

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JOYCE FERGUSON

(Case No. 12463)

Public hearings were held after due notice on August 17, 2020, and September 14, 2020. The Board members present at the meeting on August 17, 2020, were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, Mr. John Williamson and Mr. Brent Workman. The Board members present at the meeting on September 14, 2020, were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, and Mr. John Williamson.

Nature of the Proceedings

This is an application for variances from the side yard, rear yard setback and separation distance requirements between units for a proposed shed.

Findings of Fact

The Board found that the Applicant is requesting the following variances: 1) a variance of 2.5 feet from the five (5) feet side yard setback requirement for a shed; 2) a variance of 3.4 feet from the twenty (20) feet separation distance requirement from the dwelling on Lot #72 for a shed; 3) a variance of 7 feet from the twenty (20) feet separation distance requirement from the porch on Lot #59 for a shed; and 4) a variance of 4.5 feet from the twenty (20) feet separation distance requirement from the shed on Lot #72 for a shed. The Property is located on the southeast side of Delaware Avenue within the Sea Air Village Manufactured Home Park (911 Address: 20043 Delaware Avenue, Rehoboth Beach) said property being identified as Sussex County Tax Map Parcel Number: 3-34-13.00-310.00-50594. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, an exterior improvement request, a site inspection review, photographs, letters in support of the Application, a survey of the Property dated February 3, 2020, 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 four letters in support of and no correspondence in opposition to the Application.
3. The Board found that Joyce Ferguson was sworn in to give testimony about the Application.
4. The Board found that Ms. Ferguson testified that the request is for an existing 7 feet by 7 feet Rubbermaid storage shed in the rear of her property.
5. The Board found that Ms. Ferguson testified that the shed was installed by a friend and that Sea Air Village has approved the shed.
6. The Board found that Ms. Ferguson testified that she was told no building permit was needed for a Rubbermaid shed.
7. The Board found that Ms. Ferguson testified that the shed was originally placed at the end of the driveway but Inspector Kelly Passwaters told her to move it to the rear yard.
8. The Board found that Ms. Ferguson testified that she has health issues and suffers from a hernia which makes it difficult for her to lift things.
9. The Board found that Ms. Ferguson testified that she preferred the shed in the front yard.
10. The Board found that Ms. Ferguson testified that the lot is small and there is no other place to put the shed.
11. The Board found that Ms. Ferguson testified that she cannot otherwise develop the Property.

12. The Board found that Ms. Ferguson testified that the exceptional practical difficulty was not caused by the Applicant.
13. The Board found that Ms. Ferguson testified that the variance will not alter the essential character of the neighborhood.
14. The Board found that Ms. Ferguson testified that most of her neighbors have larger sheds.
15. The Board found that Ms. Ferguson testified that the variance requested is the minimum variance to allow the Applicant to retain the existing shed on the Property.
16. The Board found that Ms. Ferguson testified that the shed has been on the Property since November 2019 and that she has not received complaints from neighbors.
17. The Board found that Ms. Ferguson testified that she needed the outdoor storage.
18. The Board found that Ms. Ferguson testified that there is no other place it could have been located.
19. The Board found that no one appeared in support of or opposition to the Application.
20. The Board left the record open until September 14, 2020, at which time the Board held a second public hearing on the matter. No additional comments were presented at that hearing.
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 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 a small, narrow, angled lot. The Property is subject to separation requirements from other structures in the neighborhood and the Applicant is restricted on where to place certain structures due to those requirements. The development on neighboring properties has significantly constrained the Applicant. The house on Lot #55 and the structures on Lot #72 are particularly close the shared property lines. In fact, the shed on Lot #72 encroaches onto this lot. Consequently, the building envelope is narrow and limited. These conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to retain a small shed on the lot but is unable to do so without a variance.
 - 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 Property and situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant did not place the structures on the other lot and the shed is needed to allow her safer access for storage. The Applicant seeks to retain the 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 the shed to be retained on the Property. The Board is convinced that the shape and location of the shed are reasonable, which is confirmed when reviewing the survey provided by the Applicant.
 - d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicant. The Property has unique conditions, as discussed above, and those conditions have limited the building envelope on the Property and have created an exceptional practical difficulty. Importantly, the Applicant did not develop the neighboring lots with structures so close to the shared property line. The Applicant is unable to retain a shed on the lot due to the unique size of the Property, the existing layout of the home, and the construction on neighboring lands.

- 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 Applicant seeks to retain a small shed on the lot for storage. Similar structures are found in the neighborhood and neighbors support the request. No evidence was presented that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- 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 shed on the Property. No additions or modifications to the shed 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.
- h. The Board also notes that the shed will allow the Applicant, who suffers from medical problems with an easy access area for storage.

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, and Mr. John Williamson. No Board Member voted against the Motion to approve the variance application. Mr. Brent Workman did not participate in the discussion or vote on this 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 November 2, 2020