

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

**IN RE: JEFFREY A. AMMON AND PORTIA D. AMMON**

**(Case No. 12405)**

A hearing was held after due notice on January 27, 2020. 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 front yard setback, side yard setback, and rear yard setback requirements for existing structures.

Findings of Fact

The Board found that the Applicants are requesting the following variances 1) a variance of 4.4 feet from the forty (40) feet front yard setback requirement for an existing building; 2) a variance of 5.3 feet from the forty (40) feet front yard setback requirement for an existing deck and steps; and 3) a variance of 12.2 feet from the twenty (20) feet rear yard setback requirement for an existing lean-to. In addition to these requests, the Application previously referred to a variance request for a shed and lean-to on the west side of the lot but the Applicants have removed that structure and, per the Applicants' direction, that variance is no longer needed. This application pertains to certain real property that is located on the south side of Double Bridges Road approximately 0.49 miles east of Porter House Road 362 (911 Address: 36902 Double Bridges Road, Frankford) said property being identified as Sussex County Tax Map Parcel Number 1-34-19.00-75.05. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey of the Property dated July 30, 2019, a deed, photographs, property record 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 no correspondence in support of or in opposition to the Application.
3. The Board found that Jeffrey Ammon and Portia Ammon were sworn in to testify about the Application. Raymond Tomasetti, Esquire, presented the Application on behalf of the Applicants.
4. The Board found that Mr. Tomasetti stated that, when the Ammons purchased the Property in 1993, the garage and existing dwelling were already on the lot. Those structures were built in 1988. The Applicants were unaware of the encroachments at that time and only discovered the encroachments when a survey was obtained as they prepared the Property for sale.
5. The Board found that Mr. Tomasetti stated that the lot is irregular in shape and unique in character and the house was built on angle and did not fit within the footprint of the building setbacks.
6. The Board found that Mr. Tomasetti stated that, when the original owner built the house, it was not developed in strict conformance with the zoning ordinance.
7. The Board found that Mr. Tomasetti stated that the Applicants are seeking variances so that the house, steps, and deck can remain in their current location.
8. The Board found that Mr. Tomasetti stated that the variances are necessary to enable legal use of the Property.
9. The Board found that Mr. Tomasetti stated that the house was built in 1988 so the deck, steps, and existing dwelling were not something created by the Applicants.
10. The Board found that Mr. Tomasetti stated that the variances will not affect the essential character of the neighborhood as the deck, steps, and house have been in the existing location since the house was built

11. The Board found that Mr. Tomasetti stated that the State owns adjacent lands.
12. The Board found that Mr. Tomasetti stated that the variances will not be detrimental to the public welfare.
13. The Board found that Mr. Tomasetti stated that the variances are the least modifications possible to bring the dwelling and deck into compliance.
14. The Board found that Mr. Ammon testified that the shed and lean-to on the west side of the lot have been moved but the shed and lean-to on the east side of the lot cannot be moved because of the placement of the new septic drain field.
15. The Board found that Mr. Ammon testified that the lean-to was used to store antique tractors and farm implements.
16. The Board found that Mr. Ammon testified that it would cause structural damage if the lean-to was removed. Ms. Ammon agreed and testified that the lean-to is attached to the garage and that the garage would have to be torn down if the lean-to was removed.
17. The Board found that Ms. Ammon testified that the drain field is located behind the house.
18. The Board found that Ms. Ammon testified that the steps and decks were on the Property when they purchased the lot.
19. The Board found that Ms. Ammon testified that there have been no complaints from neighbors.
20. The Board found that Ms. Ammon testified that the Property is adjacent to a wildlife refuge.
21. The Board found that Ms. Ammon testified that there is approximately 10-15 feet from the edge of paving of the road and the front property line and that there is a swale between the road and the property line.
22. The Board found that Mr. and Ms. Ammon confirmed that the statements made by Mr. Tomasetti as true and correct.
23. The Board found that no parties appeared in support of or in opposition to the Application.
24. 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.
  - a. The Property is unique due to its shape and historical use. The Property is a lot with an angled front yard. This angled lot line has created a unique and limited building envelope. The building envelope is further limited since the Property is improved with a septic system and the drain field greatly limits the areas where structures can be located. These unique characteristics of this Property have created a limited building envelope and have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seeks to retain existing structures 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 Applicants seek to retain existing structures on the lot but are 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 existing structures to remain on the lot. The Board is convinced that the shape and location of these existing structures are also reasonable, which is confirmed when reviewing the survey provided by the Applicants. The Board notes

that only a small portion of the dwelling, deck, and steps encroach into the front yard setback area and that the lean-to is attached to the garage. Removal of the lean-to would structurally affect the garage.

- d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. The Applicants did not construct the existing structures on the lot. Rather, those structures were placed by a prior owner. The Applicants also did not create the unique shape of the lot. These conditions have resulted in a limited building envelope on the Property which is further limited by the septic system location. These conditions have created 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 structures will have no effect on the character of the neighborhood. While the dwelling, steps, and deck encroach into the setback area, there is a gap between the edge of pavement of Double Bridges Road and the front property line such that the encroachments are not as noticeable as it would if the edge of pavement matched the front property line. The Board notes that there were no complaints from neighbors noted in the record about the existing structures. 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 existing structures 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 represents the least modifications possible of the regulations at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to retain the existing structures 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.

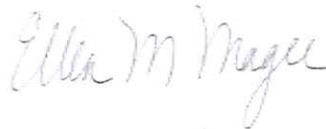


The Board approved the variance application finding that it met the standards for granting a variance.

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 the variance request were Dr. Kevin Carson, Mr. Jeffrey Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion.

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 March 17, 2020.