

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: TERRY BLACK

(Case No. 12388)

A hearing was held after due notice on December 2, 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 corner front yard setback requirements for an existing shed.

Findings of Fact

The Board found that the Applicant is requesting a variance of 3.75 feet from the fifteen (15) feet corner front setback requirement for an existing shed. This application pertains to certain real property located on the northeast corner of Neptune Drive and Ocean Farm Drive in the Ocean Farm subdivision (911 Address: 100 Ocean Farm Drive, Frankford); said property being identified as Sussex County Tax Map Parcel Number 1-34-17.00-468.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a property survey dated March 2004, an aerial photograph of the property and four letters from neighbors in support of the application.
2. The Board found that the Office of Planning & Zoning received five letters in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Terry Black was sworn in to give testimony about the Application. Mr. Black provided the Board with a power point presentation to support the Application and a letter from the Homeowner's Association in support of the Application.
4. The Board found that Mr. Black testified that the property is unique because it is a corner lot, which has a large underground propane tank and drainage pipe in the back of the lot which limit the potential locations for the proposed shed.
5. The Board found that Mr. Board testified that the back of the property floods so that the shed cannot be placed in that area but is being placed on the highest point of the property and it still needs to be elevated.
6. The Board found that Mr. Black testified that another unique issue of the property was that, because it is a corner front lot, the setback is 30 feet instead of the normal 15 feet.
7. The Board found that Mr. Black testified that the shed will not alter the essential character of the community as there are a number of sheds in the community and the look of the proposed shed matches the siding and color of his house.
8. The Board found that Mr. Black testified that the location of the shed will not obstruct the visibility of motorist on the road.
9. The Board found that Mr. Black testified that there is 15 feet from the end of pavement to the property line.
10. The Board found that Mr. Black had the shed installed on the property by Woodland Sheds of Maryland.
11. The Board found that Mr. Black testified that shed was built on footers with electricity so it would be very difficult to move.
12. The Board found that Patrice Smith was sworn in to testify in support of the Application.

13. The Board found that Ms. Smith stated that she is a Board member of the Ocean Farm Homeowner's Association and it supports the Application.
14. The Board found that Mr. Smith stated that the shed matched the look of the home and was consistent with the essential character of the neighborhood.
15. The Board found that Mr. Smith stated that no homeowners in the community opposed of the Application.
16. The Board found that four people appeared in support of the Application and no parties 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 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 the size and shape. The Property is further unique as it has a propane tank, drainage pipe and flooding in the rear part of the lot. These unique conditions have created a limited building envelope and, as such, the unnecessary hardship and exceptional practical difficulty were not created by the Applicant. The natural restrictions of the property limited where the shed could be located. The lot's building envelope is further limited because it is a corner lot.
 - b. The unnecessary hardship and exceptional practical difficulty related to the fence 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 shed on the lot 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 reasonably sized shed to remain on the lot. The Board is convinced that the shape and location of the shed are also reasonable, which is confirmed when reviewing the exhibits provided by the Applicant.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. The Property has a limited envelope due to its size and the location of a drainage pipe and propane tank. These conditions have created the unnecessary hardship and exceptional practical difficulty.
 - e. 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 Board is convinced that shed will have no effect on the character of the neighborhood. The shed has been on the Property for many years and no complaints were noted in the record about its location. Rather, the Board heard evidence that the homeowners association supports this request. The Board heard no evidence that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board also notes that there is a gap between the edge of paving of the adjacent road and the property line so the encroachment is likely not as noticeable as it would otherwise be if the property line was closer to the roadbed.
 - f. 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 retain the existing shed on the Property. No additions or modifications to the shed are proposed.

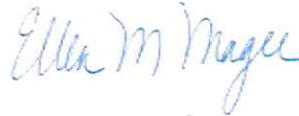
- g. The condition or situation of the Property and the intended use of the Property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.

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. Jeffrey 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 February 4, 2020