

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: RALPH COOK, JR.

(Case No. 12166)

A hearing was held after due notice on July 23, 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 setback for an existing structure.

Findings of Fact

The Board found that the Applicant is seeking a variance of 11.2 feet from the fifteen (15) feet side yard setback requirement on the north side for an existing dwelling and a variance of 11.4 feet from the fifteen (15) feet side yard setback requirement on the north side for an existing dwelling. This application pertains to certain real property located on the west side of Bowman Road, approximately 1,694 feet north of Ellis Mill Road (911 Address: 3432 Bowman Road, Seaford); said property being identified as Sussex County Tax Map Parcel Number 5-31-17.00-17.12.

1. The Board was given copies of the Application, an undated location survey, a building permit application, 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 Ralph Cook, Jr. was sworn in to testify about the Application.
4. The Board found that Mr. Cook testified that he purchased the Property in 1979 and constructed an addition to the side of the home in 1986. No survey was performed at that time and he relied on statements made by the prior property owner as to the location of the lot line. Mr. Cook was not aware of this violation until he tried to sell the home and obtained a survey as part of the process of selling the lot.
5. The Board found that Mr. Cook testified that the neighboring property will not be developed as it is State property and is a preserved wildlife area.
6. The Board found that Mr. Cook testified that the only place the garage could be built was on the right side due to the placement of the septic field, the driveway, the well and access to the house. The lot is also wooded.
7. The Board found that Mr. Cook testified that the situation is unique and he did not create the exceptional practical difficulty.
8. The Board found that Mr. Cook testified that the variances will not alter the essential character of the neighborhood as many of the neighboring homes have similar attached garages. He has also not received any complaints about the structure.
9. The Board found that Mr. Cook testified that the structure has been on the Property for more than 30 years.
10. The Board found that Mr. Cook testified that no additions or expansions to the structure are proposed.
11. The Board found the Greg Sizemore testified in support of the Application.
12. The Board found that one (1) person appeared in support of and no parties appeared 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.

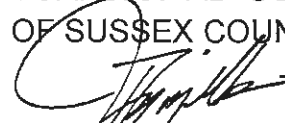
- a. The Property is unique due to the location of the well and septic system which limit the developable area of the lot. The Property is also wooded as is shown on the aerial photograph. These unique characteristics of this Property limit the buildable area available to the Applicant and have created an exceptional practical difficulty for the Applicant who seeks to retain an existing dwelling on the Property.
- 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 unique conditions as noted above and the buildable area thereof is limited due to those conditions. The Applicant seeks to retain a dwelling 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 the dwelling to remain on the Property. The Board is convinced that the shape and location of the dwelling are also reasonable, which is confirmed when reviewing the survey provided by the Applicant.
- c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the limited building envelope of the Property. The Property was developed with a house when the Applicant purchased the Property and the lot also contained a well and septic system. These conditions limited the areas where a garage addition could reasonably be built. The buildable area is also limited due to the fact that the lot is wooded. Notably, the lot is adjacent to State wildlife preservation lands as well. These unique conditions resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. The unique characteristics of the Property are clear when reviewing the record.
- 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 dwelling will have no effect on the character of the neighborhood. The dwelling has been on the Property for many years in this location without complaint from neighbors. No evidence was presented that the variances would somehow alter the essential character of the neighborhood and the lack of evidence is telling since, if the structure were to have altered the character of the neighborhood, the Board would expect neighbors to present such evidence. The Property is also adjacent to State wildlife preservation lands so the encroachment is likely not as noticeable as perhaps it would be otherwise. The Board also notes that there are similar structures in the neighborhood.
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulation at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain a reasonably sized dwelling on the lot. No additions or modifications to the dwelling 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 September 18, 2018.