

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

**IN RE: RYAN FORTINI**

**(Case No. 12244)**

A hearing was held after due notice on December 17, 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 front yard setback, side yard setback, and maximum fence height requirement for existing structures.

Findings of Fact

The Board found that the Applicant is seeking a variance of 1.4 feet from the five (5) feet side yard setback requirement on the northwest side for a shed, a variance of 22.4 feet from the 40 feet front yard setback requirement along Zion Church Road for a shed, and a variance of 3.5 feet from the maximum height requirement of 3.5 feet for a fence. This application pertains to certain real property located on Fenwick Circle and Zion Church Road, approximately 736 feet east of New Road (911 Address: 37558 Fenwick Circle, Selbyville) said property being identified as Sussex County Tax Map Parcel Number 5-33-12.00-216.00.

1. The Board was given copies of the Application, checks, invoices, an aerial photograph of the Property, a violation notice, photographs, a survey of the Property dated October 5, 2018, 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 James Jones and Ryan Fortini were sworn in to testify about the Application. Shannon Carmean Burton, Esquire appeared on behalf of the Applicant and she submitted exhibits to the Board to review.
4. The Board found that Mrs. Burton stated that the Property, which is located in Fenwick West, is unique because it is a through lot and has two front yards for setback purposes. The Applicant purchased the Property in February 2018 with the existing house and the Applicant intended to install a pool.
5. The Board found that Mrs. Burton stated that the need for the variance was not created by the Applicant because he was unaware that the Property was considered to have two front yards and the seller did not disclose this fact to the Applicant.
6. The Board found that Mrs. Burton stated that the Applicant relied on professionals, such as Mr. Jones, to install the pool and fence. Mr. Fortini also relied on his contractor to place the shed.
7. The Board found that Mrs. Burton stated that the fence is in line with a neighbor's fence.
8. The Board found that Mrs. Burton stated that the exceptional practical difficulty is due to the uniqueness of the Property.
9. The Board found that Mrs. Burton stated that the Property cannot otherwise be developed as the shed and fence are already in place.
10. The Board found that Mrs. Burton stated that vehicles travel along Zion Church Road at 50 miles per hour and that, due to the traffic on Zion Church Road, the Applicant requires a fence to ensure the safety of his dogs. The fence will also provide him with privacy and is required for the pool.
11. The Board found that Mrs. Burton stated that the variances are necessary to enable reasonable use of the Property.

12. The Board found that Mrs. Burton stated that the shed is barely visible as it is located within the fence line.
13. The Board found that Mrs. Burton stated that the variances will not alter the essential character of the neighborhood or impair uses of neighboring properties or be detrimental to the public welfare.
14. The Board found that Mrs. Burton stated that the fence is a 7 feet tall vinyl fence and is consistent with the neighborhood and does not inhibit traffic visibility.
15. The Board found that Mrs. Burton stated that the variances requested are the minimum variances that will afford relief.
16. The Board found that Mr. Fortini affirmed the statements made by Mrs. Carmean Burton as true and correct.
17. The Board found that Mr. Fortini testified that he was unaware of the issue of having two front yards.
18. The Board found that Mr. Fortini testified that a neighbor also has a pool and fence.
19. The Board found that Mr. Jones testified that he signed for the building permit but was unaware that the property had two front setbacks.
20. The Board found that Mr. Jones testified that the fence was installed in line with neighboring fences and does not affect traffic sight lines. There is 8-10 feet from the edge of paving of Zion Church Road and the property line.
21. The Board found that Mrs. Burton stated that there is no vehicular access to Zion Church Road.
22. The Board found that no parties appeared in support of or in opposition to the Application.
23. 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 for the variances met the standards for granting a variance. The findings below further support the Board's decision to approve the Application for the variances for those structures.
  - a. The Property is unique as it is a lot with road frontages on two roads and is subject to two front yard setback requirements even though the Property only has vehicular access from Fenwick Circle. The side of the Property along Zion Church Road is effectively the rear yard of the lot but is subject to front yard setback requirements. These conditions greatly restrict the building envelope on the Property. While the Property is considered a through lot, the Applicants do not have direct access to Zion Church Road and only access the Property from Fenwick Circle. It is clear to the Board that the lot's unique characteristics have created an exceptional practical difficulty for the Applicant who seeks to retain a reasonably sized shed and fence on the lot.
  - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property is bordered on two sides by roads and has unique setback requirements even though the Applicant can only access the Property from one of those roads. The Applicant seeks to retain a reasonably sized shed and fence 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 Applicant to retain a reasonably sized shed and fence on the Property. The Board is convinced that the shape and location of the shed and fence 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 lot or enact the setback requirements which have limited the building envelope of the lot. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced

that the exceptional practical difficulty was not created by the Applicant but was created the lot's unique characteristics.

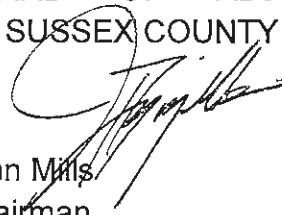
- d. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the shed and fence will have no effect on the character of the neighborhood. There are other sheds and similar fences in the community. The shed and fence do not present visibility concerns along Zion Church Road and will help restrict the Applicant's dogs from running onto Zion Church Road; which should benefit travelers along that road. 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 a reasonably sized shed and fence on the Property. No additions or modifications to those structures are proposed.

The Board approved 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 of the motion to approve 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 March 5, 2019.