

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY  
IN RE: JANINE E. DAVIDSON & JOAN M. MOSES**

**(Case No. 12318)**

A hearing was held after due notice on June 17, 2019. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the side yard setback requirements for an existing structure.

Findings of Fact

The Board found that the Applicants are requesting a variance of 4 feet from the five (5) feet side yard setback requirement on the south side for an existing shed. This application pertains to property located on the west side of Long Meadow Lane approximately 399 feet north of Park Pavillion Way in the Ridings at Rehoboth subdivision (911 Address: 20143 Long Meadow Lane, Lewes) said property being identified as Sussex County Tax Map Parcel Number 2-34-5.00-572.00.

1. The Board was given copies of the Application, a notice of approval from the Ridings at Rehoboth Homeowners Association Architectural Review Committee, a violation letter from the Sussex County Planning & Zoning Department, a building permit, a survey of the Property dated March 7, 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 one (1) letter in support of and three (3) letters in opposition to the Application.
3. The Board found that Janine Davidson and Joan Moses were sworn in to testify about the Application.
4. The Board found that Ms. Moses testified that the Property is unique because the backyard is not level and floods. According to Ms. Moses, the rear of the lot sometimes has 2-3 feet of water and the shed cannot be placed there due to the flooding and slope.
5. The Board found that Ms. Moses testified that the Applicants wanted to place the shed in the rear yard but the slopes made that difficult.
6. The Board found that Ms. Moses testified that the Applicants went to their homeowners association regarding the problem and the association approved the shed. After the shed was constructed, the Applicants received a violation notice from Sussex County and the association then opposed the shed.
7. The Board found that Ms. Moses testified that their neighbor to the south does not have an issue with the shed.
8. The Board found that Ms. Davidson testified that the Applicants received approval from the homeowner's association's architectural review committee to place the shed on the Property.
9. The Board found that Ms. Davidson testified that the backyard floods with heavy rain causing water issues due to unlevelled property and the shed would be underwater when it rains. Drains were installed but the flooding continues.
10. The Board found that Ms. Davidson testified that shed was placed in the side yard because there are no flooding problems in that area of the lot.
11. The Board found that Ms. Davidson testified that the Property cannot otherwise be developed as the lot slopes to the rear of the dwelling.
12. The Board found that Ms. Davidson testified that the exceptional practical difficulty was not caused by the Applicants but by the flooding on the Property.

13. The Board found that Ms. Davidson testified that the variance will not alter the essential character of the neighborhood as the shed was built and painted to match the existing house.
14. The Board found that Ms. Davidson testified that the variance requested is the minimum variance to afford relief to allow a shed to be placed on the side of the home.
15. The Board found that Ms. Moses testified that the shed is on a gravel pad and the Applicants would not have built the shed without approval from the architectural review committee.
16. The Board found that Ms. Davidson testified that there were no complaints about the shed until recently.
17. The Board found that Ms. Davidson testified that the Applicants obtained a building permit and gave it to their builder but the builder did not indicate that he was placing the shed encroaching into setbacks.
18. The Board found that Ms. Moses testified that they relied on their builder to place the shed in compliance with the Code and the builder did not bring up this issue during construction.
19. The Board found that Ms. Moses testified that the rear yard slopes and is too steep for a ramp, which poses a safety concern.
20. The Board found that Ms. Moses testified that there is a well on the property on the other side.
21. The Board found that Charles R. Baker, who is the Vice President of the Ridings of Rehoboth Homeowners Association, was sworn in to give testimony in opposition to the Application.
22. The Board found that Mr. Baker testified that the Association opposes the request for variance by the Applicants. Mr. Baker argued that the shed violates the architectural standards of the Association and that the Applicants failed to meet the standards for granting a variance. Mr. Baker largely recited a letter submitted by Brian Bennett, who is the President of the Association.
23. The Board found that Mr. Baker testified that he was made aware of the location issue after the violation notice was issued.
24. The Board found that Mr. Baker testified that Sussex Conservation has been to the development many times.
25. The Board found that Mr. Baker testified that the Association does not object to the ramp if a variance was needed for that structure.
26. The Board found that Ms. Moses testified that the shed location was staked out and shown to the Architectural Review Committee. The Applicants purchased the shed because they believed they had approval from the homeowners association.
27. The Board found that Ms. Moses testified that the ramp is 3 inches tall.
28. The Board found that Ms. Moses testified that the shed matches the house and that, if the shed was turned, it would not look like the house and would be aesthetically pleasing.
29. The Board found that two people appeared in support of and four parties appeared in opposition to the Application.
30. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered, 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 due to the topography and flooding of the rear yard. The Applicants submitted pictures which clearly show standing water in the rear of the lot and the opposition even noted that the Sussex Conservation District has been to the development at times due to flooding concerns. Due to the unique slope of the rear of the lot and these flooding

concerns, the Applicants were limited in their placement options for the shed. Furthermore, the other side of the lot is improved by a well and also has flooding concerns. The Applicants were thus significantly constrained as to where they could locate the shed. These unique conditions have created an exceptional practical difficulty for the Applicants who seek to retain a shed on the Property.

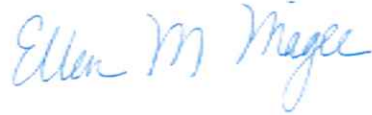
- b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants seek to retain a shed but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow a reasonably sized 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 Applicant.
- c. The exceptional practical difficulty was not created by the Applicants. There was no evidence that the Applicants created the unique size of the Property or that the Applicants created the flooding problems on the lot. These unique conditions have created an unusually limited building envelope for the practical location of the shed. These conditions have created the exceptional practical difficulty for the Applicants who seeks to retain a shed on the lot.
- 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 was constructed and designed to look like the existing dwelling. While the Association opposes the variance request, the Association did approve the shed under its architectural review standards. The Applicants convinced the Board that they took the architectural review standards seriously and designed the structure to comply with those standards. The Applicants clearly consulted with the Association before beginning construction on this project and the Association's Vice President even acknowledged that he was unaware of the encroachment until after a violation notice had been issued by Sussex County. Furthermore, the Applicants' neighbor to the south, who would be most affected by the request, has indicated to them that he does not oppose the variance request. The Board was simply not convinced by the opposition that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board notes that, if the Association believes that the restrictive covenants have been violated, perhaps the Association would have relief through avenues other than through the Board.
- 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 shed on the Property. No additions or modifications to the shed are proposed. The shed is a reasonable size and was constructed to match the dwelling. If the shed was turned as proposed, the shed would no longer match the dwelling. Furthermore, there is no other location where the shed can be located on the lot.

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. John Mills, 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 August 6, 2019