

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: KAREN WRIGHT & JAMES WRIGHT**

**(Case No. 12661)**

A hearing was held after due notice on February 21, 2022. 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 a variance from the maximum lot coverage requirement.

Findings of Fact

The Board found that the Applicants are requesting variance of 241.15 square feet from the 35% maximum lot coverage variance. This application pertains to certain real property located on the east side of Berry Street within the Bay City Manufactured Home Park (911 Address: 25859 Berry Street, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 234-24.00-34.00-53131 ("the Property"). 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 September 21, 2021, correspondence in support of and in opposition to the Application, minutes of Case No. 10548, a letter dated November 5, 2003, from the Office of Planning & Zoning, a letter from the Applicants' attorney, photographs, and findings of fact for Case No. 10018.
2. The Board found that the Office of Planning & Zoning received thirteen (13) letters in support of and one letter in opposition to the Application.
3. The Board found that Karen Wright and James Wright were sworn in to testify about the Application. Chad Lingenfelder, Esquire, presented the case on behalf of the Applicants.
4. The Board found that Mr. Lingenfelder stated that there is a history with the Property dating back to 2007 as the previous owners applied for a variance request for a shed and porch and were denied. A request for a rehearing was denied in 2010.
5. The Board found that Mr. Lingenfelder stated that the Applicants do not own the Property but they own the home located on the Property and rent the Property located in the Bay City Mobile Home Park. He noted that prior owners placed the house on the Property.
6. The Board found that Mr. Lingenfelder stated that, after the prior variance request was denied, Bay City removed the porch and shed and the Property sat vacant for eleven years until the Applicants purchased the home and leased the Property.
7. The Board found that Mr. Lingenfelder stated that the Applicants believe the former variance was denied due to the addition of structures that was completed prior to the variance request.
8. The Board found that Mr. Lingenfelder stated that the Property consists of 5,424 square feet and that the mobile home consists of 1,792 square feet, which is 33% of the lot taken up by just the mobile home.
9. The Board found that Mr. Lingenfelder stated that the shed and porch consist of 336 square feet.
10. The Board found that Mr. Lingenfelder stated that there is significant stormwater and groundwater issues within Bay City.
11. The Board found that Mr. Lingenfelder stated that the Applicants are looking to build raised structures so not to impede on water drainage. He noted that the prior

- structures were not elevated. He argued that raising the structures will allow for water to flow underneath the structures.
12. The Board found that Mr. Lingenfelder stated that the Applicants have attempted to mitigate water issues on the lot by placing a stone driveway.
  13. The Board found that Mr. Lingenfelder stated that the Applicants need the shed because they have no storage options for outdoor equipment on the Property. He noted that the Applicants have a golf cart, tools, and patio furniture.
  14. The Board found that Mr. Lingenfelder stated that more erosion has occurred since the last variance request and the greater erosion has created a greater need for these structures.
  15. The Board found that Mr. Lingenfelder stated that the shed will match the house.
  16. The Board found that Mr. Lingenfelder stated that the Property is unique and that the Applicants are asking for minimum variance needed to use the Property to the best of their ability. He noted that his clients intend to use the Property as their full-time residence.
  17. The Board found that Mr. Lingenfelder stated that the Applicants inquired with the landlord about expanding the Property but that request was denied.
  18. The Board found that Mr. Lingenfelder stated that the Applicants would only be using a small portion of actual ground by using posts to elevate the structures. He noted that the shed will be elevated one foot and the porch will be elevated 3-4 feet.
  19. The Board found that Mr. Lingenfelder stated that stormwater problems have increased since the 1970s, when the development was created, and the Property is near a federal wetland and the bay.
  20. The Board found that Mr. Lingenfelder stated that the Property cannot otherwise be developed and that the exceptional practical difficulty was not created by the Applicants.
  21. The Board found that Mr. Lingenfelder stated that the structures will be similar to other structures in Bay City and that there is vegetation and a proposed fence to limit view of the proposed shed.
  22. The Board found that Mr. Lingenfelder stated that there are other lots with more lot coverage that have variances or were grandfathered in.
  23. The Board found that Mr. Lingenfelder stated that the variances will not alter the essential character of the neighborhood.
  24. The Board found that Ms. Wright testified that the Applicants are asking for a shed, which everyone else in the park has. She noted that the Applicants have items which require storage such as a pontoon boat and golf cart.
  25. The Board found that Ms. Wright testified that their lot is the only lot that consists of only a house and that the Applicants intend to make it a home but are unable to reside there full-time due to lack of storage options.
  26. The Board found that Ms. Wright testified that the Applicants tried to get additional land to lease from the landlord but were unable to do so.
  27. The Board found that Ms. Wright affirmed the statements made by Mr. Lingenfelder as true and correct.
  28. The Board found that Preston Miller was sworn in to testify in support of the Application.
  29. The Board found that Mr. Miller testified that he lives three blocks from the lot in question.
  30. The Board found that Mr. Miller testified that Bay City was designed for smaller trailers.
  31. The Board found that Mr. Miller testified that the neighborhood is not livable without having a shed. He noted that everyone has boats and / or golf carts.
  32. The Board found that Mr. Miller testified that decks are needed as well.

33. The Board found that Mr. Miller testified that the home was an eyesore for over ten years prior to the Wrights' purchase of the home and that the Applicants have done a good job with the Property.
34. The Board found that Dan Wien and Patricia Wyl were sworn in to testify in opposition of this application. Mr. Wien also submitted exhibits for the Board to review.
35. The Board found that Mr. Wien testified that he lives adjacent to the lot in question on the south side. He has leased his lot since 1972.
36. The Board found that Mr. Wien testified that Bay City started allowing doublewide trailers rather than singlewide trailers and that decision created these issues.
37. The Board found that Mr. Wien testified that the lot coverage rule is to keep from overbuilding sites.
38. The Board found that Mr. Wien testified that there are flooding problems and that there is no stormwater program. He testified that Bay City has failed to mitigate the stormwater issues. He noted that there are no retention swales.
39. The Board found that Mr. Wien testified that other manufactured homes have fill and push water to Berry Street and that the installation of fill dirt in the neighborhood started in 1998 and led to a worsening of flood problems.
40. The Board found that Mr. Wien testified that he is there to protect his property.
41. The Board found that Mr. Wien testified that most houses are level with the road.
42. The Board found that Mr. Wien testified that the additional structures will block views.
43. The Board found that Mr. Wien testified that there have been 12 floods since 1998.
44. The Board found that Ms. Wyl testified that she lived in Bay City from 1999 to 2013 and, during that time, residents sued the landowner due to flooding on their lots in 2007. She has since moved to Pot Nets.
45. The Board found that Ms. Wyl testified that they were one street over from Berry Street and the lots around them were higher forcing water to their lot.
46. The Board found that Ms. Wyl testified that she objects to the variance because it creates more issues with flooding.
47. The Board found that Ms. Wyl testified that she does not believe raising the shed will mitigate any flooding. She noted that her daughter's shed is on blocks and water pools around the shed.
48. The Board found that Ms. Wyl testified that Lot 1 is not a standard lot as it is elevated while other lots on Berry Street are lower.
49. The Board found that Ms. Wyl testified that as a former neighbor they suffered in Bay City due to the stormwater runoff. She argued that even normal rain events cause flooding problems.
50. The Board found that Ms. Wyl testified that the support letters appear to be from raised lots not lower lying lots.
51. The Board found that Ms. Wyl testified that the low-lying lots suffer and that neighbors cannot walk outside due to the runoff issues.
52. The Board found that Mr. Lingenfelder stated that one of the opposition members does not reside there and has not lived there for some time so she is a non-interested party.
53. The Board found that Mr. Lingenfelder stated that he sees no violations against the Property from the County or federal government and that a certificate of occupancy was issued for the house on Lot 1.
54. The Board found that Mr. Lingenfelder stated that the Applicants have not caused the stormwater problem.
55. The Board found that Mr. Lingenfelder stated that there is no proof to show that his clients adding a shed and porch will not adversely impact the already existing water issues. He argued that there have been no experts to testify that these additions would create more issues.

56. The Board found that Mr. Lingenfelder stated that Bay City told them there was recently a variance granted for the same type of request.
57. The Board found that Ms. Wright testified that they could put down pavers without having a variance.
58. The Board found that Ms. Wright testified that they spoke with a neighbor who owns a low-lying property and the neighbor supports the request.
59. The Board found that Ms. Wright testified that Berry Street is no different than other streets in Bay City.
60. The Board found that Ms. Wright testified that she is unaware of the size of her neighbor's shed but the neighbor has two decks, a shed, and an outdoor shower.
61. The Board found that Ms. Wright testified that they looked at a smaller shed but it is not feasible, and the Applicants would like to go bigger actually but are seeking the minimum to be able to accommodate their belongings.
62. The Board found that Ms. Wright testified that the Applicants have no shade on their lot.
63. The Board found that Ms. Wright testified that the Applicants looked at other options but those options are not as feasible, practical, or nice looking, such as pavers or an enclosed trailer
64. The Board found that four individuals appeared in support of and two individuals appeared in opposition to the Application.
65. 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 there has been a substantial change of conditions or other conditions or in the proposed use or plans for use which materially affect the merits of the request.
  - a. The Board previously denied a variance of 659.15 square feet from the 35% lot coverage requirement. See the Board's decision in Case No. 10548. The prior case was filed by a prior owner of the house on the Property. Subsequent to that decision, the porch and shed were removed.
  - b. The Property sat vacant for 11 years until the Applicants acquired the house and rented the Property. The Applicants have submitted a revised plan to add a smaller shed and porch on the Property. The variance needed for those structures is 241.15 square feet. It is clear that the plans proposed by the Applicants are substantially different from the original application.
  - c. These findings confirm that there has been a substantial change in the proposed use or plans for the use.
66. 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 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 size and historical development. The Property is a small lot consisting of only 5,391 square feet and was developed by a house many years ago. The house, which has been vacant for 11 years, does not include a porch or shed. The Applicants seek to construct a shed and porch, consistent with other similar structures in the neighborhood, but are unable to do so in accordance with the Sussex County Zoning Code. Due to the historical development of the Property and the small size of the lot, less than 100 square feet is available for these structures. The buildable area is, thus, exceptionally small and has created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek to construct these structures on the Property.
  - 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 Property and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants seek to reasonably develop the Property but are unable to do while complying with the Sussex County Zoning Code. The Board is thus convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the Applicants to reasonably develop the Property with a shed and porch. The porch is needed to provide functional outdoor space and the shed is needed for the storage of outdoor materials. Due to the close proximity to the bay, indoor storage of patio furniture and a golf cart are needed to reasonably use the Property. The Board is convinced that the size, shape, and location of the proposed structures are reasonable.
- d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. As discussed above, the Property has unique conditions which have limited the Applicants' ability to reasonably develop and use the Property. The Applicants did not create the unique conditions of the lot since the Applicants only recently acquired the Property. They did not create the lot size or place the house on the lot. The Board was convinced that the Applicants did not create the exceptional practical difficulty and unnecessary hardship. Furthermore, the Board is convinced that the Applicants did not come to the Property with an illegal use in mind. Rather, the Applicants are limited by the physical conditions of the Property and need the variance to reasonably use the Property as proposed.
- 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 proposed structures will have no effect on the character of the neighborhood. While the opposition presented concerns about flooding, they provided no expert testimony to demonstrate that the additional structures would somehow exacerbate those issues. Moreover, the Applicants are allowed to put pavers on the Property without needed a variance and those pavers would have impervious surfaces as well. The issues with flooding appear to be due to the layout of the neighborhood in the 1970s and the lack of stormwater management areas in the park. The Applicants have no control over that issue. The Board notes that there have been other variances granted nearby and that the structures proposed by the Applicants are consistent with similar structures in the neighborhood. Ultimately, the Board was not convinced by substantial evidence that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board also notes that some neighbors support the request.
- 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 reasonably develop the Property with a shed and porch. The Applicants have reduced the size of the shed to minimize the need for variances while still providing them with necessary storage space.
- 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 Hasting, Mr. Jordan Warfel, and Mr. John Williamson. No Board Members 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 April 18, 2022