

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ZACHARY ULRICH & BREANNA TUMAS

(Case No. 12645)

A hearing was held after due notice on February 7, 2022. The Board members present were: Dr. Kevin Carson, Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

This is an application for a variance from the maximum lot coverage requirement.

Findings of Fact

The Board found that the Applicants are requesting a variance of 9.8% from the 35% maximum lot coverage requirement. If the variance is granted, the lot coverage for this lot would be 44.8%. This application pertains to certain real property located on S. Canal Street within the Bay City Manufactured Home Park (911 Address: 35851 S. Canal Street, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 234-24.00-34.00-17838 (hereinafter "the Property"). 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 September 2, 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 to the Application.
3. The Board found that Zach Ulrich, Gregory Tumas, and Breanna Tumas were sworn in to give testimony about the Application.
4. The Board found that Mr. Ulrich testified that the Applicants own a home in a mobile home community park where they lease the land.
5. The Board found that Mr. Ulrich testified that the lot is small and is subject to the lot coverage rule and that their marginal restrictions are different than a typical subdivision.
6. The Board found that Mr. Ulrich testified that the Applicants' dwelling sits on a low-lying area of the Property and is subject to run off where water would pool under the house. He noted that under the home is dirt and mud and water evaporates upwards and creates a moldy floor in their home.
7. The Board found that Mr. Ulrich testified that, to eliminate water problems, the Applicants have installed a French drain.
8. The Board found that Mr. Ulrich testified that that their diligence and installation of the French drain has resolved the standing water issues and has benefited neighboring properties as well.
9. The Board found that Mr. Ulrich testified that the Applicants added a carport and a roof to the deck.
10. The Board found that Mr. Ulrich testified that the Applicants are applying for the minimum variance to complete their request.
11. The Board found that Mr. Ulrich testified that the Applicants began work on the new structures prior to obtaining permits and that the carport put the Property over the lot coverage requirement.
12. The Board found that Ms. Tumas testified that the Applicants have been confused about the calculation of lot coverage.

13. The Board found that Ms. Tumas testified that the Property held water in a ponding status which made it difficult to walk in the yard.
14. The Board found that Ms. Tumas testified that their neighbors built up their properties prior to regulation changes and forcing water to their low-lying property and under their home. She noted that she has a mold allergy and was becoming ill. She noted that they found the source of mold was the standing water.
15. The Board found that Ms. Tumas testified that their neighbor complimented their efforts in resolving the standing water problem and that neighboring lands are not as wet either.
16. The Board found that Ms. Tumas testified that they added the French drain, a carport, and a roof to the deck.
17. The Board found that Ms. Tumas testified that the carport put them over the maximum allowable coverage requirement.
18. The Board found that Ms. Tumas testified that the additions were not permitted initially and her father helped with the construction of the carport.
19. The Board found that Ms. Tumas testified that the installation of drains have not adversely affected their neighbors.
20. The Board found that Ms. Tumas testified that the neighbor with elevated driveway is located near the carport and they are attempting to reduce the water forced to their property.
21. The Board found that Ms. Tumas testified that the carport would help eliminate water standing on that side of the house and creating mold near the main bedroom which was where she was getting the sickest.
22. The Board found that Ms. Tumas testified that there was gutters in place but they were not helpful when there was excessive rain.
23. The Board found that Ms. Tumas testified that their neighbors to the east have not complained about water on their property due to carport.
24. The Board found that Ms. Tumas testified that the water drains toward the road and back of the home based on the pitch of the roof.
25. The Board found that Ms. Tumas testified that this was constructed spring of 2021 with landlord approval.
26. The Board found that Ms. Tumas testified that the carport stops at the end of the sunroom.
27. The Board found that Ms. Tumas testified that purchased the home three years ago and all structures were existing at that time except the carport and sunroom.
28. The Board found that Mr. Tumas testified that the carport is located on a concrete pad with cement block and no footer. He noted that the carport is not a permanent structure and is not permanently attached to the ground.
29. The Board found that Mr. Tumas testified that the area was previously used by a prior owner as a paver floor and was used to hold a golf cart and jet ski. He believes that the carport is necessary for storage of the golf cart.
30. The Board found that Mr. Tumas testified that the water is not directed towards the neighbor's house but towards the front of the Property.
31. The Board found that Mr. Tumas testified that he assisted with construction but is not a licensed contractor.
32. The Board found that Mr. Tumas testified that gutters and down spouts will be applied if they are allowed to resume work.
33. The Board found that Mr. Tumas testified that the carport is 5.5 feet from the side property line and is shown as the dotted edge on the paver on the survey.
34. The Board found that, per the site plan, the square footage of the Property was 5,221.30 square feet and that 35% of that figure is 1,827.46. Per the site plan, the square footage of the existing structures is as follows:
 - a. Carport – 112 square feet
 - b. Sunroom – 166 square feet

- c. Shed – 101 square feet
- d. House 1,590 square feet
- e. Deck – 228 square feet
- Total: 2,197 square feet

35. The Board found that the existing structures are 369.54 feet over the maximum allowable amount.
36. The Board found that no one appeared in support of or in opposition to the Application.
37. 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 from the maximum square footage requirement partially met the standards for granting a variance. The Board approves the variance needed for the existing shed, sunroom, house, deck, and steps as shown on the survey of the Property dated September 2, 2021. The Board, however, denies the variance for the carport which is shown as part of the paver on the aforementioned survey. The findings below further support the Board's decision to approve the Application in part and to deny the Application in part.
 - a. The Property is unique as it is a small lot consisting of only 5,221.30 square feet and was previously improved by a prior owner. These conditions greatly restrict the building envelope on the Property. It is clear to the Board that the lot's unique characteristics have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek to retain the existing shed, deck, steps, sunroom, and house on the lot.
 - b. The unnecessary hardship and exceptional practical difficulty for the existing shed, deck, steps, sunroom, and house 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 with a shed, deck, steps, sunroom, and house in strict conformity with the Sussex County Zoning Code. The Applicants seeks to retain those structures on the Property but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance as it pertains to those structures is necessary to enable the reasonable use of the Property as the variance for those structures will allow the Applicants to retain the existing shed, deck, steps, sunroom, and house on the Property. The Board is convinced that the shape and location of the existing shed, deck, steps, sunroom, and house are also reasonable, which is confirmed when reviewing the survey provided by the Applicants.
 - d. The Board finds, however, that the carport is not necessary to enable the reasonable use of the Property as the carport. The Board was not convinced that the Property could not otherwise be reasonably used without the carport. Moreover, the carport was not previously on the Property and was placed on the lot by the Applicants without a permit.
 - e. The exceptional practical difficulty and unnecessary hardship for the existing shed, deck, steps, sunroom, and house were not created by the Applicants. Those structures were on the lot prior to the Applicants' purchase of the home and the unique characteristics of the Property are clear when reviewing the survey and the Applicants' testimony. The Board is convinced that the exceptional practical difficulty and unnecessary hardship as it pertains to the existing shed, deck, steps, sunroom, and house were not created by the Applicants but was created the lot's unique characteristics.
 - f. As it pertains to the carport, however, the Board finds that the Applicants created their own exceptional practical difficulty by placing the carport on

the lot in violation of the Code. The Applicants' decision to place the carport on the lot without obtaining a building permit is the reason for the need for variance and has nothing to do with the size, shape, or condition of the Property. The Board was not convinced that the variance request for the carport was the product of a *need*. Instead, the variance requests appear to be the product of a *want* as the Applicants seeks to retain the carport for purposes of convenience, profit, and / or caprice. The Board was not convinced that the variance needed for the carport was due to a unique condition of the Property. Rather, the Applicants' decision place the carport outside the building envelope is the reason for the variance for the carport. The Applicants have thus created their own exceptional practical difficulty.

- g. The variance for the existing shed, deck, steps, sunroom, and house 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 existing shed, deck, steps, sunroom, and house will have no effect on the character of the neighborhood. The existing shed, deck, steps, sunroom, and house have been on the Property for some time but there were no complaints noted in the record about those structures. Furthermore, no evidence was presented which would indicate that the variances for those structures would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- h. The variance sought for the existing shed, deck, steps, sunroom, and house 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 for the existing shed, deck, steps, sunroom, and house will allow the Applicants to maintain those structures on the Property. No modifications or additions to the existing shed, deck, steps, sunroom, and house are proposed.
- i. As it pertains to the carport, since the variance for the carport is not necessary to enable the reasonable use of the Property, the Board finds that the variance requested for the carport is not the minimum variance necessary to afford relief.
- j. 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.
- k. This approval for the variances for the existing shed, deck, steps, sunroom, and house is expressly contingent upon the removal of the carport from the Property.

The Board granted the variance needed for the existing shed, sunroom, house, deck, and steps as shown on the survey of the Property dated September 2, 2021. The Board, however, denied the variance for the carport which is shown as part of the paver on the aforementioned survey.

Decision of the Board

Upon motion duly made and seconded, the application for a variance from the maximum lot coverage requirement was approved in part and denied in part. The Board Members in favor of the motion to approve the variance in part and to deny the variance in part were: Dr. Kevin Carson, Mr. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the motion to approve in part and to deny in part the application. Mr. Jeffrey Chorman 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 April 4, 2022