

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

**IN RE: BOYS & GIRLS CLUB OF DELAWARE**

**(Case No. 12492)**

A hearing was held after due notice on December 14, 2020. The Board members present 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 setback and rear yard setback requirements for proposed and existing structures.

Findings of Fact

The Board found that the Applicant is requesting a variance of 6.4 feet from the fifteen (15) feet side yard setback requirement on the southeast side for steps, a variance of 3.04 feet from the twenty (20) feet rear yard setback requirement for a proposed addition, and a variance of 3.94 feet from the five (5) feet side yard setback requirement on the northwest side for an existing shed. The Property is located on the southwest side of Oak Orchard Road approximately 442 feet east of John J. Williams Highway (Route 24) (911 Address: 31550 Oak Orchard Road, Millsboro) said property being identified as Sussex County Tax Map Parcel Number: 2-34-29.00-69.06. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a site plan of the Property dated August 2020, a site plan of the Property dated November 2020, a letter from Ring Lardner, schematic drawings, pictures, 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 Ring Lardner and Millie Charnick were sworn in to give testimony about the Application. Mr. Lardner is the Applicant's engineer and Ms. Charnick is the Vice President of the Southern Region of the Delaware Boys & Girls Club. Mr. Lardner submitted exhibits to the Board to review.
4. The Board found that Mr. Lardner testified that Oak Orchard Road is to the north of this site, the property to the west is owned by the Nanticoke Indian Tribe, and the lands to the south and east are owned by Robert Reed.
5. The Board found that Mr. Lardner testified that the Applicant proposes to construct an addition to the rear of the existing building and needs a variance for the addition and for an external stairway related to the addition. The Applicant also needs a variance for an existing shed.
6. The Board found that Mr. Lardner testified that the Boys and Girls Club has reached capacity and needs to expand in order to accommodate the families in the area.
7. The Board found that Mr. Lardner testified that the Applicant previously received a special use exception in 2010 to use a manufactured home as a classroom. The Applicant intends to remove the manufactured home as part of this expansion project. An outdoor pavilion will also be relocated on the site.
8. The Board found that Mr. Lardner testified that the proposed expansion is the least impactful renovation that will still meet the needs of the Applicant.
9. The Board found that Mr. Lardner testified that the Property is unique as it is a small lot that has a commercial use.

10. The Board found that Mr. Lardner testified that the Applicant purchased additional land to increase the size of the lot in the early 2000s.
11. The Board found that Mr. Lardner testified that the lot is 150 feet wide which is the minimum lot width for AR-1 zoning district.
12. The Board found that Mr. Lardner testified that there are properties zoned B-2 in the area which have lesser setback requirements.
13. The Board found that Mr. Lardner testified that the building is 100 feet from the right-of-way and parking is located in the front yard.
14. The Board found that Mr. Lardner testified that the Property cannot otherwise be developed as the stairs are needed for an emergency exit.
15. The Board found that Mr. Lardner testified that the building depth is needed to meet programming needs and life, health and safety codes and that the addition cannot be shortened in the rear yard to meet the setback requirements while still meeting other regulations.
16. The Board found that Mr. Lardner testified that there is no other location for the shed and it is needed for storage. He also believes that the shed cannot be relocated on the property without affecting the development of the site.
17. The Board found that Mr. Lardner testified that the exceptional practical difficulty has not been created by the Applicant but to serve the needs of the community, provide additional space for students and to meet safety regulations.
18. The Board found that Mr. Lardner testified that granting the variances will not alter the essential character of the neighborhood as the Boys and Girls Club is an integral part of this neighborhood and, if they were to relocate to another area, the relocation would alter the character of the neighborhood.
19. The Board found that Mr. Lardner testified that the variances requested are the minimum variances necessary to afford relief.
20. The Board found that Mr. Lardner testified that the building cannot be reduced in size as classrooms must be a certain size and hallways have to be ADA compliant.
21. The Board found that Ms. Charnick testified that it is important to remain at this location as the Applicant serves many of the families in this area. The club is also in close proximity to Mountaire making this location convenient for families to drop off or pick up children after work.
22. The Board found that Ms. Charnick testified that the Applicant hopes that the variances will be granted so that they can expand the building.
23. The Board found that Ms. Charnick testified that there is a current waiting list for 60 children.
24. The Board found that Ms. Charnick testified that the manufactured home will be removed.
25. The Board found that Ms. Charnick testified that the Applicant hopes to be able to serve teenagers in the evening hours.
26. The Board found that Mr. Lardner testified that the Nanticoke Indian Association Chief supports the request.
27. The Board found that Mr. Lardner testified that the stormwater management area is located in the rear yard and that the Applicant cannot build elsewhere in the rear yard due to the stormwater management area.
28. The Board found that Mr. Lardner testified that no additional parking is needed but there will be security lighting.
29. The Board found that three (3) parties appeared in support of the Application and no 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 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 developed with a building for a boys and girls club. The Property is limited in size as it not a large parcel and the Applicant is constrained in its ability to develop the Property due to the need to meet parking, stormwater, fire marshal, ADA, and other requirements. These requirements greatly limit the building envelope for the Applicant on a site that is already limited. The Board notes that much of the parking is located within the building envelope in front of the building and a portion of the stormwater management area is located in the building envelope to the rear of the site. Consequently, the Applicant has few options to expand the building. The situation is also unique because the Applicant provides services for its community and has reached its capacity. Many of the children served lived in the neighborhood or have parents who work at a nearby poultry plant but there is a large waiting list because the Applicant's current facility cannot accommodate them. Ultimately, the unique characteristics of this Property limit the buildable area available to the Applicant and have created an exceptional practical difficulty and unnecessary hardship for the Applicant who seeks to reasonably expand its building and to retain 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 and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has unique conditions and the Applicant is greatly limited in its ability to reasonably expand the building on the lot due to those conditions. The Applicant seeks to retain a shed and build an addition and steps of a reasonable size 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 Applicant to retain the shed and to reasonably expand the building. 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 Applicant. The Board also notes that the expansion is needed because the Applicant has reached its capacity for service of children but there is a greater need to accommodate additional children in this area. The approval of these variances will allow the Applicant to expand on site and to better serve its community.
- d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicant. The Applicant 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 has created the exceptional practical difficulty and unnecessary hardship. Furthermore, the Applicant needs to expand its building to accommodate more children on site. The unique characteristics of the Property are clear when reviewing the survey and the Applicant's testimony. The Board is convinced that the exceptional practical difficulty and unnecessary hardship were not created by the Applicant but were created the lot's unique characteristics and by the need to meet other regulatory requirements.
- 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 addition, steps, and shed will have no effect on the character of the neighborhood. The shed has been in its location for some time and no complaints were noted in the record about the shed. The addition and steps will enable the Applicant to better serve children in the

community and will likely benefit the neighborhood. The Board notes that support for the Application has been evidenced in the record and there was no opposition to the request. The lack of opposition is telling since the shed has been on the Property for some time. 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.

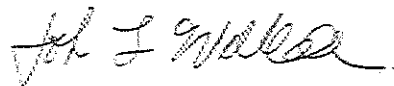
- f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain the shed and to construct the addition and steps. The Board notes that the Applicant was limited in where it could construct the addition and steps due the existing development of the Property and other regulations such as stormwater management, parking, ADA, and fire marshal regulations. The Applicant could not, for example, build in parts of the building envelope due to the location of the stormwater management area and parking spaces. These conditions also limit the area where the shed could be located. The Board is convinced that the Applicant took measures to otherwise limit the encroachments while still meeting other regulations.
- 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, 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



John Williamson  
Acting Chair

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

Date February 15, 2021.