

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: KELLY EWING & BRIAN EWING

(Case No. 12512)

A hearing was held after due notice on January 4, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, and Mr. John Williamson.

Nature of the Proceedings

This is an application for variance from the side yard setback requirement for a proposed structure.

Findings of Fact

The Board found that the Applicant is requesting a variance of 3.5 feet from the five (5) feet side yard setback requirement on the south side for a proposed shed. This property located on the southeast side of Mallard Drive within the Swann Keys Subdivision (911 Address: 36918 Mallard Drive, Selbyville) said property being identified as Sussex County Tax Map Parcel Number 5-33-12.16-141.00. 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 11, 2011, photographs, an email 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 one letter in support of and no correspondence in opposition to the Application.
3. The Board found that Kelly Ewing was sworn in to testify about the Application.
4. The Board found that Ms. Ewing testified that she recently moved the property and she previously had a 2 car garage at her prior residence. The Applicants propose to place a shed measuring 8 feet by 8 feet on the side of the house.
5. The Board found that Ms. Ewing testified that the lot is narrow with water access and a portion of the rear yard is located in a lagoon.
6. The Board found that Ms. Ewing testified that there is limited space on the side of the house where the shed is projected to be located and it is the only area that does not have existing concrete, parking, yard, and landscaping. According to Ms. Ewing, there are utility / electrical boxes, vents, and AC / heating units that cannot be moved and that moving the shed to another area would cause safety issues by blocking windows. The Applicants prefer not to disturb the areas where there is existing concrete, parking, yard, landscaping, windows, or utilities.
7. The Board found that Ms. Ewing testified that the house and lot cannot be changed.
8. The Board found that Ms. Ewing testified that the side of the house where the proposed shed will be placed has the most space and is the preferred location.
9. The Board found that Ms. Ewing testified that the placement of the shed in this location will allow the Applicants to have a shed without blocking windows and utilities or disturbing existing concrete, grass, and landscaping.
10. The Board found that Ms. Ewing testified that the shed cannot be placed in the rear of the property as there are flooding concerns.
11. The Board found that Ms. Ewing testified that street parking is not permitted on Mallard Drive so the shed needs to be placed in an area that will not prevent parking on the property.
12. The Board found that Ms. Ewing testified that the Applicants did not create the size and shape of the lot.
13. The Board found that Ms. Ewing testified that the shed is critical for storage as there is no garage on the property and that granting the variance would allow the

- Applicants to keep personal belongings on the Property and not have the expense of an offsite storage unit.
14. The Board found that Ms. Ewing testified that the location of the shed will not alter the essential character of the neighborhood as there are many sheds within the community and many are close to property lines.
 15. The Board found that Ms. Ewing testified that the shed will match the color and shingling of the existing dwelling and that the shed will have vinyl siding and trim to match the dwelling.
 16. The Board found that Ms. Ewing testified that the neighbor who is closest to the proposed shed has no objection and submitted a letter in support of the Application. Neighbors on Lots 140, 142, and 68 have indicated to the Applicants support of the Application.
 17. The Board found that Ms. Ewing testified that the request is the minimum request to allow the shed to be placed on the lot.
 18. The Board found that Ms. Ewing testified that there is a stone at the base of the house which projects 5 inches and the shed will be located next to the stone.
 19. The Board found that Ms. Ewing testified that the Applicants explored different options with different sized sheds but were unable to find a suitable option because of the location of the window, vent, and utilities.
 20. The Board found that Ms. Ewing testified that the house is 2 stories tall but no cars can park underneath the home.
 21. The Board found that no one appeared in support of or opposition to the Application.
 22. 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 and shape. The Property is a small lot measuring only 5,500 square feet and is exceptionally shallow as a large portion of the rear yard is located in a lagoon thereby creating a small building envelope. These unique characteristics of this Property have created a limited building envelope and have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek to a shed to the side of their house.
 - 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 place 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 this reasonably sized shed to be placed 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 notes that the shed should provide functional storage for the Applicants and that such storage space is needed because there is no garage or other similar storage area on the site.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. The Property is exceptionally small and shallow with a portion of the rear yard in the lagoon and these conditions have resulted in a limited building envelope on the Property. These conditions have created the unnecessary hardship and exceptional practical difficulty. Furthermore, the Applicants are constrained by the location of the existing

residence which also presents challenges on where the shed can be located. The Applicants also must preserve space on the lot for parking since the house is not elevated and there is no off-street parking in the neighborhood.

- 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 will be designed to match the dwelling and there is evidence of similar sheds being placed on other lots in the neighborhood. The Board notes that neighbors have indicated support of the Application and no evidence was presented that the variance would somehow alter the essential character of the neighborhood. The neighbors most impacted have indicated their support of the Application to the Applicants.
- 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 Applicant has demonstrated that the variance sought will allow the Applicants to place reasonably sized shed on the Property. The Board is convinced that the Applicants explored other options for the size, shape, and location of a shed but were constrained by the conditions of the lot.
- 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. Jeffrey Chorman, 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
Chairman

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

Date March 1, 2021