

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: LAWRENCE D. LINGO & GALE A. LINGO

(Case No. 12501)

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 a variance from the side yard setback for a proposed structure.

Findings of Fact

The Board found that the Applicants are requesting a variance of 1.4 feet from the five (5) side yard setback requirement on the west side for a proposed detached shed. This application pertains to certain real property located on the north side of Loggerhead Court within the Swann Cove Subdivision (911 Address: 31561 Loggerhead Court, Selbyville) said property being identified as Sussex County Tax Map Parcel Number 5-33-12.00-923.00. 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 December 2, 2013, letters supporting the Application, 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 two (2) letters in support of and no correspondence in opposition to the Application.
3. The Board found that Lawrence Lingo was sworn in to testify about the Application.
4. The Board found that Mr. Lingo testified that he needs extra storage space and proposes to construct an 8 foot by 10 foot shed next to his house.
5. The Board found that Mr. Lingo testified that the Property is unique as it is a narrow lot with only 11.9 ft between the side property line and the dwelling.
6. The Board found that Mr. Lingo testified that placing the shed will not meet the side yard setback requirements.
7. The Board found that Mr. Lingo testified that restrictive covenants will not allow for a shed to be placed in the back yard.
8. The Board found that Mr. Lingo testified that the exceptional practical difficulty was not created by the Applicants but by the need for additional storage.
9. The Board found that Mr. Lingo testified that he cares for an elderly parent and handicapped wife so there is a need to store a mobility scooter and walker in addition to other items. He also noted that there is a ramp in the garage which takes up a lot of storage space.
10. The Board found that Mr. Lingo testified that the homeowners association has issued an approval for the shed and the adjacent neighbor is in support of the Application as well.
11. The Board found that Mr. Lingo testified that the variance will not alter the essential character of the neighborhood.
12. The Board found that Mr. Lingo testified that the variance requested is the minimum variance to allow for the shed.
13. The Board found that Mr. Lingo testified that there will be a 2-3 inch gap between the shed and the house.
14. The Board found that no one appeared in support of or opposition to the Application.
15. 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 for the variance met the

standards for granting a variance. The findings below further support the Board's decision to approve the Application for the variance.

- a. The Property is unique due to its size, shape, and restrictions. The Property is a narrow lot consisting of less than 10,000 square feet. While the Applicants are afforded some relief under the small lot ordinance, the Property is subject to restrictive covenants which do not allow the placement of sheds in the rear yard. The Applicants need the shed for storage of equipment as two family members have disabilities which require certain equipment. Additionally, a portion of the garage has been converted to a ramp and storage space in the garage has been lost. There is clearly a need for the shed but the Applicants are limited in where they can place the shed due to the narrowness of the lot, the placement of the house, and the restrictive covenants. The Applicants seek to construct a reasonably sized shed on the Property but are unable to do so due to the lot's unique conditions. These conditions have thus created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek to construct 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 physical characteristics and the buildable area thereof is limited due to those characteristics. The Applicants seek to construct a 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 Applicants to construct a reasonably sized shed on the lot. 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 Applicants. The Board also notes that the Applicants need the extra storage space due to disabilities of family members and are limited in where they can place the shed.
- d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. The lot has a unique shape and there was no evidence that the Applicants created the unusual conditions of the lot. The unique conditions of the lot are clear from the testimony and evidence in the record. Likewise, the Property is burdened by restrictive covenants which limit where a shed can be placed. The Board notes that the unique conditions of the Property created an exceptionally limited building envelope and the unnecessary hardship and exceptional practical difficulty. The exceptional practical difficulty and unnecessary hardship were exacerbated by the need for additional storage space due to the disabilities of two family members.
- 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 proposed shed will have no effect on the character of the neighborhood. The record is clear that the adjacent neighbor and the homeowners association support the request. No evidence was presented which convinced the Board that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- f. The variance is the minimum variance necessary to afford relief and the variance represents the least modification possible of the regulation at issue. The Applicants have demonstrated that the variance will allow the

Applicants to construct a reasonably sized shed on the lot. The Applicants propose to place the shed in a manner to reduce the encroachment into the setback area. The shed is the minimum size necessary to allow the Applicants to have sufficient storage space for their equipment.

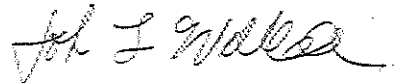
- g. The condition or situation of the Property and the intended use of the Property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.

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 the variance were Dr. Kevin Carson, Mr. Jeff 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 of 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.