

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: TERRI LOKEY

(Case No. 12719)

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

Nature of the Proceedings

This is an application for variances from the side yard setback requirement for existing and proposed structures.

Findings of Fact

The Board found that the Applicant is seeking the following variances:

1. A variance of 0.88 feet from the ten (10) feet side yard setback requirement on the north side for an existing dwelling;
2. A variance of 1.3 feet from the ten (10) feet side yard setback requirement on the north side for an existing dwelling;
3. A variance of 3 feet from the five (5) feet side yard setback requirement on the south side for an existing carport; and
4. A variance of 5 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 Terrace Road within the Holly Ridge Terrace Subdivision (911 Address: 30347 Terrace Road, Ocean View) said property being identified as Sussex County Tax Map Parcel Number 134-9.00-182.00 ("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 December 3, 1997, real estate information on the Property, a letter of support, 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 one letter in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Terri Lokey was sworn in to testify about the Application.
4. The Board found that Ms. Lokey testified that she bought the Property two and a half years ago and that all structures, except for the proposed shed, were located on the Property at that time.
5. The Board found that Ms. Lokey testified that there is an existing shed that measures 12 foot by 14 foot and is located about 2 feet off the property line. She noted that the shed is deteriorating and she would like to replace it with a new shed measuring 14 feet by 24 feet. She makes this variance request because the new shed is 2 feet wider.
6. The Board found that Ms. Lokey testified that, if she moved the shed any farther off the property line, the shed would impede her access to her back yard and she needs approximately 6 feet to access the rear yard with her lawn mower.
7. The Board found that Ms. Lokey testified that her next-door neighbors wrote a letter in support of the Application and that the neighbor's shed actually butts up to her shed.
8. The Board found that Ms. Lokey testified that no homeowner association approval is needed.
9. The Board found that Ms. Lokey testified that there will be no grass between the proposed shed and the neighbor's shed as there is gravel there.

10. The Board found that Ms. Lokey testified that she did look into a smaller shed.
11. The Board found that Ms. Lokey testified that her boyfriend does commercial construction and will be using the shed to store some of his tools. She noted that they lack storage area.
12. The Board found that Ms. Lokey testified that, when she purchased the Property, there were three (3) sheds on the lot and one of the sheds has been torn down and another will be torn down.
13. The Board found that Ms. Lokey testified that the neighbors have two (2) sheds that are on the property line.
14. The Board found that Ms. Lokey testified that there will be about 6-8 feet between the shed and her house.
15. The Board found that Ms. Lokey testified that there is a porch off the rear of the house which is how she enters the dwelling.
16. The Board found that Ms. Lokey testified that there is not a front entrance to the house as the door on the front enters into a bedroom.
17. The Board found that Ms. Lokey testified that the shed will have a pitched A-frame roof with no gutters on the shed.
18. The Board found that Ms. Lokey testified that the home does not have a garage but she has a carport and the carport is right in front of the shed. She noted that part of the carport will be moved to place the shed.
19. The Board found that Ms. Lokey testified that the Property is very narrow and she does not have many other options for placement of the shed.
20. The Board found that Ms. Lokey testified that she cannot place the shed on the other side of the Property because there is an open air tiki hut, which cannot be moved. She does not want to place the shed any closer to the water.
21. The Board found that Ms. Lokey testified that the location of all other structures on the Property was not created by her. She noted that there have been no complaints about the house.
22. The Board found that Ms. Lokey testified that there have been no additions to the house.
23. The Board found that Ms. Lokey testified that the whole one side of the Property is driveway and she cannot put the shed there.
24. The Board found that Ms. Lokey testified that the cul-de-sac exists on paper but has not been paved.
25. The Board found that Ms. Lokey testified that the well is located on the north side of the dwelling.
26. The Board found that no one appeared in support of or in opposition to the Application.
27. 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 for the variances, as modified below, met the standards for granting a variance. The findings below further support the Board's decision to approve the Application for the variances, as modified.
 - a. The Property is unique as it is a small, narrow lot bordering a lagoon and a cul-de-sac. The Property was developed by a house, sheds, and carport by a prior owner and the Applicant seeks to retain the existing dwelling and carport and to replace a shed. The Property has a unique building envelope due to the size and shape of the lot. The Property also has a well that limits the building envelope as well. The Board finds that the lot's unique conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to retain the existing dwelling and carport and to replace 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 Applicant seeks to retain the existing dwelling and carport and to replace a shed 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 a reasonably sized dwelling and carport to remain on the Property while also allowing the Applicant to replace a dilapidated shed. The Board is convinced that the shape and location of the structures, as modified, are also reasonable, which is confirmed when reviewing the survey provided by the Applicant. The dwelling and carport have been in their present locations for years without complaint and the neighbors most affected by the shed's location support the Application.
- 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. The Board also notes that the existing dwelling has been on the Property since at least 1997 and the carport has been on the lot for at least 2.5 years. Both of those structures were placed by prior owners. The Applicant had no involvement in the development of the lot by the placement of those structures.
- e. The variances, 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 structures will have no effect on the character of the neighborhood. The dwelling and carport have been on the lot for years and no complaints about the structures were noted in the record. The shed, meanwhile, will be located in a similar area to a prior shed. The neighbors most affected by the shed encroachment support the request. The Board notes that there was no evidence submitted into the record that the existing structures have had or will somehow alter the essential character of the neighborhood. The lack of evidence is telling since those structures have been in on the lot for years.
- f. The variances, as modified, are the minimum variances necessary to afford relief and the variances, as modified, represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances, as modified, will allow the Applicant to retain the dwelling and carport on the Property and to replace a dilapidated shed in a similar location.
- 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 Board's approval of the side yard variance for the proposed shed is modified. The Board approves a variance of 3 feet from the side yard setback requirement rather than a variance of 5 feet as proposed by the Applicant. The Board was convinced that a variance of 3 feet, rather than 5 feet, was the minimum variance to afford the Applicant relief as this will allow her to construct a shed while still maintaining sufficient access to the rear yard and a buffer from the side property line. The remaining variances sought by the Applicant are approved without modification.

The Board granted the variance application, as modified, 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 as modified 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 with modification.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



Jeffrey Chorman
Chair

If the use is not established within two (2) years from the date below the application becomes void.

Date September 12, 2022.