

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: STEPHANIE McENTAFFER

(Case No. 12677)

A hearing was held after due notice on April 18, 2022. The Board members present were: Mr. John Williamson, Dr. Kevin Carson, Mr. Jeff Chorman, and Mr. Jordan Warfel.

Nature of the Proceedings

This is an application for a variance from the side yard setback requirement for a proposed porch on an existing deck and a variance from the front yard setback requirement for an existing shed.

Findings of Fact

The Board found that the Applicant is requesting the following variances: a variance of 3.7 feet from the 5 foot side yard setback requirement on the north side for a proposed porch to be constructed over an existing deck and a variance of 2.2 feet from the 30 foot front yard setback requirement for an existing shed. This application pertains to certain real property located on the southeast side of Shore Drive approximately 150 feet from Carey Street (911 address: 9043 Shore Drive, Milford) said property being identified as Sussex County Tax Map Parcel Number 230-17.00-11.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, an Amendment to the Application, a portion of the tax map of the area, several surveys of the Property, and copies of archived property records associated with prior improvements to the Property.
2. The Board found that the Office of Planning and Zoning received no letters in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Ms. Stephanie McEntaffer and Mr. Donald McEntaffer were sworn in to testify about the Application.
4. The Board found that Mr. McEntaffer testified that he and his wife own the Property, and that the shed is existing and they were unaware of the setback requirement.
5. The Board found that Mr. McEntaffer testified that there are other sheds in the neighborhood placed in similar fashion and that the variances will not alter the essential character of the neighborhood.
6. The Board found that Mr. McEntaffer testified that the shed is stick built, anchored, and has windows.
7. The Board found that Mr. McEntaffer testified that there is a deck on the front of the home and there is a mound system septic drain field along with the DNREC "No-Build" line on the Property – all of which restrict the buildable area on the Property.
8. The Board found that Mr. McEntaffer testified that the shed's location is the only functional location for it on the Property.
9. The Board found that Mr. McEntaffer testified that the deck over which the porch will be built currently exists.
10. The Board found that Mr. McEntaffer testified that the main entrance to the house is via the north side of the structure.
12. The Board found that Mr. McEntaffer testified that the location of the porch and entryway was due to mobility issues of their elderly parents.

13. The Board found that Mr. McEntaffer testified that the porch will include a roof structure constructed over the existing deck and that the porch structure is now framed with the screens and roof to be completed.

14. The Board found that Mr. McEntaffer testified that the porch will have a pitched roof like the dwelling's pitched roof with a gutter system to assist with runoff onto neighboring properties.

15. The Board found that Mr. McEntaffer testified this variance application is the result of a violation notice received from Sussex County and that his contractor was "The Great Outdoors".

16. The Board found that Mr. McEntaffer testified that the existing porch was previously constructed to the DNREC "No-Build" line.

17. The Board found that Mr. McEntaffer testified that the variances requested are the minimum variances to allow the shed and the construction of the porch over the existing deck.

18. The Board found that no one appeared in support or in opposition to the Application.

19. 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 unrebutted, the Board determined that the application met the standards for granting the variances. The findings below further support the Board's decision to approve the variances.

a. The Property is unique due to the exceptionally small buildable area. The lot is encumbered by the existing dwelling and deck, the DNREC "No-Build" line, and the existing mound type septic system. These conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to maintain the existing shed and construct a porch on an existing deck.

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 unique physical characteristics, and the buildable area thereof is limited due to those characteristics. The Applicant seeks to maintain a shed on the lot and erect a porch over an existing deck but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow this reasonably sized shed to remain in a reasonable location in the yard of the lot like others in this area. The Board is also convinced that the construction of a porch over the existing deck of the structure is also reasonable, given the limitations that exist on the Property.

d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. 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.

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 will they be detrimental to the public welfare. The Board is convinced that the shed will have no effect on the character of the neighborhood. There are other similar sheds at similar locations within the neighborhood. Likewise, the porch over the existing deck will not alter the essential character of the neighborhood, and there are similar structures in existence in the area. Also, there was no opposition to the porch from the neighbor to the north, which is

nearest to it. No evidence was presented which demonstrates that the variances would somehow alter the essential character of the neighborhood.

f. The variances sought are the minimum variance necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue.

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 Mr. John Williamson, Dr. Kevin Carson, Mr. Jeffrey Chorman, and Mr. Jordan Warfel. No Board Member voted against the Motion to approve the variance application. Mr. Travis Hastings 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 June 27, 2022