

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DARRELL SPURLOCK & NAOMI SPURLOCK

(Case No. 12585)

A hearing was held after due notice on August 2, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

This is an application for variances from the side yard setback requirement for an existing structure.

Findings of Fact

The Board found that the Applicants are requesting a variance of 5 feet from the five (5) feet side yard setback requirement on the south side for an existing lean-to. This property is located on the northeast side of Blue Teal Road within the Swann Keys Subdivision (911 Address: 37018 Blue Teal Road, Selbyville) said property being identified as Sussex County Tax Map Parcel Number 5-33-12.16-497.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a letters supporting the Application, a survey of the Property dated January 4, 2007, drawings and photographs of the structure, property record information, the minutes for Case No. 9639, property record information, a letter in opposition to the Application, findings of fact for Case No. 9639, 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 two letters in support of and one letter in opposition to the Application.
3. The Board found that Darrell Spurlock and Naomi Spurlock were sworn in to testify about the Application.
4. The Board found that Ms. Spurlock testified that the Property is located in Swann Keys.
5. The Board found that Ms. Spurlock testified that the request for a variance is for a structure to act as protection from weather elements when grilling and as a barrier from smoke from the adjacent property.
6. The Board found that Ms. Spurlock testified that neighbors congregate and smoke on their deck, which is elevated 3-4 feet, and the smoke blows into the Applicants' yard. She noted that her husband has asthma and cannot be in smoky environments.
7. The Board found that Ms. Spurlock testified that Norman Hood, who is a contractor, constructed the lean-to in April or May 2021 and they believed he had obtained all necessary permits.
8. The Board found that Ms. Spurlock testified that there is no run off to adjacent properties as there is a rain gutter which comes back onto the Applicants' property.
9. The Board found that Ms. Spurlock testified that this lean-to does not block neighboring views of the lagoon.
10. The Board found that Ms. Spurlock testified that the Property is narrow with the house sitting only 5.9 feet from the property line.
11. The Board found that Ms. Spurlock testified that the area is a passage way next to the house so the structure could not be placed elsewhere.
12. The Board found that Ms. Spurlock testified that neighbors have submitted letters supporting the request but they have not spoken with the neighbors who smoke.

13. The Board found that Ms. Spurlock testified that they were unable to use the rear porch because of the neighbors' smoke until the lean-to was constructed.
14. The Board found that Ms. Spurlock testified that the structure is not visible from the roadway.
15. The Board found that Ms. Spurlock testified that the requested variance is the minimum variance to allow the structure to remain in its current location.
16. The Board found that Ms. Spurlock testified that there is no overhang onto neighboring lands. Rather, she testified that the overhang and gutter are on the Applicants' property and can be maintained without going onto neighboring lands. Mr. Spurlock also agreed with that statement.
17. The Board found that Ms. Spurlock testified that homeowner association approval is not required.
18. The Board found that Ms. Spurlock testified that the lean-to works well and the smoke has not been an issue. She believes that a fence would not be a sufficient barrier from smoke as the neighbor's deck is elevated.
19. The Board found that Ms. Spurlock testified that the lean-to is also used as protection from weather conditions.
20. The Board found that Mr. Spurlock testified that the lean-to is a semipermanent structure held with four bolts on the existing concrete slab.
21. The Board found that one person appeared in support of and no one appeared in 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 weighed and considered, 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, shape, and development. The lot is a small and narrow lot measuring only 40 feet wide by 99 feet deep. The Property is developed with a house and porch but the Applicants experience difficulty using their back yard due to smoke which blows from the neighboring property. In order to provide a barrier from the smoke, the Applicants built a lean-to along the property line. This lean-to was needed due to Mr. Spurlock's medical condition. The lean-to is also needed rather than a fence because the smoke blows from an elevated area. These conditions are unique and have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek to retain a lean-to on the site.
 - 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 and situation, 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. Moreover, the Applicants are unable to reasonably use the rear of the Property due to smoke which blows from an elevated deck on neighboring lands. Mr. Spurlock has a medical condition which necessitates that he avoid smoke and the lean-to provides a safe barrier from that element. The Applicants seek to retain the lean-to on the Property 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 lean-to to remain on the lot. The Board is convinced that the shape and location of the lean-to are also reasonable, which is confirmed when reviewing the survey provided by the Applicants.

- d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. As previously stated, the Property has unique conditions and these conditions have resulted in a limited building envelope on the Property. The Applicants also did not create the smoky conditions from the neighboring lands. These conditions have created the unnecessary hardship and exceptional practical difficulty. Moreover, the Applicants relied on their contractor to build the lean-to in compliance with the Code only to later discover the encroachment.
- 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 lean-to will have no effect on the character of the neighborhood. Letters of support were submitted from some neighbors and, while one neighbor submitted opposition, there was no substantial evidence that the addition would somehow alter the essential character of the neighborhood. The Board notes that the Applicants credibly testified that the structure can be maintained without encroaching onto neighboring lands. Moreover, the lean-to has rain gutters which will catch rainwater and deposit either on the Property or in the adjacent canal.
- 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 retain the lean-to on the Property. No additions or modifications to that structure are proposed. The lean-to is sufficient in height to block the smoke and it is clear from the record that the Applicants have been able to functionally use the rear of their Property since the lean-to has been installed; something they were not able to do prior to the lean-to's construction.
- 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 with conditions were Mr. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson. Dr. Kevin Carson and Mr. Jeffrey Chorman 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 October 18, 2021.