

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: ROBERT OGDEN & WENDY OGDEN**

**(Case No. 12058)**

A hearing was held after due notice on November 20, 2017. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the side yard and rear yard setback requirements.

Findings of Fact

The Board found that the Applicants are seeking a variance of 4.5 feet from the five (5) feet side yard setback requirement on the north side and a variance of 2.2 feet from the five (5) feet rear yard setback requirement for a shed. This application pertains to certain real property located on the northeast side of Elmwood Avenue West, approximately 958 feet south of Woodland Circle (911 Address: 23611 Elmwood Avenue West, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-17.08-227.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, drawings of the shed, Findings of Fact for Case No. 11652, pictures of the shed, and a survey of the Property dated September 1, 2015.
2. The Board found that the Office of Planning & Zoning received seven (7) letters in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Robert Ogden was sworn in to testify about the Application. Mr. Ogden submitted a letter from the homeowners association in support of the Application.
4. The Board found that Mr. Ogden testified that the homeowners association supports the variance request.
5. The Board found that Mr. Ogden testified that he proposes to replace the existing shed. A variance was previously granted for the existing shed.
6. The Board found that Mr. Ogden testified that the new shed will measure 16 feet by 8 feet and there is a concrete slab under the shed.
7. The Board found that Mr. Ogden testified that the rear of the lot is only 42 feet wide. An elevated brick patio and stone walkway are located in the rear yard.
8. The Board found that Mr. Ogden testified that the shed cannot be placed elsewhere.
9. The Board found that Mr. Ogden testified that the original shed rotted out and the previous owner placed siding around the shed.
10. The Board found that Mr. Ogden testified that the original shed is dilapidated and needs to be removed.
11. The Board found that Mr. Ogden testified that the new shed will improve the surrounding area.
12. The Board found that Mr. Ogden testified that the variances requested represent the minimum variances necessary to afford relief.
13. The Board found that Mr. Ogden testified that the new shed will not be any closer to the rear yard than the existing shed and the new shed will be farther from the side property line than the existing shed.
14. The Board found that no parties 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 due to its size and shape, which is apparent when reviewing the survey. The rear of the Property is particularly narrow as it is only 42.72 feet wide. The unique size and shape of the lot limit the Property's building envelope. The Property's unique characteristics have created an exceptional practical difficulty for the Applicants who seek to replace a shed on the lot. The situation is also unique because the existing shed, for which a variance was previously granted, is dilapidated and needs to be removed.
- b. 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 size and shape and the buildable area thereof is limited due to its size and shape. The Applicants seek to replace a reasonably sized shed 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 Applicants to replace the shed. The Board is convinced that the shape and location of this shed are reasonable, which is confirmed when reviewing the survey provided by the Applicants.
- c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual size and shape of the Property. This unusual building envelope has created an exceptional practical difficulty for the Applicants. The Applicants also did not build the existing shed, which is now dilapidated and needs to be replaced.
- d. 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 neighborhood is a residential area and a shed has been on the lot for many years. No complaints about the location of the shed have been submitted into the record. Furthermore, no evidence was presented which convinced the Board that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. Rather, the Board received letters of support from neighbors and the homeowners association. The Board also notes that the shed will encroach less into the side yard setback than the existing shed.
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represents the least modifications possible of the regulations at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to replace the shed on the Property. The shed will encroach no farther into the setback areas than the existing shed.

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 were Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman. No Board Members voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY

  
Dale Callaway  
Chairman

If the use is not established within one (1)  
year from the date below the application  
becomes void.

Date January 23, 2018.