

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: PATRICK TELL

(Case No. 12603)

A hearing was held after due notice on September 13, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

This is an application for variances from the front yard, side yard, and corner front yard setback requirements for existing structures.

Findings of Fact

The Board found that the Applicant is requesting the following variances: 1) a variance of 16.2 feet from the thirty (30) feet front yard setback requirement for an existing shed; 2) a variance of 2.7 feet from fifteen (15) feet corner front yard setback requirement for an existing shed; 3) a variance of 5.8 feet from the thirty (30) feet front yard setback for an existing dwelling; 4) a variance of 2.5 feet from the five (5) feet side yard setback requirement on the northeast side for an existing dwelling; and 5) a variance of 3.2 feet from the fifteen (15) feet corner front yard setback requirement for an existing porch. This application pertains to certain real property located on the east side of Oak Orchard Road at the intersection of River Road and Oak Orchard Road (911 Address: 32746 Oak Orchard Road, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 2-34-34.12-78.00. 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 February 23, 2019, 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. This Application was heard at the same time as the application for Case No. 12602 since both properties are owned by the same owner, are located near each other, and are similar requests.
4. The Board found that Patrick Tell was sworn in to give testimony about the Application.
5. The Board found that Mr. Tell testified that the Property is historic and the buildings are over 100 years old. He noted that the structures were on the Property when he purchased it.
6. The Board found that Mr. Tell testified that the Property has flooding issues and the house needs to be raised or it will fall down.
7. The Board found that Mr. Tell testified that the requests will not add to the non-conformity as the Applicant intends to raise the existing dwelling in its current location. He noted that the dwellings will be 8 feet below the maximum height requirement under the Code.
8. The Board found that Mr. Tell testified that portions of the house are rotting and need replacement.
9. The Board found that Mr. Tell testified that he owns other properties nearby.
10. The Board found that Mr. Tell testified that the shed will remain in its current locations as only the house is being raised.
11. The Board found that Mr. Tell testified that the house is currently below ground level.

12. The Board found that Mr. Tell testified that the steps for the dwelling will comply with code and will be off the bayside of the house.
13. The Board found that Mr. Tell testified that most of the structures have been on the Property since the early 1900s.
14. The Board found that no one appeared in support of or in opposition to the Application.
15. 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 a small lot that was developed with a dwelling and related structures many years ago, likely prior to the enactment of the Sussex County Zoning Code. The structures encroach into the setback areas. The Applicant needs to raise the house because of flooding issues on the Property but he is unable to do so without violating the setback requirements. The flooding has caused the house to deteriorate and the Applicant intends to renovate the house as well. The lot is a small lot measuring only 5,299 square feet and the buildable area is limited by the small lot size and the historical development of the lot. The lot also has an unusual shape as it is only 35.91 feet wide at the rear yard and is limited by the corner front yard setback requirement as well. It is clear to the Board that the lot's unique characteristics have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to retain existing structures on the lot and to elevate the existing dwelling.
 - 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 is a small, oddly shaped lot subject to flooding and was developed by a dwelling and related structures many years ago. The Applicant seeks to retain the structures and to elevate the house to alleviate flooding concerns 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 the Applicant to retain the existing structures and to elevate the existing house on the Property. The Board is convinced that the shape and location of these structures are also reasonable, which is confirmed when reviewing the survey provided by the Applicant.
 - d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicant. The Applicant did not create the lot or the flooding problems or place the existing dwelling and structures on the lot. Those structures were placed on the lot by a prior owner years ago. Those conditions have limited the building envelope of the lot, which is an already small and unusually shaped lot with flooding problems. The unique characteristics of the Property are clear when reviewing the survey and the testimony from the Applicant. The Board is convinced that the unnecessary hardship and exceptional practical difficulty were not created by the Applicant but were created the lot's unique characteristics. The Applicant were greatly constrained by the existing development of the lot and the small size thereof.
 - 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 structures will have no effect on the character of the neighborhood. The dwelling and the related structures have been on the Property for many years and no complaints about those structures were noted in the record. The only change in the structures is that the Applicant is elevating the existing house above the flood plain. Steps to the elevated house will be within the building envelope. There was no evidence that the structures would present visibility concerns along adjacent roads. Furthermore, no evidence was presented which would indicate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.

- 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 these structures and to elevate the house as proposed. The Board notes that the Applicant was constrained by the prior development and the unique conditions of the lot. Furthermore, the Applicant will construct the steps to fit within the building envelope.
- 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, Mr. Travis Hastings, Mr. Jordan Warfel, Mr. John Williamson. No Board Member voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



John Williamson
Chair

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

Date November 1, 2021.