

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ANTHONY A. KEMPSKI, JR.

(Case No. 12567)

A hearing was held after due notice on June 7, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. John Williamson, and Mr. Jordan Warfel.

Nature of the Proceedings

This is an application for variances from the front yard setback and rear yard setback requirements for existing and proposed structures.

Findings of Fact

The Board found that the Applicant is requesting the following variances: 1) a variance of 6.7 feet from the thirty (30) feet front yard setback requirement for proposed steps; 2) a variance of 9.45 feet from the thirty (30) feet front yard setback requirement for a proposed deck; 3) a variance of 2.5 feet from the five (5) feet rear yard setback requirement for an existing shed; 4) a variance of 2.3 feet from the five (5) feet rear yard setback requirement for an existing shed; and 5) a variance of 2.0 feet from the five (5) feet rear yard setback requirement for an existing shed. This application pertains to certain real property located on the southwest side of Forest Drive within Orchard Manor Subdivision (911 Address: 28296 Forest Drive, Millsboro) said property being identified as Sussex County Tax Map Parcel Number 2-34-34.08-95.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, a survey of the property dated April 7, 2021, photographs, and a schematic of the proposed addition.
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 Anthony Kempski was sworn in to testify about the Application and he submitted updated answers to his application.
4. The Board found that Mr. Kempski testified that the existing steps have degraded from heavy use and need to be replaced. He proposes to construct new steps with a more supportive, larger landing which he believes is needed for safety to accommodate a family member who is confined to a wheelchair.
5. The Board found that Mr. Kempski testified that the family owns a handicap van with a portable ramp but a front deck is needed to allow for the front door to be opened when the wheelchair is on the deck. He believes that the current home is situated too close to the setback to achieve this goal.
6. The Board found that Mr. Kempski testified that the side door enters into laundry area and is too narrow for a wheelchair to navigate. He noted that the wheelchair is a Broda model and is a large wheelchair.
7. The Board found that Mr. Kempski testified that the front door is the only option and a more narrow deck or steps would not allow the wheelchair to be secured on the front deck while the door is open.
8. The Board found that Mr. Kempski testified that the difficulty was not created by the Applicant but by the existing dwelling being located too close to the front setback line.
9. The Board found that Mr. Kempski testified that the variances will not alter the essential character of the neighborhood as there are existing steps that are in disrepair.

10. The Board found that Mr. Kempski testified that the new deck, steps, and railing will be aesthetically beneficial to the neighborhood and are consistent with the other properties on this private road.
11. The Board found that Mr. Kempski testified that the 8 foot width of the deck and steps is the minimum safe distance to be able to push a chair up the ramp, position safely on the deck, and open the front door.
12. The Board found that Mr. Kempski testified that they have had difficulty at other locations with opening the door and maneuvering the wheelchair.
13. The Board found that Mr. Kempski testified that the sheds and screen porch were existing on the Property when the Property was purchased by the Applicant.
14. The Board found that Mr. Kempski testified that the deck will be open.
15. The Board found that no one appeared in support of or in opposition to the Application.
16. 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 met the standards for granting a variance. The findings below further support the Board's decision to approve the Application.
 - a. The Property is unique due to its development, size, and historical use. The Property has been developed by a shed (with attached screened porch), dwelling, and related structures on an undersized lot. The lot measures only 9,684 square feet and is only 90 feet deep. The Applicant has a family member who uses a wheelchair and greater wheelchair accessibility to the home is needed. Due to the small size of the lot and its prior development, there is no location on the lot where a deck large enough for a wheelchair to safely maneuver into the home can be located. These conditions are unique and have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to construct a new deck and steps and also to retain an existing 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 situation and the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to construct a new deck and steps on the Property and to retain an existing shed but is unable to do while complying with the Sussex County Zoning Code. The Board is thus convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the Applicant to construct a new deck and steps on the Property and to retain an existing shed. The Board is convinced that the size, shape, and location of the structures are reasonable. The Board notes that the shed has been on the lot for some time and predates the Applicant's ownership of the lot. The deck and steps are needed to provide reasonable access to a family member of the Applicant who uses a large wheelchair.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. As discussed above, the Property has unique conditions which have limited the Applicant's ability to reasonably develop the Property. The Applicant did not create the unique shape and size of the lot or place the shed on the lot. The Board was convinced that the Applicant have not created the exceptional practical difficulty and unnecessary hardship. Furthermore, the Board is convinced that the Applicant did not come to the Property with an illegal use in mind. Rather, the Applicant needs the front yard variances to allow for a deck and steps that will afford a disabled family member with safer access to the home. The rear yard variances are for a structure that was not placed on the lot by the Applicant.

- e. The variances 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 proposed deck and steps and the existing shed will have no effect on the character of the neighborhood. The shed has been in its present location for some time and no complaints about the shed were noted in the record. The deck and steps will replace existing steps which have fallen into disrepair and, while the proposed deck and steps will be larger than the prior ones, the deck and steps will be open and should be more aesthetically pleasing than the current steps. There was no evidence that the structures would alter the character of the neighborhood and the Board heard no substantial evidence that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to construct a new deck and steps on the Property and to retain an existing shed. There are no proposed additions or modifications to the shed. The Applicant also demonstrated that he looked at other options for the location of the deck and steps but was constrained by the Property's conditions and the layout of the existing dwelling.
- 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 were Mr. Jeffrey Chorman, Mr. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the Motion to approve the variance application. Dr. Kevin Carson did not participate in the discussion or vote on this 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 August 16, 2021