

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: TREVOR CLARK

(Case No. 12522)

A hearing was held after due notice on February 1, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicant is requesting a variance of 7 feet from the ten (10) feet side yard requirement on the east side for an attached shed. This property located on the north side of Ocean View Place within the White Creek at Bethany Subdivision (911 Address: 30869 Ocean View Place, Ocean View) said property being identified as Sussex County Tax Map Parcel Number 1-34-8.00-582.00. 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, an application to the White Creek at Bethany Homeowners Association, a letter of approval from the White Creek at Bethany, 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 Trevor Clark was sworn in to testify about the Application. Mr. Clark submitted an additional drawing showing the proposed structures.
4. The Board found that Mr. Clark testified that he is requesting a variance for a storage shed on the right side of his home.
5. The Board found that Mr. Clark testified that the community's restrictive covenants do not permit stand-alone sheds within the development.
6. The Board found that Mr. Clark testified that he is also constructing an outdoor shower and trash receptacle but those structures will meet the required setbacks.
7. The Board found that Mr. Clark testified that the shed will measure 13.5 feet by 6 feet and approximately 6 square feet of the proposed shed will encroach into the setback area.
8. The Board found that Mr. Clark testified that he could not relocate the shed farther back because the location of the side door to the garage would be blocked. He also noted that there are utility pipes which also limit the placement of the shed.
9. The Board found that Mr. Clark testified that that the homeowners association and neighbor to that side of the property support the Application.
10. The Board found that Mr. Clark testified that the property is unique because of the placement of the house on the lot and due to the community restriction on stand-alone sheds.
11. The Board found that Mr. Clark testified that the proposed shower, shed, and trash receptacle need to be on this side of the dwelling as the pipes are located on the right side of the home for the shower.
12. The Board found that Mr. Clark testified that the exceptional practical difficulty was not created by the Applicant.
13. The Board found that Mr. Clark testified that this shed will not alter the essential character of the neighborhood and has been approved by the homeowners association.

14. The Board found that Mr. Clark testified that that the shed cannot be placed on the west side of the dwelling as the Property has a deep incline in that area. He noted that the other side of the Property is also improved by permanent kayak racks and there are windows which cannot be blocked.
15. The Board found that Mr. Clark testified that the lot to the other side of the property (Lot 45) is vacant.
16. The Board found that Mr. Clark testified that the variance is the minimum variance to afford relief as only a corner of the shed will encroach into the setback area.
17. The Board found that Mr. Clark testified that there is no internal access to the shed.
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 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 shape, topography, and development. The Property is an oddly shaped lot located adjacent to a cul-de-sac. The front of the Property is curved and the lot widens to the rear. While the lot has more buildable area to the rear of the lot, the Property also slopes to the rear and the house was built closer to the front property line. The Applicant seeks to make reasonable additions to the house but is limited due to these unique conditions and these unique characteristics have created a limited building envelope and have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to place a shed to the side of the house. The Board also notes that the Property is unique because it is burdened by restrictive covenants which limit the erection of a stand-alone shed.
 - 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 Applicant seeks to place shed on the lot but is 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 Applicant. The Board notes that the shed should provide functional storage for the Applicant and that such storage space is needed because there is no other similar storage shed on the site.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. The Property has an unusual shape, topography, and development and these conditions have resulted in a limited building envelope on the Property. The Property is further burdened by restrictive covenants which preclude the erection of a stand-alone shed. These conditions have created the unnecessary hardship and exceptional practical difficulty. Furthermore, the Applicant is constrained by the location of the existing residence which also presents challenges on where the shed can be located.
 - 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 the neighbor most affected by the variance request supports the request. The homeowners association also supports the request. The Board notes that only a small portion of the shed will encroach into the setback area since the shed will be attached to the dwelling and the dwelling was placed at a different angle than the angle of the property line. The Board also notes that no evidence was presented that the variance would somehow alter the essential character of the neighborhood.

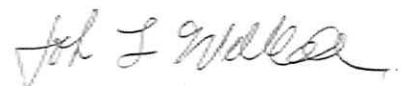
- f. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to place a reasonably sized shed on the Property. The Board is convinced that the Applicant explored other options for the size, shape, and location of a shed but was constrained by the conditions of the lot, the development of the lot, and the restrictive covenants.
- 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, Mr. Travis Hastings, 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
Chair

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

Date April 12, 2021