

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: GARY ALEXANDER

(Case No. 12666)

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

Nature of the Proceedings

This is an application for a variance from the side yard setback requirement for a proposed structure.

Findings of Fact

The Board found that the Applicant is requesting a variance of 4 feet from the five (5) feet side yard setback requirement on the south side for a proposed shed. This property is located on the west side of Sussex Road within the Indian River Acres Subdivision (911 Address: 30143 Sussex Road, Dagsboro) said property being identified as Sussex County Tax Map Parcel Number 134-7.00-34.00 ("the Property"). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey of the Property dated July 30, 2002, a building permit application, photographs of the Property, 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 no correspondence in support of or in opposition to the Application.
3. The Board found that Gary Alexander and Laura Alexander were sworn in to testify about the Application. Mr. Alexander submitted pictures to the Board to review.
4. The Board found that Ms. Alexander testified that the Applicants live on a canal and the Applicants had to replace their bulkhead due to erosion.
5. The Board found that Ms. Alexander testified that the shed previously sat on a concrete pad which was removed as part of the bulkhead improvement. She noted that the Applicants also had to remove a portion of deck to aid in repairs.
6. The Board found that Ms. Alexander testified that the Applicants have a davit which they use to remove small watercrafts on the other side of the Property and the davit had to be removed as well.
7. The Board found that Mr. Alexander testified that the shed will be 5 feet off the rear property line but needs a side yard variance.
8. The Board found that Mr. Alexander testified that the Applicants would like the shed in its former area so that it is accessible from the dock.
9. The Board found that Mr. Alexander testified that the old shed has been removed and he was unaware of the rear yard setback until he applied for a permit for the replacement deck.
10. The Board found that Mr. Alexander testified that the shed will have vinyl siding and he would only need 1-2 feet to clean the rear of the shed. He noted that there is no grass to be tended to near the shed and that his neighbor uses that area for crab pot storage.
11. The Board found that Mr. Alexander testified that he could place the shed 2 feet off the property line as the previous shed was that distance also.
12. The Board found that Mr. Alexander testified that he cannot place the shed on the north side due to the need for access to the shed from the dock. He also noted that the Applicants store their boat equipment on the other side of the lot.
13. The Board found that Mr. Alexander testified that the Applicants also have an irrigation system on the side of the Property where the davit is located.

14. The Board found that Mr. Alexander testified that their homeowners association follows Sussex County regulations.
15. The Board found that Mr. Alexander testified that the prior shed measured 12 feet by 12 feet and the new shed measures 8 feet by 14 feet.
16. The Board found that Mr. Alexander testified that the shed will be placed on a timber and gravel bed rather than a concrete pad and that the concrete pad had to be removed as part of the bulkhead replacement.
17. The Board found that Mr. Alexander testified that the shed will have a ramp attached on the east end (road facing).
18. The Board found that Mr. Alexander testified that they have support from their neighbor and that the majority of their neighbors are seasonal residents.
19. The Board found that Mr. Alexander testified that he was told he needed to move his deck 10 feet off the property line prior to construction and that he was not aware that replacing the shed would be an issue.
20. The Board found that no one appeared in support of or in opposition to the Application.
21. 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 with a modification met the standards for granting a variance. The findings below further support the Board's decision to approve the Application for the variance with modification.
 - a. The Property is unique as it is a lot bordering a lagoon and has suffered from erosion. The erosion required a replacement of the existing bulkhead and the replacement of that bulkhead required a removal of an existing shed that has been on the Property since at least 2002. The Applicants request to replace that shed with a new one of similar size and in a similar location as the prior shed. Due to the existing development of the Property and the need to replace the structures due to the erosion of the rear property line, the Applicants were limited in where a shed could be located that would serve its intended purpose. The Board finds that the lot's unique conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek to construct a 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 and limited buildable area. The Applicants seek to construct a replacement shed 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 a reasonably sized replacement shed to be constructed on the Property. The Board is convinced that the shape and location of the shed are also reasonable, which is confirmed when reviewing the survey provided by the Applicants. The shed will be used in a similar manner as a prior shed and will be located near the dock so that it is accessible. The Board notes that the variance request is modified as the Applicants testified that the shed can be moved 2 feet off the property line rather than 1 foot as originally proposed.
 - 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. These conditions have created the unnecessary hardship and exceptional practical difficulty. The Board notes that the existing structures were on the lot since at least 2002 and the Applicants did not

acquire the Property until 2003. The erosion along the rear property line created a need to replace the bulkhead and that led to the removal of the existing shed. The Board also notes that, due to the unique conditions of the lot, there appears no other place where the shed can be located that would serve its intended purpose.

- e. The variance, as modified, 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 shed will have no effect on the character of the neighborhood. The shed will be no closer to the side property line than the prior shed and the shed will comply with the rear property setback which the prior shed did not. The Board notes that there was no evidence submitted into the record that the prior shed or this shed has had or will somehow alter the essential character of the neighborhood. Rather, the Applicant testified that his neighbor most affected by the variance supports the request.
- f. The variance, as modified, is the minimum variance necessary to afford relief and the variance, as modified, represents the least modification possible of the regulation at issue. The Applicants have demonstrated that the variance, as modified, will allow the Applicants to place the reasonably sized shed on the Property. The Board is convinced that the Applicants explored other options for the size, shape, and location of the shed but were constrained by the conditions of the lot. The Board notes that the variance, as modified, will be 3 feet rather than 4 feet.
- 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.
- h. The variance is approved with the modification that the shed be located no closer than 2 feet from the side yard property line on the south side of the Property.
- i. The Board also finds that the Board cannot consider a rear yard variance for the proposed deck because this Application was only advertised for a side yard variance. The Applicants will have to reapply for the rear yard variance needed for the deck.

The Board granted the variance application with modification 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 with modification. The Board Members in favor of the Motion to approve the variance with modification were Dr. Kevin Carson, Mr. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the Motion to approve the variance application with modification. 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 May 2, 2022.