

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

**IN RE: JAMES WADE & ELIZABETH WADE**

**(Case No. 12494)**

A hearing was held after due notice on November 16, 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 a variance from the rear yard setback requirement for an existing structure.

Findings of Fact

The Board found that the Applicants are requesting a variance of 5 feet from the five (5) feet rear yard setback requirement for an existing shed. The application pertains to certain real property located on the north side of White Pine Drive within the Pines at Long Neck Subdivision (911 Address: 14 White Pine Drive, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 2-34-23.00-808.00. After a public hearing, the Board made the following findings of fact.

1. The Board was given copies of the Application, a license agreement with the Pines at Long Neck Homeowners Association, Inc., a survey of the Property dated September 18, 2020, a survey of the Property dated October 2, 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 no correspondence in support of or in opposition to the Application.
3. The Board found that Erin Lee was sworn in to testify about the Application. Shannon Carmean Burton, Esquire, appeared on behalf of the Applicants.
4. The Board found that Mrs. Burton stated that the Applicants purchased this property in September 2020 with the existing improvements and that, during the purchase process, the Applicants had a survey completed and discovered that the shed and deck encroach onto lands owned by the Pines at Long Neck Subdivision and also into the setback area. According to Mrs. Burton, the Homeowners Association entered into a licensing agreement to allow the existing improvements to remain in their current locations.
5. The Board found that Mrs. Burton stated that the deck is not above grade level and therefore can go to the property line and that the variance request is for the shed only.
6. The Board found that Mrs. Burton stated that the Property is unique as it is a narrow rectangular lot consisting of only 7,500 square feet.
7. The Board found that Mrs. Burton stated that there is no possibility that the Property can be developed in strict conformity with the Sussex County Zoning Code.
8. The Board found that Mrs. Burton stated that the rear of the Property abuts to open space lands owned by the homeowners association.
9. The Board found that Mrs. Burton stated that the shed has been in its current location since 1999 and there is no other location to place it on the Property.
10. The Board found that Mrs. Burton stated that the variance is necessary to enable the reasonable use of the Property.
11. The Board found that Mrs. Burton stated that the Applicants did not create the exceptional practical difficulty as they just recently purchased the Property and learned of the encroachment after receipt of the survey.
12. The Board found that Mrs. Burton stated that granting the variance will not alter the essential character of the neighborhood or be detrimental to the public welfare.



13. The Board found that Mrs. Burton stated that the lands that would be affected by the variance are open space owned by the homeowners association, which has entered into a license agreement to allow the encroach onto the homeowner association's lands.
14. The Board found that Mrs. Burton stated that the variance requested is a minimum variance to afford relief and to bring the shed into compliance with the Zoning Code and that the variance represents the least modification of the regulation at issue.
15. The Board found that Ms. Lee affirmed the statements made by Mrs. Burton as true and correct.
16. The Board found that Ms. Lee testified that the shed cannot be moved forward on the Property as it would block access to the rear entrance of the dwelling.
17. The Board found that Ms. Lee testified that the shed consists of 250 square feet with two sets of doors and that the interior is divided by a wall and is used for storage and tools.
18. The Board found that Ms. Lee testified that a neighbor has a shed in a similar location.
19. The Board found that Ms. Lee testified that there have been no complaints about the shed.
20. The Board found that no one appeared in support of or opposition to the Application.
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 small and narrow. The lot consists of only 7,500 square feet and is only 60 feet wide. The lot's unique conditions limit the buildable area available to the Applicants and have created an unnecessary hardship and an exceptional practical difficulty for the Applicants who seek to retain an existing shed on the lot. The Board also notes that the lot's developable area is further limited by the location of the dwelling and steps.
  - 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 a unique shape and size and the buildable area thereof is limited due to the size and shape of the lot. The Applicants seek to retain an existing shed on the lot 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 the reasonably sized shed to remain on the Property. The Board is convinced that the shape and location of the shed is also reasonable, which is confirmed when reviewing the survey provided by the Applicants. The Board notes that the shed is used for storage and tools.
  - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. The Applicants did not create the unusual shape or size of the Property or place the shed on the lot. The unique size and shape of the Property are clear when reviewing the survey. The Board is convinced that the unnecessary hardship and exceptional practical difficulty were not created by the Applicants but was created by the lot's unique characteristics and the development by a prior owner.
  - e. 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 has been on the Property for many years and no complaints were noted in the record. There was no evidence that the location of the shed in the rear yard setback area would somehow affect the neighborhood and no evidence was presented that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board also notes that the shed is located on lands of the homeowners association but the homeowners association has entered into a license agreement consenting to this location. Accordingly, the property owner most affected by this variance does not oppose the location of the shed.

- f. The variance sought is the minimum variance necessary to afford relief and the variance requested represents 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 shed in the rear yard setback area are proposed. The Board also notes that the shed cannot be moved closer to the home without blocking access thereto.
- 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 Chair

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

Date January 25, 2021.