

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MICHAEL E. BALLARD

(Case No. 12290)

A hearing was held after due notice on May 20, 2019. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the front yard setback and maximum fence height requirements for existing structures.

Findings of Fact

The Board found that the Applicant is requesting a variance of 28.8 feet from the forty (40) feet front yard setback requirement for an existing shed along Zion Church Road and a variance of 3.5 feet from the fence height requirement of 3.5 feet. This application pertains to a through lot located on the north side of Fenwick Circle and the south side of Zion Church Road, approximately 510 feet east of New Road (911 Address: 37576 Fenwick Circle, Selbyville) said property being identified as Sussex County Tax Map Parcel Number: 5-33-12.00-218.00.

1. The Board was given copies of the Application, a survey of the Property dated January 25, 2019, photographs, a building permit application, letters of support, aerial photographs of the Property, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received two (2) letters in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Michael Ballard was sworn in to testify about the Application. Mr. Ballard submitted an additional letter of support.
4. The Board found that Mr. Ballard testified that the Property is unique as it is a through lot which backs up to Route 20.
5. The Board found that Mr. Ballard testified that the speed limit along Zion Church Road is 50 miles per hour and traffic is atrocious.
6. The Board found that Mr. Ballard testified that the Property only has access to Fenwick Circle. He wanted access off Zion Church Road but was denied.
7. The Board found that Mr. Ballard testified that the Property cannot otherwise be developed as the fence and shed are already in place.
8. The Board found that Mr. Ballard testified that the fence was installed prior to inspectors leaving the Property.
9. The Board found that Mr. Ballard testified that he has dogs and children who play in his yard and the fence is needed to provide protection. There is a pool to the rear of the house as well.
10. The Board found that Mr. Ballard testified that neighbors support the Application and the shed and fence conform with others in the neighborhood. The shed has been on the property for 3-4 years and fences in the neighborhood are in a line. The neighboring fences have been there for 15 years.
11. The Board found that Mr. Ballard testified that the fence provides a sound and light barrier.
12. The Board found that Mr. Ballard testified that it would be a burden to move the fence because there is poured concrete down each pole of the fence.
13. The Board found that Mr. Ballard testified that the shed was built as part of the fence.

14. The Board found that Mr. Ballard testified that the exceptional practical difficulty was not created by the Applicant as he relied on the builder to get all necessary permits and was unaware there was an issue until he was cited by Sussex County.
15. The Board found that Mr. Ballard testified that the variances will not alter the essential character of the neighborhood as there are many other properties with fences.
16. The Board found that Mr. Ballard testified that the variances are the minimum variance requests to allow the current fence and shed to remain on the Property.
17. The Board found that Mr. Ballard testified that there is approximately 12 – 15 feet between the edge of paving and the fence as a ditch separates the two.
18. The Board found that Paul Rieger was sworn in to give testimony in support of the Application.
19. The Board found that one person appeared in support of and no parties appeared in opposition to the Application.
20. 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 unrebutted, 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 variance requests.
 - 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. The Applicant also relied on his builder to construct these structures in compliance with the Code only to later discover the encroachments.
 - 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 granted the variance application finding that the variance application 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. John Mills, Mr. John Williamson, 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 June 18, 2019.