

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

**IN RE: CATHERINE A. HAMEL**

**(Case No. 12208)**

A hearing was held after due notice on October 1, 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 rear yard and side yard setback requirements for an existing structure.

Findings of Fact

The Board found that the Applicant is seeking a variance of 1.6 feet from the five (5) feet rear yard setback requirement and a variance of 0.6 feet from the five (5) feet side yard setback requirement on the north side for an existing shed. The Property is a corner lot with the front yard being adjacent to Bald Eagle Road and the corner front yard being adjacent to 9<sup>th</sup> Street. This application pertains to certain real property located on the northeast corner of Bald Eagle Road and 9<sup>th</sup> Street (911 Address: 21201 Bald Eagle Road, Rehoboth Beach) said property being identified as Sussex County Tax Map Parcel Number: 3-34-19.16-100.00.

1. The Board was given copies of the Application, a survey of the Property dated July 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 Kenneth Beeks was sworn in to testify about the Application.
4. The Board found that Mr. Beeks testified that the Property was owned by his now deceased in-laws and he inherited the Property. Recently, he sold the Property and, as part of the settlement process, he discovered that the shed on the lot encroached into the side yard and rear yard setback areas.
5. The Board found that Mr. Beeks testified that the shed was installed about thirty (30) years ago but is still operational.
6. The Board found that Mr. Beeks testified that there have been no complaints about the shed and his neighbors do not object to the variance request.
7. The Board found that Mr. Beeks testified that the Property is unique because of its shape and it is a corner lot.
8. The Board found that Mr. Beeks testified that the Property cannot be otherwise developed because there are a number of pine trees on the Property. There is no other place where the shed can be placed.
9. The Board found that Mr. Beeks testified that the exceptional practical difficulty was created by the prior owner since the shed was placed on the Property by a prior owner.
10. The Board found that Mr. Beeks testified that the variances will not alter the character of the neighborhood because the shed is part of the neighborhood.
11. The Board found that Mr. Beeks testified that the variances requested are the minimum variances requested to afford relief.
12. The Board found that Mr. Beeks testified that the Property was previously served by septic but has since connected to sewer after the shed was built.
13. The Board found that no parties appeared in support of or in opposition to the Application.

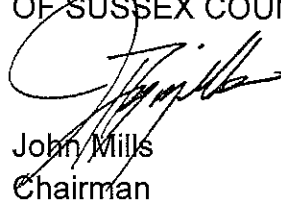
14. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board found credible, persuasive, and un rebutted, the Board determined that the application met the standards for granting a variance. The findings below further support the Board's decision to approve the Application.
- a. The Property is unique due to its shape and size. The lot consists of only 8,288 square feet and is unusually shaped. The north side of the Property is much shorter than the south side of the Property. These conditions have created a small building envelope, which is further reduced since the Property is a corner lot. The Property is heavily wooded and its development is limited by these conditions as well. The situation is also unique as the Applicant acquired the Property only to find out that the shed which has been on the Property for many years does not comply with the setback requirements. 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 shed was constructed approximately 30 years ago and the Applicant seeks to retain the shed 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 shed to remain on the Property. The Board is convinced that the shape and location of the shed are reasonable, which is confirmed when reviewing the survey provided by the Applicant. The shed cannot be moved into compliance and is necessary for Applicant's use of the Property as it provides necessary outdoor storage.
  - c. The exceptional practical difficulty was not created by the Applicant. The Property has unique physical conditions, as discussed above, and those conditions have limited the building envelope on the Property and have created an exceptional practical difficulty. Importantly, the Applicant did not develop the Property with the shed. Rather, the shed was placed on the Property many years ago 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. The shed has been on the Property for many years without recorded complaints. Despite the longstanding location of the shed and notification to neighbors, no complaints were noted in the record about its 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 shed on the same footprint. No additions or modifications to the shed 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



John Mills  
Chairman

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

Date December 11, 2018.