

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JOHN T. COVELLI

(Case No. 12751)

A hearing was held after due notice on October 17, 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 variances from the side and rear yard setback requirements for an existing shed.

Findings of Fact

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

1. A variance of 3 feet from the five (5) feet side yard setback requirement on the south side for an existing shed; and
2. A variance of 3 feet from the five (5) feet rear yard setback requirement for an existing shed.

This application pertains to certain real property located on the east side of Poole Court (911 Address: 30954 Poole Court, Dagsboro) said property being identified as Sussex County Tax Map Parcel Number 134-6.00-208.00 ("the Property"). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, a survey of the Property dated March 29, 2018, a letter of support, and a survey of the Property dated August 10, 2022.
2. The Board found that the Office of Planning & Zoning received one (1) letter in support of the Application and no correspondence in opposition to the Application.
3. The Board found that John Covelli was sworn in to testify about the Application.
4. The Board found that Mr. Covelli testified that the shed has been in place since 2018 in its present position and that, prior to 2018, the shed was on the north side of the Property in a similar manner. He noted that he constructed a new house on the lot in 2018 and moved the shed to the south side of the Property and that he was under the incorrect assumption that, for a movable shed with no foundation under it of this size, it could be 2 feet off the side and rear property lines.
5. The Board found that Mr. Covelli testified that his neighbor submitted a letter in support of the Application.
6. The Board found that Mr. Covelli testified that, if he were to move the shed to be in compliance with the Code, he would be close to, if not on top of, the "D" box for his septic system.
7. The Board found that Mr. Covelli testified that the item marked tank on the survey is the septic tank and that along the right side of the house is the drainage field.
8. The Board found that Mr. Covelli testified that he does not see where the shed is bothering anyone.
9. The Board found that Mr. Covelli testified that the shed measures 10 feet by 12 feet or 8 feet by 12 feet.
10. The Board found that Mr. Covelli testified that to the south side of the house is a concrete pad which is fenced in for his dog and that part of the drain field is underneath the concrete pad.
11. The Board found that Mr. Covelli testified that he hired a company to move the shed.

12. The Board found that Mr. Covelli testified that the septic and house were there when he purchased the Property.
13. The Board found that Mr. Covelli testified that, if he placed the shed next to the pole barn or behind the house, it would be difficult to access with his truck.
14. The Board found that Janice Tunnell was sworn in to testify in support of the Application.
15. The Board found that Ms. Tunnell testified that she is the president of the Dogwood Acres voluntary homeowners association and that this neighborhood is a very unique community and is changing in character.
16. The Board found that Ms. Tunnell testified that Mr. Covelli's shed is not out of the character of the neighborhood and that the shed does not pose any problems. She noted that no one has ever called her about the shed and that most of the complaints she fields are for vehicles and boats.
17. The Board found that one person appeared in support of and no one appeared in opposition to the Application.
18. 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 size and septic system. The lot consists of 10,000 square feet but a significant part of the side and rear yard are used for a septic system and drainfield. As a result, the Applicant was limited in where he could reasonably place the shed. These conditions limit the building envelope of the Property and have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to retain the existing shed on the site.
 - 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 unique physical characteristics and the buildable area thereof is limited due to those characteristics. The Applicant seeks to retain an existing shed on the lot 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 this reasonably sized shed to remain on the lot. The Board is convinced that the shape and location of the structure are also reasonable, which is confirmed when reviewing the survey provided by the Applicant. The Board notes that the shed cannot be moved into compliance with the Code while providing the Applicant with reasonable access to the shed.
 - 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.
 - 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 shed will have no effect on the character of the neighborhood. The shed allows the Applicant to store his belongings in a sheltered environment and the Applicant's neighbor and homeowners association support to the request. No evidence was presented which

demonstrates that the variances would somehow alter the essential character of the neighborhood.

- 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 a reasonably sized shed on the Property. No additions or modifications to the shed are proposed. The shed also cannot be moved to minimize the need for variances without affecting the usability of the shed.
- 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, and Mr. John Williamson. No Board Member voted against the Motion to approve the variance application.

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 December 19, 2022