

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: GARY NEEDHAM

(Case No. 12254)

A hearing was held after due notice on January 7, 2019. 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 and rear yard setback requirements for a proposed structure.

Findings of Fact

The Board found that the Applicant is seeking a variance of 8.5 feet from the 15 feet side yard setback requirement on the west side for a proposed structure. The Property is located on the southwest corner of Gainsborough Drive and Sheffield Court in the Rolling Meadows Subdivision (911 Address: 28 Gainsborough Drive, Lewes) said property being identified as Sussex County Tax Map Parcel Number: 3-34-6.00-927.00.

1. The Board was given copies of the Application, a survey of the Property dated August 15, 2018, drawings of the proposed addition, property record card 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 one (1) letter in support of the Application and three (3) letters in opposition to the Application.
3. The Board found that Randy Burton, who is the Applicant's builder, was sworn in to testify about the Application.
4. The Board found that Mr. Burton testified that the Applicant seeks to construct a small addition off the current living room to increase living space in the home.
5. The Board found that Mr. Burton testified that the Applicant has some health needs where he needs to put gym equipment in the home but also needs additional living space.
6. The Board found that Mr. Burton testified that the Property is unique because it is a corner lot and has two front yards.
7. The Board found that Mr. Burton testified that the Property cannot otherwise be developed as there is no other area to add living space to the house that would work with the current layout. The Applicant cannot build the addition south due to the location of an existing bedroom.
8. The Board found that Mr. Burton testified that there is an existing deck on the west side of the house. The addition will be built in this area.
9. The Board found that Mr. Burton testified that the situation was not created by the Applicant.
10. The Board found that Mr. Burton testified that his addition will not alter the essential character of the property as it will be built on the current deck.
11. The Board found that Mr. Burton testified that there is a hedgerow along the property line which will block the view of the new addition.
12. The Board found that Mr. Burton testified that the variance requested is the minimum variance request to afford relief.
13. The Board found that Mr. Burton testified that house was built by a prior owner.
14. The Board found that Marcia Kasony was sworn in to testify in opposition to the Application. Ms. Kasony owns adjacent property to the west and she expressed concerns about the impact of the addition on her privacy. She testified that there are

trees along the shared boundary line and that she is concerned about the proximity of the addition to the root structure of those trees.

15. The Board found that Steve Hyle was sworn in to give testimony about the Application. Mr. Hyle neither supports or opposes the Application. Rather, he represents the homeowners' association and he testified that the association has not yet had an opportunity to review the plans and offer an opinion. The Applicant will, however, have to seek approval from the association before construction can begin.
16. The Board found that one person appeared in support of and one person appeared in opposition to the Application.
17. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered, 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 corner lot with a dwelling set back a significant distance from Gainsborough Drive. The Applicant suffers from health concerns and needs an addition to the home to accommodate his needs. Due to the existing layout of the home, which was constructed by a prior owner, the Applicant is unable to construct an addition to other parts of the home. The building envelope is also limited due to the corner 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 dwelling was constructed by a prior owner and the Applicant seeks to construct a reasonable addition on the Property but is 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 addition to be constructed on the Property. The Board is convinced that the shape and location of the addition are reasonable, which is confirmed when reviewing the survey provided by the Applicant. The addition will also afford the Applicant with additional living space to accommodate his health concerns.
 - 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 dwelling. Rather, the dwelling was placed on the Property by a prior owner. The Applicant is unable to construct this reasonable addition due to the existing layout of the home.
 - 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 dwelling has been on the Property for many years and the Applicant seeks to add a reasonable addition to the home. The neighbor to the west complained about privacy concerns but these concerns appear to be unfounded. First, the shared property line is improved by trees which block the addition from view. Furthermore, the addition will be constructed largely on an area currently used for a deck. While the addition will be closer to the property line than the deck, the expansion is not so unreasonable that the neighbor's privacy should be significantly affected. The Board was not convinced by the opposition that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board also notes that the homeowners association appears to have a

process for regulating improvements within the community and the Applicant will likely have to receive additional approvals through that process.

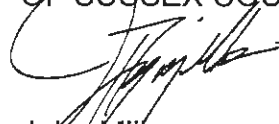
- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to construct a reasonable addition to the home. The Board is convinced that the Applicant took steps to minimize the encroachment. The Board also notes that the Applicant was unable to construct the addition elsewhere on the lot due to the existing layout of the home and the corner setback requirements.

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 March 5, 2019.