

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: NANCY KAYE PETERMAN

(Case No. 12366)

A hearing was held after due notice on October 7, 2019. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the side yard setback requirement for an existing structure.

Findings of Fact

The Board found that the Applicant is seeking a variance of 12.5 feet from the fifteen (15) feet side yard setback requirement on the south side for an existing carport and a variance of 13.4 feet from the fifteen (15) feet side yard setback requirement on the south side for an existing carport. This application pertains to certain real property located on the east side of Quail Hollow Road approximately 500 feet south of Tuckers Road within the Doe Run subdivision (911 Address: 15609 Quail Hollow Road, Greenwood) said property being identified as Sussex County Tax Map Parcel Number 4-30-11.00-46.00. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey of the Property dated August 7, 2019, an aerial photograph of the Property, copies of the minutes for Case No. 5685, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of or in opposition to the Application.
3. The Board found that Nancy Peterman was sworn in to testify about the Application.
4. The Board found that Ms. Peterman testified that the carport was placed in the current location by her ex-husband for a motor home over 10 years ago.
5. The Board found that Ms. Peterman testified that the Property consists of 2 acres and is unique because it slopes towards the rear. The slope begins behind the shed and the carport.
6. The Board found that Ms. Peterman testified that the structure could not be moved to the left because of the slope and there is nowhere else the carport could be located.
7. The Board found that Ms. Peterman testified that the driveway was extended back to the carport.
8. The Board found that Ms. Peterman testified that she did not create the exceptional practical difficulty.
9. The Board found that Ms. Peterman testified that the variances will not alter the character of the neighborhood and that there have been no complaints from neighbors.
10. The Board found that Ms. Peterman testified that the variances requested are the minimum variances to afford relief.
11. The Board found that Ms. Peterman testified that the house was built in 1993 and she purchased the Property in 1998.
12. The Board found that Ms. Peterman testified that there is no home on the lot to the south and the lots are wooded.
13. The Board found that Ms. Peterman testified that her septic system is located in the front yard and the well is located in the rear yard.
14. The Board found that Ms. Peterman testified that there is a cement slab around the building and the carport is bolted to the concrete and cannot be moved.

15. The Board was shown a topographical map which showed a 10 foot drop in elevation in the rear yard.
16. The Board found that David Miller was sworn in to give testimony in support of the Application. Mr. Miller owns the lot to the south and he does not oppose the request.
17. The Board found that one person appeared in support of and no one appeared in opposition to the Application.
18. 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 Application for the variances for that structure.
 - a. The Property is unique due to its shape and slope. The Property is long and narrow and the Applicant recently discovered that a carport constructed by her ex-husband encroached into the setback area. The carport is located to the west of a significant slope in the rear of the Property. This slope has created an exceptional practical difficulty since much of the Property slopes to an adjacent tax ditch. Based on the County's topographical maps, the slope drops 10 feet from the location of the carport to the ditch. This drop is significant and greatly limits the buildable area of the lot. These conditions have thus created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to retain an existing carport on the lot.
 - b. The unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code.
 - c. 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 physical characteristics and the buildable area thereof is limited due to those characteristics. The Applicant seeks to retain an existing carport on the lot 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 these reasonably sized structure to remain on the lot. The Board is convinced that the shape and location of this existing carport is also reasonable, which is confirmed when reviewing the survey provided by the Applicant. Notably, the carport lines up with the existing driveway and is in a sensible location.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. The Property was developed many years ago with the existing house by a prior owner and the Applicant did not create the unusual slope of the rear of the lot. These conditions have created a limited building envelope on the Property and the unnecessary hardship and exceptional practical difficulty.
 - e. 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 existing carport will have no effect on the character of the neighborhood. The existing carport has been its present location for over ten years with no complaints noted in the record about the structure. In fact, the neighbor most affected by the request supports the request. No evidence was presented that the variances would somehow alter the essential character of the neighborhood. The lack of evidence is telling since, if the carport had somehow altered the essential character of the neighborhood, the Board would expect some evidence thereof.
 - f. 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 carport on the lot. No additions or modifications to those structures are proposed.

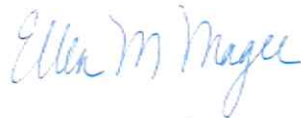
- g. The condition or situation of the Property and the intended use of the Property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.

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 of the Motion to approve were Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, 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



Ellen M. Magee
Chair

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

Date December 3, 2019