

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MICHAEL STAZZONE & KATHRYN STAZZONE

(Case No. 12491)

A hearing was held after due notice on November 2, 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 variances from the side yard setback requirement and the rear yard setback requirement for existing structures.

Findings of Fact

The Board found that the Applicants are requesting a variance of 7.2 feet from the fifteen (15) feet side yard setback requirement on the southeast side for an existing carport and a variance of 1.4 feet from the five (5) feet rear yard setback requirement for an existing shed. The Property is located on the northeast side of Kings Drive within the Swanendael Subdivision (911 Address: 2513 Kings Drive, Lewes) said property being identified as Sussex County Tax Map Parcel Number: 3-35-8.10-3.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey of the Property dated August 6, 2007, a drawing, an elevation certificate, a letter of support, 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 letter in support of and no correspondence in opposition to the Application.
3. The Board found that Kathryn Stazzone and Michael Stazzone were sworn in to give testimony about the Application.
4. The Board found that Mr. Stazzone testified that there was no garage or covered space for cars on the Property when they purchased the lot but the Applicants needed cover for their cars due to the debris from the trees on the lot.
5. The Board found that Mr. Stazzone testified that, at the time of construction of the carport, the Applicants thought there was a 5 foot setback and did not discover that the setback was 15 feet until construction was completed.
6. The Board found that Mr. Stazzone testified that the Property is unique because there was no garage.
7. The Board found that Mr. Stazzone testified that the carport was constructed in 2010 by a licensed contractor.
8. The Board found that Mr. Stazzone testified that the Property cannot otherwise be developed and that the exceptional practical difficulty was not created by the Applicants.
9. The Board found that Mr. Stazzone testified that there is a septic system is located in the rear of the lot.
10. The Board found that Mr. Stazzone testified that there are mature trees on the property and there is a need to have a cover for a vehicle to protect it from damage from those trees. He noted that they experienced a cracked windshield from debris at one point prior to the carport.
11. The Board found that Mr. Stazzone testified that the carport has been in place for ten years and there have been no complaints from neighbors.
12. The Board found that Mr. Stazzone testified that the variances requested are the minimum variances to allow the carport and shed to remain in their current locations.

13. The Board found that Mr. Stazzone testified that reducing the width of the carport would make it difficult to place a car in the carport.
14. The Board found that Mr. Stazzone testified that the shed was on the Property at the time of purchase and could not be moved without demolishing it.
15. The Board found that Mr. Stazzone testified that the shed has been in its current location for over 30 years and will not alter the essential character of the neighborhood. He noted that there are other sheds in the neighborhood.
16. The Board found that Ms. Stazzone testified that the garage was converted into living space prior to their purchase of the Property and that, when they purchased the Property, there was no garage.
17. The Board found that Ms. Stazzone testified that the carport was constructed to protect vehicles from falling branches and that, even though they have cleared a number of trees, they still have lots of limbs falling.
18. The Board found that no one appeared in support of or in opposition to the Application.
19. 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 as it is developed with a dwelling and shed, which predate the Applicants' acquisition of the Property, and a septic system in the rear yard. The Property is also unique due to mature trees which are located thereon. The mature trees have created a need for a covered space to park vehicles but the Applicants are limited in where such a covered space could be located due to the prior development of the lot. The unique characteristics of this Property limit the buildable area available to the Applicants and have created an exceptional practical difficulty and unnecessary hardship for the Applicants who seek to retain a carport and a shed on the lot.
 - 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 unique conditions and the Applicants are greatly limited in their ability to reasonably use the lot due to those conditions. The Applicants seek to retain a carport and a shed of reasonable size 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 retain those structures. The Board is convinced that the shape and location of the structures are also reasonable, which is confirmed when reviewing the survey and pictures provided by the Applicants. The Board also notes that the carport is needed to reasonably use the lot as the mature trees drop debris which has damaged the Applicants' vehicle. The carport provides protection from that debris and there is no other location where that structure could be located. If the carport was reduced in width, a car could not fit underneath; thereby defeating the purpose of the carport.
 - d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicants. The Applicants did not create the unusual conditions of the Property. The unique conditions have resulted in a limited building envelope on the Property and the small building envelope, which was created, in part, due to the septic system and mature trees, has created the exceptional practical difficulty and unnecessary hardship. Furthermore,

the shed was placed on the Property by a prior owner approximately 30 years ago. The unique characteristics of the Property are clear when reviewing the survey and the Applicants' testimony. The Board is convinced that the exceptional practical difficulty and unnecessary hardship were not created by the Applicants but was created the lot's unique characteristics. The Board also notes that the Applicants relied on a licensed contractor to construct the carport only to later learn of the carport's encroachment.

- 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 Board is convinced that the carport and shed will have no effect on the character of the neighborhood. The shed is similar to others in the neighborhood and no complaints were noted in the record the shed or the carport. Rather, the neighbor to the Property supports the request. The lack of opposition is telling since the structures have been on the Property for many years. Furthermore, no evidence was presented which would indicate 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 Applicants have demonstrated that the variances sought will allow the Applicants to retain the shed and carport. No additions to those structures are proposed. The Board notes that the shed cannot be moved into compliance due its age and condition and the carport cannot be reduced in size without defeating the purpose of having a carport.
- 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



John Williamson
Acting Chairman

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

Date January 4, 2021