnut Lane also appears to end at the Property. The location of these structures near the Chestnut Lane, thus, do not appear to be unusual and, given the

uniqueness of Chestnut Lane, it is unlikely that the encroachments would be noticed. Furthermore, despite the fact that the sheds have been on the Property for many years and neighbors were notified of these variance requests, no complaints were noted in the record about the sheds. 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. The fence should also benefit the neighborhood by providing a safe area for the Applicant's dogs to roam without trespassing onto neighboring lands.

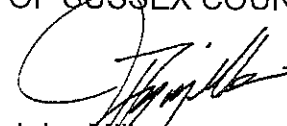
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain the existing sheds and to construct a reasonably sized fence. No additions or modifications to the sheds are proposed.

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



John Mills
Chairman

If the use is not established within two (2) years from the date below the application becomes void.

Date August 7, 2018