

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

**IN RE: JOSEPH A. VAI**

**(Case No. 12545)**

A hearing was held after due notice on April 19, 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 a proposed structure.

Findings of Fact

The Board found that the Applicant is requesting a variance of 5 feet from the five (5) feet side yard setback requirement on the side adjacent to Lot 53 for a proposed shed. This application pertains to certain real property located on the west side of Mallard Drive within the Swann Keys Subdivision (911 Address: 37041 Mallard Drive, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-12.16-94.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, an aerial photograph of the Property, a survey of the Property dated March 14, 2007, a letter from the Applicant, literature on the proposed shed, photographs, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received no letters in support of or in opposition to the Application.
3. The Board found that Joseph Vai was sworn in to testify about the Application.
4. The Board found that Mr. Vai testified that he has an existing 8 foot by 12 foot shed on his property and would like to replace it with a proposed 10 foot by 24 foot shed.
5. The Board found that Mr. Vai testified that the existing shed is old and is 5.5 inches from the side property line.
6. The Board found that Mr. Vai testified that this home will be the Applicant's full-time residence and there is a need for additional storage.
7. The Board found that Mr. Vai testified that the shed will be an A-Frame with the same shiplap toward the front to match the home.
8. The Board found that Mr. Vai testified that the adjacent neighbor supports the request and that homeowner association approval is not required.
9. The Board found that Mr. Vai testified that this is the only location to place the shed and allow access to the rear of the Property from the street.
10. The Board found that Mr. Vai testified that the exceptional practical difficulty was not created by the Applicant that the new shed will be in the same location as the existing shed which was on the Property when purchased.
11. The Board found that Mr. Vai testified that the proposed shed will not alter the essential character of the neighborhood as it will match the existing house.
12. The Board found that Mr. Vai testified that the request is for a 10 foot by 24 foot shed but it could be a 10 foot by 20 foot shed.
13. The Board found that Mr. Vai testified that the proposed shed would be 10 feet tall and the existing shed is 8.5 feet tall.
14. The Board found that Mr. Vai testified that the existing shed is on the grass with a sidewalk around it.
15. The Board found that Mr. Vai testified that the 24 foot shed would not impede the view from the neighbor's home.

16. The Board found that Mr. Vai testified that he does not want the shed to block his window since his living room is on that side of the house. Mr. Vai also testified that the prime view from the Property is to the rear of the house.
17. The Board found that Mr. Vai testified that the shed cannot be placed to the rear of the home as the Applicant intends to add additional living space in the future.
18. The Board found that Mr. Vai testified that there is a small existing shed in the rear which will be removed.
19. The Board found that Mr. Vai testified that there is a mature tree on the property which would prevent placing the shed further to the rear.
20. The Board found that Mr. Vai testified that the existing shed will be removed, the grass will be removed, some stone will be put down and the proposed shed will be brought through the driveway.
21. The Board found that Mr. Vai testified that there will be an overhang of 6 inches but the overhang will not extend onto the neighbor's property and the neighbor's home is 10 feet from the property line.
22. The Board found that Mr. Vai testified that the proposed shed will have vinyl siding with no windows on the neighbor's side of the shed so it will not require maintenance.
23. The Board found that Mr. Vai testified that, if necessary, the shed could be moved 1 foot to 1.5 feet off the property line.
24. The Board found that Mr. Vai testified that there are larger sheds in the neighborhood.
25. The Board found that Mr. Vai testified that there is no flooding on the Property.
26. The Board found that Mr. Vai testified that he cannot move the shed closer to the house due to the sidewalk.
27. The Board found that Mr. Vai testified that the shed would block two windows if it was put closer to the house.
28. The Board found that Mr. Vai testified that the home measures 12 feet by 60 feet and was purchased in 2000.
29. The Board found that Mr. Vai testified that an addition to the home was added along with the rear shed in 2004.
30. The Board found that Mr. Vai testified that the older shed was on the Property when he purchased the Property.
31. The Board found that Mr. Vai testified that the shed will be approximately 2 feet from the sidewalk and the sidewalk measures 3.5 feet wide.
32. The Board found that Mr. Vai testified that he plans to have expand the sidewalk to 5 feet wide.
33. The Board found that Mr. Vai testified that he intends to extend the living room and bedroom and that there is no room for storage.
34. The Board found that no one appeared in support of or in opposition to the Application.
35. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered, the Board determined that the application failed to meet the standards for granting a variance. The findings below further support the Board's decision to deny the Application.
  - a. The Applicant failed to demonstrate that the Property was unique and that the uniqueness of the Property has created an exceptional practical difficulty. The lot is a small but rectangularly shaped lot and the lot benefits from reduced setback requirements under the small lot ordinance. The Property is already developed with a house, 2 porches, a boardwalk, a concrete pad, sidewalk, and 2 sheds. The Applicant proposes to remove the 2 sheds and construct a larger shed which measures more than double the size of the existing encroaching shed. The Applicant did not present evidence of unique topography or other conditions which would effectively limit his ability to develop the Property and which created an exceptional

practical difficulty.<sup>1</sup> Rather, the difficulty is clearly the result of the Applicant's intention to construct the shed within the setback areas. The Board notes that the Applicant does not want to block views from the dwelling yet he proposes to construct the shed on the shared property line of his neighbor. The Applicant also testified that he plans to construct an addition to the rear of the home. Quite simply, there appears to be room to place a shed on the lot; albeit not in the Applicant's preferred location. As such, the Applicant has failed to demonstrate that there was some unique condition which has created the exceptional practical difficulty.

- b. The Applicant failed to prove that the Property could not be developed in strict conformity with the Sussex County Zoning Code. The Property has buildable area to the side and rear of the house but the Applicant chose not to use those portions of the building envelope for the entire proposed shed. Rather, the Applicant proposes to construct a shed which is more than double the size of the existing shed on the Property line. As a result, half the shed will be located outside the building envelope even though there is room on the lot to place a shed on the lot. Rather than comply with the Code, the Applicant proposes this variance so that he can use other portions of the building envelope for an addition that he plans to construct at some point in the undefined future. This addition would take up other parts of the building envelope. It is clear that the Applicant has chosen not to build in strict conformity with the Code rather than developing the lot to comply with the Code's setback requirements. While the location of a shed (or the size thereof), may not be the location the Applicant prefers, the Applicant failed to demonstrate that he could not otherwise comply with the Code's setback requirements. The Applicant is not entitled to have a shed, particularly one that is double the size of the existing shed and that is located on the property line. For these reasons, the Board finds that the Property could be developed in strict conformity with the Code and that the variance is not necessary to enable reasonable use of the Property.
- c. The Board finds that the Applicant is creating his own exceptional practical difficulty by proposing to construct a shed which does not fit within the building envelope. The Applicant's decision to construct this addition in this location is the reason for the need for a variance and has nothing to do with the size, shape, or condition of the Property. There is no unusual condition to the Property which has created this difficulty. The building envelope appears to otherwise be able to fit a shed, albeit in a location which differs from the Applicant's preference, without the need for the variance. The Board was not convinced that the variance request was the product of a *need*. Instead, the variance request appears to be the product of a *want* as the Applicant seeks to build the shed as proposed for purposes of convenience, profit, and / or caprice. Since the Applicant can develop the Property in compliance with the Sussex County Zoning Code, the need for the variance is something created by the Applicant's wants rather than an unusual physical condition relating to the Property. The Applicant has thus created his own exceptional practical difficulty.
- d. The Board finds that the Applicant failed to demonstrate that the variance would not alter the essential character of the neighborhood or substantially or permanently impair the uses of neighboring properties. While the Applicant has testified that his neighbor does not object to the request, the

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<sup>1</sup> The Applicant made a vague reference to a tree but provided no specific evidence of how the tree would impact the developability of the lot. The Board notes that the Applicant also testified to other planned improvements on the Property and the Board was not convinced that the proposed location of the shed was materially impacted by the location of the tree given the Applicant's other proposed improvements.

Applicant proposes to erect his shed on the shared property line. The Board finds the Applicant's testimony that there would be no maintenance concerns with the shed in the future as stretching the bounds of credibility. The shed will be located on the property line. If the shed needed maintenance on the Lot 53 side of the shed, the Applicant would have to trespass on his neighbor's land to perform the maintenance work. Even though his current neighbor (who did not testify on the issue) may not object to the trespass, the Property may change hands in the future and a future neighbor may not have similar thoughts. The Board also has concerns because the Applicant lives in Swann Keys, which is a community with similar sized lots, and that the approval of this request could embolden others in Swann Keys to push the boundaries of their building envelopes. This concern is particularly apparent since the Property already benefits from the small lot ordinance and reduced setbacks.

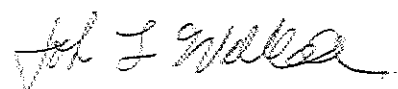
- e. Since the variance is not necessary to enable the reasonable use of the Property, the Board also finds that the variance requested is not the minimum variance necessary to afford relief. The Applicant testified that there are other buildable areas but he does not want to place the shed in those areas. The Applicant also testified that the shed could be smaller. Furthermore, the Board finds that no variance is needed to afford relief since there is space to replace a shed on the Property in compliance with the Sussex County Zoning Code.

The Board denied the variance application finding that it failed to meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was denied. The Board Members in favor of the Motion to deny 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 deny 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 June 21, 2021