

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ADAN CASAS

(Case No. 12684)

Public hearings were held after due notice on May 2, 2022, and June 27, 2022. The Board members present were: Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

This is an application for variances from the side yard setback, rear yard setback, and stable structure for personal keeping of animals setback requirements for existing structures

Findings of Fact

The Board found that the Applicant is requesting the following variances¹:

1. A variance of 40 feet from the 50 feet rear yard setback requirement for an existing stable;
2. A variance of 33 feet from the 50 feet rear yard setback requirement for an existing stable;
3. A variance of 25.7 feet from the 50 feet side yard setback requirement on the north side for an existing stable;
4. A variance of 34.3 feet from the 50 feet side yard setback requirement on the south side for an existing stable;
5. A variance of 5.2 feet from the 15 feet side yard setback requirement on the south side for an existing detached garage;
6. A variance of 4.5 feet from the 15 feet side yard setback requirement on the south side for an existing detached garage;
7. A variance of 4.2 feet from the 15 feet side yard setback requirement on the south side for an existing porch and dwelling; and
8. A variance of 3.9 feet from the 15 feet side yard setback requirement on the south side for an existing dwelling, porch, and steps.

This application pertains to certain real property located on the west side of Seaford Road approximately 0.74 miles south of Bethel Road / Camp Road (911 Address: 30016 Seaford Road, Laurel); said property being identified as Sussex County Tax Map Parcel Number 232-12.00-32.00 (hereinafter "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 30, 2021, notes from Sussex County inspectors, 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 Adnan Casas was sworn in, through an interpreter, to give testimony about the Application.
4. The Board found that Mr. Casas testified that he was approached to remove a structure on his property as it was not built to Code and that he seeks to remedy this violation.

¹ These variances are the updated requests following the submission of an updated site plan and the Applicant's testimony at the hearing on June 27, 2022.

5. The Board found that Mr. Casas testified that the structure is existing and built into the ground and he is asking to keep it and the structure was there when he purchased the Property.
6. The Board found that Mr. Casas testified that the structure in the rear yard was built by him about 7-8 years ago and he has had no complaints. He noted that his 2 horses are housed in this structure, which backs up to the railroad tracks. He also testified that the structure is in need of no repairs, has a metal roof, and does not need to be power washed frequently.
7. The Board found that Mr. Casas testified that he has a septic system on the Property where "353" is noted on the aerial photograph.
8. The Board found that Mr. Casas testified that the structure in the rear corner of the Property is a roof used for shade for his horses, which he built on the Property and he has received no complaints. He is willing to remove that structure.
9. The Board found that Mr. Casas testified that the shed in the middle of the Property was not built by him and it is used for storage of work materials and tools. He has received no complaints about that structure either.
10. The Board found that Mr. Casas testified that he did not build the house but he built the addition about three (3) years ago and he did not obtain permits. He noted that there have been no complaints about the addition.
11. The Board found that Mr. Casas testified that the lot is long and narrow.
12. The Board found that Mr. Casas testified that that he would be able to move the shed but the barn is on a foundation and would not be as easy to move.
13. The Board found that Mr. Casas testified that there is an active train track behind the Property. He noted that the train company has not complained to him about the location of the structures.
14. The Board found that Mr. Casas testified that he could possibly bring the barn in by 2 feet but a greater reduction would be too small for the horses. He would, however, be open to submitting a plan of action to gain compliance.
15. The Board found that Mr. Casas testified that that it would be a financial burden to demolish the structures.
16. The Board voted to leave the record open for the limited purpose of allowing the Applicant to submit a revised site plan by June 20, 2022, showing the proposed relocation of the structures in the rear of the Property and to allow for public comment at the Board's meeting on June 27, 2022, as to the proposed relocation only.
17. On June 27, 2022, the Board reviewed an updated site plan dated June 20, 2022, and held a second public hearing on the matter; at which time Mr. Casas appeared and was sworn in to testify. At the hearing, staff confirmed that the proposed location of the stable will be greater than 200 feet from neighboring dwellings.
18. The Board found that Mr. Casas testified that, based on the new plan, he will be cutting the barn in half and reusing the materials to reconstruct on the opposite side away from the rear property line.
19. The Board found that Mr. Casas testified that the shed in the rear corner will be removed completely and that the shed in the middle of the Property will be moved into compliance.
20. The Board found that Mr. Casas testified that the septic system is located in the area noted as "28,770 Sq. Ft." on the updated site plan.
21. The Board found that, at both public hearings, no one appeared in support of or in opposition to the Application.
22. 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, as amended with the June 20, 2022, site plan, met the standards for granting a variance. The findings

below further support the Board's decision to approve the Application, as amended.

- a. The Property is unique as it is a narrow but long lot measuring only 79.77 feet wide by 366.70 feet deep. The Property is improved by a septic system and that septic system takes up a significant portion of the building envelope. The Applicant has horses and needs a stable to place those horses but is unable to locate the stable on the Property in compliance with the Code due to the unique conditions of the Property. The Property was also previously improved with a dwelling and driveway and the Applicant was limited in where he could construct a reasonable addition and garage due to the location of those improvements. These unique conditions greatly limit the buildable area of the lot and 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.
- 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 narrow lot and has a limited building envelope due to the narrowness of the lot and septic system. The Applicant seeks to retain the existing structures on the Property 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 the Applicant to retain and relocate the existing structures on the Property as shown on the site plan dated June 20, 2022. 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 Applicant proposes to relocate the stable away from the rear property line and that the stable is needed for him to keep his horses. The Board also notes that the garage and dwelling are needed for the reasonable and intended use of the lot.
- d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicant. The Applicant did not create the Property or place the septic system on the lot. Those conditions have limited the building envelope of the lot. Moreover, the Applicant did not place the existing house on the lot. The unique characteristics 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 were created the lot's unique characteristics and the prior development 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 as shown on the June 20, 2022, site plan will have no effect on the character of the neighborhood. The Applicant will be relocating the stable away from the rear property line and the rear of the Property is adjacent to an active railroad line. There was no evidence that the stable would present visibility concerns along the railroad. The Applicant will also be bringing other sheds on the Property into compliance with the Sussex County Zoning Code. The Board also notes that the dwelling has been on the Property for many years and no complaints about those structures were noted in the record. 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. The Board also notes that the stable is located at least 200 feet from neighboring dwellings.

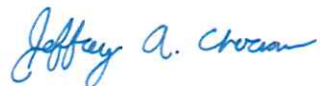
- f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain and relocate the existing structures on the lot as shown on the June 20, 2022, site plan. The Board notes that the Applicant was constrained by the unique conditions of the lot and has agreed to relocate the stable, as proposed, and to bring the sheds into compliance with the Code to minimize the variances requested. This approval is based on those requirements.
- 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, as amended, finding that it met the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application, as amended, 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, and Mr. John Williamson. No Board Member voted against the Motion to approve the variance application, as amended.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



Jeffrey Chorman
Chair

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

Date August 15, 2022.