

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JASON SUTTON & JENNIFER SUTTON

(Case No. 12530)

A hearing was held after due notice on March 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 variances from the side yard setback requirement for a proposed structure.

Findings of Fact

The Board found that the Applicants are requesting a variance of 4 feet from the five (5) feet side yard setback requirement on the north side for a proposed shed. This property on the west side of Blue Bill Drive within the Swann Keys Subdivision (911 Address: 37057 Blue Bill Drive, Selbyville) said property being identified as Sussex County Tax Map Parcel Number 5-33-12.16-171.00. 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 June 11, 2018, an edited survey to show the location of the proposed shed, 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 Jason Sutton was sworn in to testify about the Application.
4. The Board found that Mr. Sutton testified that there was an existing shed at this location on his property and the shed was rusty and had deteriorated over time. Accordingly, the shed was removed and the Applicants seek the variance to replace the shed with a new shed in the same location.
5. The Board found that Mr. Sutton testified that the lot is unique as it is only 50 feet wide by 100 feet deep but 10 feet of the rear yard is located in a lagoon.
6. The Board found that Mr. Sutton testified that the home is a single-story dwelling measuring approximately 28 feet wide by 56 feet deep.
7. The Board found that Mr. Sutton testified that sheds are common in the neighborhood and other sheds are similarly situated. Mr. Sutton noted that his neighbor's shed is only 8 inches from the property line.
8. The Board found that Mr. Sutton testified that the Property cannot otherwise be developed and that, due to the narrow nature of the Property and the rear portion thereof being located in the canal, there is no other location to place a shed on the Property.
9. The Board found that Mr. Sutton testified that the exceptional practical difficulty was not created by the Applicants but by the lot size which were created in the early 1980s.
10. The Board found that Mr. Sutton testified that the existing shed is a possible hazard and the new shed will be in the same location as the prior shed but will be structurally sound.
11. The Board found that Mr. Sutton testified that the variance will not alter the essential character of the neighborhood as there are many sheds within the community.
12. The Board found that Mr. Sutton testified that the variance requested is the minimum variance to afford relief and allow for the ability of persons to freely access the rear of the home from the left side of the yard.

13. The Board found that Mr. Sutton testified that the shed will be used to store gasoline and items that cannot be stored in or under the home and that the shed will be on blocks to protect the contents from water damage.
14. The Board found that Mr. Sutton testified that the tide rises in the area and the bulkhead, which had deteriorated as well, was replaced but kept in the same location.
15. The Board found that Mr. Sutton testified that the shed will be the same width as his neighbor's shed but smaller. The proposed shed measures 10 feet by 14 feet and the neighbor's shed measures 10 feet by 16 feet.
16. The Board found that Mr. Sutton testified that the shed was on the Property when they purchased the lot and there have been no complaints regarding the existing shed.
17. The Board found that Mr. Sutton testified that the adjacent neighbor does not object to the location of the shed.
18. The Board found that Mr. Sutton testified that the shed cannot be moved farther away from the property line or turned as it would block access to the rear yard.
19. The Board found that no one appeared in support of or in opposition to the Application.
20. 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 an even smaller 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 place a shed on the lot in a similar location to a prior 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 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 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 house and prior shed were on the lot when purchased by the Applicants. The prior shed deteriorated and needed to be replaced.
 - 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 similar to the shed on a neighboring lot and there is evidence of other similar sheds being placed on other lots in the neighborhood. No evidence was presented that the variance would somehow alter the essential character of the neighborhood. The neighbor closes to the proposed shed indicated support of the Application to the Applicant as well.

- 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 place a 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, 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 May 3, 2021