

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ERIC REED

(Case No. 12437)

A hearing was held after due notice on June 15, 2020. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, and Mr. John Williamson.

Nature of the Proceedings

This is an application for a variance from the rear yard setback requirement for an existing structure.

Findings of Fact

The Board found that the Applicant is requesting a variance of 4.4 feet from the twenty (20) feet rear yard setback requirement for an existing addition to an existing accessory structure. The application pertains to certain real property located on the east side of Shoemaker Drive approximately 325 feet north of East Redden Road (911 Address: 17863 Shoemaker Drive, Georgetown); said property being identified as Sussex County Tax Map Parcel Number 1-35-6.00-27.02. 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 October 25, 2015, 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 Eric Reed was sworn in to testify about the Application.
4. The Board found that Mr. Reed testified that, in 2014, he had a building constructed on the property by DeShields Construction and he thought the builder obtained all final approvals. In December 2019, he learned that the certificate of compliance had not yet been issued and he received a certificate of compliance in January 2020.
5. The Board found that Mr. Reed testified that, thereafter, he hired a builder to construct an addition to the garage for his boat. The addition measures 30 feet by 24 feet. The existing garage measures 30 feet by 40 feet and has electric.
6. The Board found that Mr. Reed testified that, after construction started, he found out that the building did not meet the setbacks. The poles were set for the building when the Applicant received a notice of violation.
7. The Board found that Mr. Reed testified that moving the building will hinder the appearance of the entire structure.
8. The Board found that Mr. Reed testified that his builder obtained the permit and he thinks the builder mistakenly believed the other part of the building was compliant.
9. The Board found that Mr. Reed testified that the Property is a long but shallow lot.
10. The Board found that Mr. Reed testified that the well is in the front yard and the septic is on the north side yard.
11. The Board found that Mr. Reed testified that the Property is unique because it is narrow in depth.
12. The Board found that Mr. Reed testified that the Property can only be accessed by a private roadway.
13. The Board found that Mr. Reed testified that the side yard became the rear yard following a subdivision of the property.

14. The Board found that Mr. Reed testified that the Property cannot otherwise be developed as it is an addition to the original garage.
15. The Board found that Mr. Reed testified that the need for the variance was not created by the Applicant as the current building was given a certificate of occupancy by Sussex County.
16. The Board found that Mr. Reed testified that granting the variance will not alter the essential character of the neighborhood but will improve the area.
17. The Board found that Mr. Reed testified that the variance requested is a minimum variance request to complete the addition that is in the process of being constructed.
18. The Board found that Jeanne Shoemaker Reed and William Betts, who are the Applicant's neighbors, were sworn in to give testimony in support of this Application.
19. The Board found that Ms. Reed testified that she is the Applicant's mother and owns the property to the south of the subject property. She testified that, if the addition was moved forward, it would block the sightlines to her property and that she would like the Applicant to be able to see her property.
20. The Board found that two people appeared in support of and no parties appeared in opposition to the Application.
21. 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 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 its odd shape. The lot is wide but not deep. The Property is also improved by a well and septic system which limit the buildable area. The lot's unique conditions limit the buildable area available to the Applicant and have created an unnecessary hardship and an exceptional practical difficulty for the Applicant who seeks to retain an addition to a storage building on the lot. The storage building affords the Applicant with functional space.
 - 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 a unique shape and the buildable area thereof is limited due to the shape of the lot. The Applicant seeks to retain an addition to a storage building 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 reasonably sized storage building addition to remain on the Property. The Board is convinced that the shape and location of the storage building addition is also reasonable, which is confirmed when reviewing the survey provided by the Applicant.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. The Applicant did not create the unusual shape of the Property. The unique shape of the Property is clear when reviewing the survey. The Board is convinced that the unnecessary hardship and exceptional practical difficulty were not created by the Applicant but was created by the lot's unique characteristics.
 - 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 the storage building addition will have no effect on the character of the neighborhood. The storage building addition is attached to an existing storage building and the addition encroaches no farther into the setback area than the existing storage building. The existing storage

building has been on the lot for several years and no complaints about its location were noted in the record. There was no evidence that the location of the storage building addition in the rear yard setback area would somehow affect the neighborhood and no evidence was presented that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board also notes that neighbors support the request.

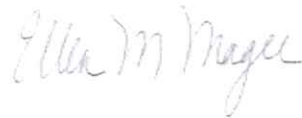
- f. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to retain a storage building addition on the Property.
- 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, and Mr. John Williamson. No Board Member voted against the Motion to approve the variance application. Mr. Brent Workman did not participate in the discussion or vote on this 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 August 4, 2020.