

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: KENNETH HEYDT & HELEN HEYDT

(Case No. 12591)

A public 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 front yard setback requirement for a proposed structure.

Findings of Fact

The Board found that the Applicants are requesting the following variances: 1) a variance of 8.6 feet from the forty (40) feet front yard setback requirement for proposed steps; 2) a variance of 4.5 feet from the forty (40) feet front yard setback requirement for a proposed manufactured home; 3) a variance of 11 feet from the forty (40) feet front yard setback requirement for an existing shed; and 4) a variance of 5 feet from the forty (40) feet front yard setback requirement for an existing shed. This application pertains to certain real property that is located on the southwest side of Camp Arrowhead Road within the Angola Neck Park Subdivision (911 Address: 22750 Camp Arrowhead Road, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-12.18-13.00. 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 May 19, 2021, 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 the Application.
3. The Board found that Helen Heydt, Kenneth Heydt, and Shelly Brobst were sworn in to give testimony about the Application.
4. The Board found that Ms. Brobst testified that she works with Oakwood Homes and that she sold a home to the Applicants.
5. The Board found that Ms. Brobst testified that the prior dwelling that was removed from the Property measured 28 feet by 60 feet and the proposed home measures 28 feet by 56 feet.
6. The Board found that Ms. Brobst testified that, due to the small building envelope, there is not enough room for a standard home.
7. The Board found that Ms. Brobst testified that the previous home was non-compliant to the County Code for many years and the Applicants were unaware that a variance would be required as the new home was smaller than the existing home.
8. The Board found that Ms. Heydt testified that the lot is diamond-shaped with a 40 foot front yard setback from Camp Arrowhead Road which leaves very little space for a multi-section home without a variance.
9. The Board found that Ms. Heydt testified that this issue was not caused by the Applicants but is a result of County regulations regarding setback restrictions from the front, rear, and side yard.
10. The Board found that Ms. Heydt testified that the previous home was non-compliant to the County Code for many years.
11. The Board found that Ms. Heydt testified that, if approved, this dwelling will not alter the essential character of the neighborhood but will enhance it.

12. The Board found that Ms. Heydt testified that the new dwelling is being placed in the same footprint as the prior dwelling.
13. The Board found that Ms. Heydt testified that the variance requested is the minimum variance that will allow the multi-section home to be placed on the Property.
14. The Board found that Ms. Heydt testified that the home is already purchased and it is smaller than the previous home.
15. The Board found that Ms. Heydt testified that the previous home had to be removed as it was destroyed by renters.
16. The Board found that Ms. Heydt testified that they have owned the Property for 5-7 years.
17. The Board found that Ms. Heydt testified that the shed will remain on the Property.
18. The Board found that Ms. Heydt testified that there have been no complaints about the placement of the shed or the previous home.
19. The Board found that Ms. Heydt testified that the Property is served by public sewer and a well.
20. The Board found that Mr. Heydt testified that the shed was on the Property at least since 1995 and that the Property was previously owned by Ms. Heydt's parents.
21. The Board found that no one appeared in support of or 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 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 in size, shape, and development. The lot measures only 11,515 square feet and is shaped like a diamond. The front portion of the lot is long but the lot is not deep. As a result, the building envelope is small and oddly shaped. Due to these conditions, it is unlikely that a reasonably sized home could be placed on the lot without a variance. These unique characteristics limit the buildable area available to the Applicants and have created an exceptional practical difficulty and unnecessary hardship for the Applicants who seeks to construct a new home and steps and to retain an existing shed on the lot.
 - 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 a unique size, shape, and development and the buildable area thereof is limited due to these conditions. The Applicants seek to construct a proposed dwelling and steps and to retain an existing shed on the lot but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that front yard variances are necessary to enable the reasonable use of the Property as the variances will allow the Applicants to make these reasonable improvements and to retain the existing shed.
 - d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicants. The Applicants did not create the unusual conditions of the Property as the Applicants have only owned the lot for 5-7 years. The existing home was destroyed by tenants and needs to be replaced. The preexisting conditions have resulted in a limited building envelope on the Property and the oddly shaped building envelope has created the exceptional practical difficulty and unnecessary hardship. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty and

unnecessary hardship were not created by the Applicants but were created by the lot's unique characteristics.

- 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 the variances will have no effect on the character of the neighborhood. The variances will allow the Applicants to reasonably improve the lot with a modest home and related structures and to retain the existing shed. There was no evidence that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The encroachments into the front yard setback Camp Arrowhead Road will likely not be noticeable since there is a large gap between the edge of paving from Camp Arrowhead Road and the front property line.

Likewise, the encroachments into the front yard setback do not appear to present any visibility issues. The Board also notes that the shed has been on the Property for many years without complaint and the house will be similarly situated to a prior dwelling on the lot and there were no complaints in the record about that house either.

- 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 Applicants have demonstrated that the variances sought will allow the Applicants to construct the reasonable improvements and to retain the existing shed. The Board is convinced that the Applicants are greatly limited by the Property's unique conditions and took efforts to minimize the encroachments on 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 were Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the motion to approve 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.