

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: CARROLL W. BRASURE, TRUSTEE

(Case No. 12414)

A hearing was held after due notice on February 17, 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 an existing structure.

Findings of Fact

The Board found that the Applicant is requesting a variance of 7.9 feet from the twenty (20) feet rear yard setback requirement for an existing storage building. The application pertains to certain real property located on the east side of Dickerson Road approximately 340 feet north of Lighthouse Road (Route 54) (911 Address: 38187 Dickerson Road, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-18.00-24.00. After a public hearing, the Board made the following findings of fact.

1. The Board was given copies of the Application, a deed to the Property, a certificate of compliance, a survey of the Property dated December 13, 2019, 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 Carroll W. Brasure was sworn in to testify about the Application. Timothy Willard, Esquire, appeared on behalf of the Applicant and he submitted pictures for the Board to review.
4. The Board found that Mr. Willard stated that the Applicant owns a pest control and basement business which is growing.
5. The Board found that Mr. Willard stated that the Applicant seeks a variance for a lean-to that is attached to a building to the rear of the Property.
6. The Board found that Mr. Willard stated that the office building is located in the middle of the lot and an L-shaped storage building is located to the rear. The L-shaped building covers most of the rear lot line at the setback line and was constructed in 1977.
7. The Board found that Mr. Willard stated that, approximately 20 years ago, the lean-to was constructed to store a tractor and the lean-to was enclosed. The lean-to is approximately 10 feet wide and 55 feet long and it projects into the rear yard setback.
8. The Board found that Mr. Willard stated that the lean-to is not often used.
9. The Board found that Mr. Willard stated that the variance will not alter the essential character of the neighborhood as the surrounding area is wooded and the structure has not adversely affected neighboring properties.
10. The Board found that Mr. Willard stated that there is a tax ditch prong adjacent to the rear of the Property which parallels the rear property line and creates a natural buffer with neighbors.
11. The Board found that Mr. Willard stated that the Property is unique as it has a unique shape, being longer on the north side than the south side.
12. The Board found that Mr. Willard stated that access to the rear of the Property is limited, so the storage shed for the tractor could not be placed elsewhere on the Property.

13. The Board found that Mr. Willard stated that the Applicant did not create the exceptional practical difficulty but, rather, the shape of the lot, and the elongated existing building caused the difficulty.
14. The Board found that Mr. Willard stated that this is a minimum variance to afford relief and to allow the lean-to to remain in its current position.
15. The Board found that Mr. Brasure affirmed the statements made by Mr. Willard as true and correct.
16. The Board found that Mr. Brasure testified that part of the lean-to was existing for about 15-18 years and he recently added to the square footage of the building.
17. The Board found that Mr. Brasure testified that no chemicals are stored in the lean-to and he uses it to store his Jeep.
18. The Board found that Mr. Brasure testified that there is only 1 entrance to the lean-to.
19. The Board found that Mr. Brasure testified that he has received no complaints about the structure.
20. The Board found that no one appeared in support of or in opposition to the Application.
21. 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 odd shape. The lot is angled and the north side of the lot is significantly deeper than the south side of the lot. 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 a storage building on the lot. The storage building affords the Applicant with functional space.
 - 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 the buildable area thereof is limited due to the shape of the lot. The Applicant seeks to retain a storage building 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 reasonably sized storage building to remain on the Property. The Board is convinced that the shape and location of the storage 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 Applicants. The Applicant did not create the unusual shape of the Property. The unique shape of the Property is 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.
 - 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 storage building is located to the rear of the Property near a tax ditch separating neighboring lands. The rear of the Property is, thus, shielded. The storage building has been on the Property for many years without complaint. 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. The lack of evidence is telling since the structure has been on the Property many years and, if an adverse effect from the structure existed, the Board would expect evidence as such.

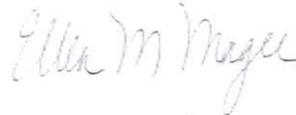
- f. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to retain a storage building on the Property. No additions or modifications to the storage building 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 May 5, 2020.