

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MICHAEL WRIGHT

(Case No. 12606)

A hearing was held after due notice on September 13, 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 and maximum fence height requirement requirements for proposed structures.

Findings of Fact

The Board found that the Applicant is requesting a variance of 28 feet from the forty (40) feet front yard setback requirement off Route 54 for a proposed shed on a through lot and a variance of 2.5 feet from the 3.5 feet maximum fence height requirement in the front yard setback for approximately 310 feet of fencing. The property is located on the northeast side of Teaberry Circle within the Teaberry Woods Subdivision (911 Address: 37744 Teaberry Circle, Selbyville) said property being identified as Sussex County Tax Map Parcel Number: 5-33-19.00-607.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a site plan of the Property, letters supporting the Application, photographs, 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 eight (8) letters in support of and no correspondence in opposition to the Application.
3. The Board found that Michael Wright and Cheryl Wright were sworn in to give testimony about the Application.
4. The Board found that Mr. Wright testified that the Property is unique and that, when he purchased the Property, he was unaware that it had two front yards and he was told that he could have a shed.
5. The Board found that Mr. Wright testified that Route 54 is a busy road with cars and pedestrians and he wants privacy for the protection of his grandchildren. He is also considering getting a dog and installing a pool.
6. The Board found that Mr. Wright testified that he proposes to install a 6 foot tall fence for privacy and safety reasons and this proposal is consistent with other sheds and fences in the neighborhood.
7. The Board found that Mr. Wright testified that he has support from neighbors.
8. The Board found that Mr. Wright testified that the fence will not create any visibility issues as it will be placed behind the subdivision sign which is on his property.
9. The Board found that Mr. Wright testified that there is no homeowners association for this development.
10. The Board found that Mr. Wright testified that the shed will measure 10 feet by 10 feet.
11. The Board found that Mr. Wright testified that there is a telephone pole, guy wires, and a stormwater basin on his lot.
12. The Board found that Mr. Wright testified that this is the only area to put the shed as there is a gas tank in on the east side of the Property.
13. The Board found that Mr. Wright testified that the silt fence shown on the photograph is 3 feet closer to the house than the proposed fence.

14. The Board found that Mr. Wright testified that the fence will be 7 feet from the property line and the shed will be 12 feet from the property line.
15. The Board found that Ms. Wright testified that they are proposing to install a pool in the future and they will need a privacy fence installed for the safety of children and grandchildren.
16. The Board found that Ms. Wright testified that the shed is necessary for children's toys and a lawnmower.
17. The Board found that Ms. Wright testified that the lot is a unique through lot which they did not understand when they purchased the Property.
18. The Board found that Ms. Wright testified that the fence will be far from the road.
19. The Board found that one person appeared in support of and no one appeared 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 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 its shape and development. The Property is a corner, through lot which is burdened by significant setback requirements. The lot is also adjacent to the busy Route 54 which has pedestrian and vehicular traffic which affects the privacy of the lot. The lot is also encumbered by a community sign, telephone pole, guy wires, and a catch basis on the north side of the lot which further restrict the developability of the lot. The building envelope, which is limited, is largely used by a dwelling and related structures but the Applicants need additional space for storage of outdoor equipment and toys. The proposed shed affords them with that space. Due to the unique conditions of the lot, the Applicants cannot construct the shed and fence in compliance with the Code without a variance and there appears no other location where the shed could be located. The Applicants also intend to construct a pool and, since Code requires a fence measuring 4 feet tall, a variance would be needed to construct the fence for the pool anyway. The Board finds that the unique conditions of the lot have created a limited building envelope and, thus, have created an exceptional practical difficulty and unnecessary hardship for the Applicants who seek to install a shed and fence 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 Applicants need a taller fence than is permitted under the Code for privacy and for a proposed pool. The Property is affected by the traffic along Route 54 and the fence is needed for safety and privacy. Moreover, the shed is needed for storage but the Applicants are unable to construct the shed in compliance with the Code due to the Property's unique conditions. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the Applicants to construct a reasonably sized shed and fence. The Board is convinced that the locations of these structures are also reasonable, which is confirmed when reviewing the survey provided by the Applicants. The Board notes that the fence and shed will be a significant distance from the actual pavement of Route 54 and the pictures demonstrate that the structures should not affect visibility along Route 54.
 - d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicants. The Applicants did not create the lot conditions

and those conditions have created the exceptional practical difficulty and unnecessary hardship. The unique characteristics of the Property are clear when reviewing the materials and testimony presented to the Board. The Board is convinced that the exceptional practical difficulty and unnecessary hardship were not created by the Applicants but was created 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 fence and shed will have no effect on the character of the neighborhood. The structures are located away from the road and are unlikely to be a distraction. The Applicants' testimony demonstrated that there is also a gap from the edge of paving of the road and the structures so the encroachments will not be as noticeable as they would otherwise be. No substantial evidence was presented which convinced the Board 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 Applicants have demonstrated that the variances sought will allow the Applicants to construct the minimum fence needed to surround their pool and provide adequate safety and privacy for their property and to construct a reasonably sized shed on the lot. The Board is convinced that the Applicants explored other options for the location of these structures but were constrained by the lot's unique characteristics.
- 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 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 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 November 1, 2021.