

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: J&J COOPER FAMILY, LLC

(Case No. 12660)

A hearing was held after due notice on February 21, 2022. 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 a variance from the side yard setback requirement for existing structures.

Findings of Fact

The Board found that the Applicant is requesting the following variances:

1. A variance of 5.6 feet from the ten (10) feet side yard setback requirement on the west side for an existing shed; and
2. A variance of 6.5 feet from the ten (10) feet side yard setback requirement on the west side for an existing garage.

This property is located at the south side of Venture Lane within the Whites Neck Village subdivision (911 Address: 35934 Venture Lane, Millville) said property being identified as Sussex County Tax Map Parcel Number 134-8.00-24.00 ("the Property"). 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 September 21, 2021, 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 Guy Cooper was sworn in to testify about the Application.
4. The Board found that Mr. Cooper testified that his father passed away and the Property was left to him and his mother and they were unaware of the setback violations.
5. The Board found that Mr. Cooper testified that he is trying to clean up this non-conforming setback from 1985 as the Property has been sold "as is".
6. The Board found that Mr. Cooper testified that, if his father had he known about the setback, he would not have built the structures in violation.
7. The Board found that Mr. Cooper testified that there have been no complaints from anyone else in the community about the encroachments.
8. The Board found that Mr. Cooper testified that the variances are the minimum variances to afford relief.
9. The Board found that Mr. Cooper testified that he is doing this as a courtesy to the buyer of the Property.
10. The Board found that Mr. Cooper testified that there is one garage with a lean-to but the shed closest to Venture Lane has been removed.
11. The Board found that Mr. Cooper testified that the Property is on county sewer and water currently but was served by septic and well when the structures were constructed.
12. The Board found that Mr. Cooper testified that the septic was located on the south side of the Property, where the lean-to is located, and would have limited the buildable area.

13. The Board found that Mr. Cooper testified that, at the time the buildings were placed, there were trees also limiting the buildable area.
14. The Board found that Mr. Cooper testified that the garage measures approximately 24 feet by 24 feet and the lean-to comes off about 8-10 feet. He noted that the garage is wider than the lean-to.
15. The Board found that Allison Newsom and James Maloney were sworn in to testify in support of this variance.
16. The Board found that two individuals appeared in support of and no one 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 for the variance 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 as it is a corner lot developed over 35 years ago by a prior owner. At that time, the Property was improved by a septic system and well and was burdened by trees. These conditions are unique and have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to retain the existing garage and lean-to 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 a unique and limited buildable area. The Applicant seeks to retain a reasonable garage and lean-to 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 those structures to remain on the Property. The Board is convinced that the shape and location of the structures are also reasonable, which is confirmed when reviewing the survey provided by the Applicant. The Board notes that the structures have been on the lot since 1985.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. As previously stated, the Property has unique conditions and these conditions have resulted in a limited building envelope on the Property. These conditions have created the unnecessary hardship and exceptional practical difficulty. Moreover, the Applicant did not place the encroaching structures on the lot.
 - 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 garage and lean-to will have no effect on the character of the neighborhood. The structures have been on the Property since 1985 and there were no complaints about those structures in the record. There was no substantial evidence that the structures have or would somehow alter the essential character of the neighborhood. The Board notes that no letters in opposition or testimony in opposition were presented to the Board.
 - f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulation at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain the structures on the Property. 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 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 the variance were Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. Travis Hastings, Mr. Jordan Warfel, and 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 April 18, 2022.