

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: WILLIAM D. MIDDLETON & SUZANNE R. MIDDLETON

(Case No. 12199)

A hearing was held after due notice on September 17, 2018. 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 a variance from the side yard setback requirement for an existing structure.

Findings of Fact

The Board found that the Applicants are seeking a variance of 2.7 feet from the ten (10) feet side yard setback requirement on the west side for the existing attached shed. This application pertains to certain real property located on the north side of Hidden Bay Drive, approximately 256 feet east of Leisure Drive in the Refuge of Dirickson Creek Subdivision (911 Address: 37309 Hidden Bay Drive, Selbyville) said property being identified as Sussex County Tax Map Parcel Number 5-33-12.00-614.00.

1. The Board was given copies of the Application, a survey of the Property dated July 2, 2018, a letter from the Refuge at Dirickson Creek's Homeowners Association President, letters of support, pictures of the Property, a building permit application, 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 the Application or in opposition to the Application.
3. The Board found that William Middleton and Suzanne Middleton were sworn in to testify about the Application.
4. The Board found that Mr. Middleton testified that the homeowners' association requires that sheds be attached to the dwelling and use the same materials as the dwelling.
5. The Board found that Mr. Middleton testified that the homeowners' association supports the Application and that, prior to building the shed, the Applicants received approval from the association.
6. The Board found that Mr. Middleton testified that the Applicants retained a builder to construct the shed and the builder obtained the building permit. Only after the shed was constructed did the Applicants learn about the encroachment.
7. The Board found that Mrs. Middleton testified that the Property is unique due to the placement of the home and the home on the neighbor's property. The Applicant's house faces Hidden Bay Drive at a straight angle but the neighboring house faces Hidden Bay Drive at an angle. This odd angle, as shown on the pictures presented by the Applicants, demonstrates that there is a wider gap between the two dwellings than would otherwise be expected. The neighbor closest to the shed has a crawl space entrance and HVAC system on that side of the home so the impact on the neighbor is minimal.
8. The Board found that Mrs. Middleton testified that the Property could not otherwise be developed due to the easement as it is on the same side of the house as the outdoor shower. The Property is also limited due to homeowner association requirements. The homeowners association requires that sheds be placed on the side of the Property where the garage is located.
9. The Board found that Mrs. Middleton testified that the shed is adjacent to an outdoor shower.

10. The Board found that Mrs. Middleton testified that the neighbors support the Application.
11. The Board found that Mrs. Middleton testified that the shed is for a riding lawn mower and is the minimum size for a riding lawn mower.
12. The Board found that Mrs. Middleton testified that the shed is attractive and matches the house. The shed will not alter the look of the neighborhood and the shed is similar in size to other sheds in the neighborhood.
13. The Board found that Mrs. Middleton testified that there is no interior access to the home from the 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 as it is burdened by certain restrictive covenants in the neighborhood which limit its development. Those covenants include a requirement that all sheds be attached to the dwelling and be located on the same side of the home as the garage. This restriction significantly limits the Applicants' ability to construct a reasonably sized shed large enough to accommodate a riding lawn mower. The Applicants sought to construct a shed and relied on a builder only to later find out that the shed encroached into the setback area. These unique conditions have created an exceptional practical difficulty for the Applicants who seek to retain the attached shed.
 - b. Due to the uniqueness of the lot and conditions, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property is limited by restrictive covenants and cannot accommodate an attached shed without a variance. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the shed to remain on the Property. The Board is convinced that the shape and location of the shed are also reasonable, which is confirmed when reviewing the survey provided by the Applicants. The shed, which is not large, is able to house the Applicant's riding lawn mower – a use which was the main purpose of the shed.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the restrictive covenants limiting the location of the shed. The Applicants also relied on their builder to construct the shed in compliance with the Sussex County Zoning Code only to later learn of the encroachment. These conditions have created the exceptional practical difficulty.
 - d. 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 shed will have no effect on the character of the neighborhood. The shed is small and only a small portion of the shed encroaches into the setback area. If the shed were detached, no variance would be needed but the community's requirements dictate that the shed be attached to the home. There is no internal access to the home from the shed so, while it is attached to the home, it functions as though it is detached. Though it will encroach into the side yard setback area, there was no evidence that shed will have any impact on the neighboring property. The pictures demonstrate that there is significant space between the shed and the neighboring dwelling. The shed also matches the existing

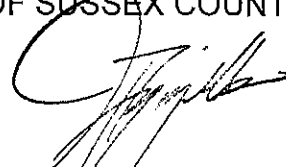
- dwelling. Notably, the Applicants also received support from neighbors and the homeowners' association. No evidence was presented that the variance would somehow alter the essential character of the neighborhood.
- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represent the least modification possible of the regulation at issue. The Applicants have demonstrated that the variance sought will allow the Applicants to retain a reasonably sized shed on the Property. No additions or modifications to the attached shed are proposed.

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 Member voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



John Mills
Chairman

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

Date November 20, 2018.