

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY  
IN RE: DANIEL OSTINVIL**

**(Case No. 12471)**

A hearing was held after due notice on September 21, 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 a variance from the rear yard setback requirement for existing structures.

Findings of Fact

The Board found that the Applicant is requesting a variance of 13.9 feet from the fifteen (15) feet rear yard setback requirement for an existing building with addition. The application pertains to certain real property located on the west side of North Poplar Street at the intersection of Old Sailor Road (911 Address: 31016 North Poplar Street, Laurel); said property being identified as Sussex County Tax Map Parcel Number 2-32-12.18-51.00. 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 January 7, 2020, a letter from Ray Sisk, photographs, a copy of the Conditional Use Approval No. 2187, building permit 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 Daniel Ostinvil was sworn in to testify about the Application.
4. The Board found that Mr. Ostinvil testified that the building was existing and is located in the rear yard and that the building is used for storage.
5. The Board found that Mr. Ostinvil testified that the Property is unique as it is a small lot with an irregular shape.
6. The Board found that Mr. Ostinvil testified that the building was erected in this location by a prior owner and he constructed an addition to the front of the building. The variance is needed for the rear of the building and, according to the Applicant, the building has always encroached into the rear yard setback area.
7. The Board found that Mr. Ostinvil testified that, since the building is existing and has been in its location for some time, it would not be feasible to move it.
8. The Board found that Mr. Ostinvil testified that the septic is located to the right side of the lot and the septic also limits the placement options for the building.
9. The Board found that Mr. Ostinvil testified that the exceptional practical difficulty has not been created by the Applicant as this was built by the previous owner.
10. The Board found that Mr. Ostinvil testified that the variance will not alter the essential character of the neighborhood.
11. The Board found that Mr. Ostinvil testified that there have been no complaints from neighbors regarding this Property.
12. The Board found that Mr. Ostinvil testified that the variance requested is the minimum variance to afford relief.
13. The Board found that no one appeared in support of or opposition to the Application.
14. 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.

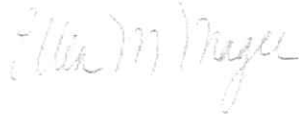
- a. The Property is unique as it is small and oddly shaped. The lot's unique conditions limit the buildable area available to the Applicant and have created an unnecessary hardship and an exceptional practical difficulty for the Applicant who seeks to retain an existing storage building on the lot. The Board also notes that the lot's developable area is further limited by the location of the well and septic.
- 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 size and the buildable area thereof is limited due to the size and shape of the lot. The Applicant seeks to retain an existing storage building 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 building to remain on the Property. The Board is convinced that the shape and location of the building 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 or size of the Property or place the building on the lot. The unique size and shape of the Property are 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 and the development by a prior owner.
- 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 will have no effect on the character of the neighborhood. The building has been on the Property for many years and no complaints were noted in the record. There was no evidence that the location of the storage building 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.
- 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 reasonably sized storage building on the Property. No additions or modifications to the building in the rear yard setback area 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 November 16, 2020.