

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: LAWRENCE G. PLANK & HOLLY J. FOX**

**(Case No. 12186)**

A hearing was held after due notice on August 20, 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 a variance from the side yard setback for an existing structure.

Findings of Fact

The Board found that the Applicants are seeking a variance of 5.4 feet from the fifteen (15) feet side yard setback requirement on the southwest side for an existing shed. This application pertains to certain real property located on the west side of Harbor Road, approximately 60 feet south of South Rodney Drive in North Shores development (911 Address: 21933 Padula Road, Georgetown); said property being identified as Sussex County Tax Map Parcel Number 2-34-8.00-59.00.

1. The Board was given copies of the Application, correspondence with the Planning & Zoning Office, an affidavit of Diana Padula, a survey of the Property dated May 31, 2018, 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 Lawrence Plank was sworn in to give testimony. Bill Schab, Esquire, was present on behalf of the Applicants, presented the Application, and submitted one exhibit for the Board to review.
4. The Board found that Mr. Schab stated that the Applicants bought the Property, which consists of 18.619 acres, a house, a pool, and a shed. Prior to settlement, a survey showed that the pool was located on the lot line and that the shed was located within the setback area. The Applicants worked with their neighbor to acquire a portion of the neighboring lot to bring the pool into compliance but were not able to acquire lands to bring the shed into compliance. The Applicants tried to rectify the situation prior to settlement but could not complete it prior to settlement.
5. The Board found that Mr. Schab stated that the house was built in 2002 and the shed was built thereafter by a prior owner. The prior owner did not obtain permits for the shed and this issue was also discovered by the Applicants prior to settlement. The Applicants have since obtained permits for the shed.
6. The Board found that Mr. Schab stated that the Property is unique because current placement of the buildings and that the Property cannot otherwise be developed without removing the building at great cost to the owners.
7. The Board found that Mr. Schab stated that only the back corner of the building is in the setback area.
8. The Board found that Mr. Schab stated that the exceptional practical difficulty was not created by the Applicants as these buildings were built by the prior owner and Mr. Plank did not get the information regarding the setback violation until two days before settlement.
9. The Board found that Mr. Schab stated that the variance will not alter the essential character of the neighborhood as this building has been there for fifteen years and the only neighbor who it could affect has written a letter of support.

10. The Board found that Mr. Schab stated that the variance requested is the minimum variance to allow relief.
11. The Board found that Mr. Plank affirmed the statements made by Mr. Schab as true and correct.
12. The Board found that Mr. Plank testified that the only way to correct this without a variance would be to remove a large piece of the structural integrity of the building which would change the character of the building and create a financial hardship. He believes that the building would be ruined if it had to be brought into compliance.
13. The Board found that Mr. Plank testified that most of the encroachment is an overhang of the building.
14. The Board found that Mr. Plank testified that the lot is wooded with a pond in the rear yard.
15. The Board found that one (1) person appeared in support of and no one 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 as it is a large, wooded lot with an unusual shape. These conditions have created an unusual building envelope which limits the developable area of the lot and have created an exceptional practical difficulty for the Applicants who seek to retain an existing shed 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 Applicants seek to retain a shed of reasonable size but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the 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 Applicants.
  - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual shape of the lot and the limited building envelope of the Property. The Property was also developed with a house, shed, and pool by a prior owner when the Applicants purchased the Property. The Applicants did not place the shed on the lot. 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 variance 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. The shed has been on the Property for many years in this location without complaint from neighbors. In fact, the neighbor most affected by the encroachment does not object to this variance request. No evidence was presented that the variance 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 Board also notes that the encroaching portion of the shed is the rear corner of the structure where an overhang is located.


- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicants have demonstrated that the variance sought will allow the Applicants to retain a reasonably sized shed on the lot. No additions or modifications to the shed are proposed. The Board also notes that the Applicants have worked with a neighbor to acquire a portion of the neighboring lot to reduce other encroachments.

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 October 16, 2018.