

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: GWENDOLYN SMITH & JEFFREY SMITH

(Case No. 12738)

A hearing was held after due notice on November 21, 2022. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, and Mr. Jordan Warfel.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicants are seeking the following variances:

1. A variance of 7.8 feet from the ten (10) feet side yard setback requirement on the southwest side for an existing pool;
2. A variance of 7.7 feet from the ten (10) feet side yard setback requirement on the southwest side for an existing pool;
3. A variance of 4.3 feet from the five (5) feet side yard setback requirement on the southwest side for an existing deck; and
4. A variance of 4.4 feet from the five (5) feet side yard setback requirement on the southwest side for an existing deck.

This property is located on the northwest side of Russell Street within the Delaware Oyster Farms Subdivision, Lot 54 (911 Address: 28272 Russell Street, Millsboro) said property being identified as Sussex County Tax Map Parcel Number 334-234-35.05-70.00 ("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 May 2, 2022, a letter from Gwendolyn Smith, Findings of Fact for Case No. 10315-2009, photographs, a survey of the Property dated September 16, 2022, 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 Gwendolyn Smith and Jeffrey Smith were sworn in to testify about the Application.
4. The Board found that Mr. Smith testified that, during the Covid-19 pandemic, the Applicants constructed a deck along the side of their house that comes down from an upper deck. He noted that the upper deck does not infringe upon the setbacks.
5. The Board found that Mr. Smith testified that the Applicants replaced the existing structure because it was becoming dilapidated and dangerous.
6. The Board found that Mr. Smith testified that the pool is a small Intex pool which is a temporary pool.
7. The Board found that Mr. Smith testified that the Property is improved with a shed that has a variance already and is near the same property line in question with the pool and deck.
8. The Board found that Mr. Smith testified that the Applicants recently purchased the property next door ("Lot 53").
9. The Board found that Mr. Smith testified that they are still seeking the variances because, in order to consolidate the properties, they would need to refinance them and now is not an opportune time to do that. He noted that they have two (2) separate loans on the properties and recently refinanced the Property to be able to purchase Lot 53.

10. The Board found that Mr. Smith testified that the fence between the properties is no longer there.
11. The Board found that Mr. Smith testified that there have been no complaints from the neighbors.
12. The Board found that Mr. Smith testified that the deck is already there and the only thing they could do is cut half the deck away which would defeat the purpose of what they were trying to do. He noted that the deck is approximately 10.5 feet wide and that, to bring the deck into compliance, you would have to take it back to 5.5 feet.
13. The Board found that Mr. Smith testified that the reason that they were built so far out is to put a set of steps going towards the front of the Property.
14. The Board found that Mr. Smith testified that the pool sits behind the deck so they can access the pool from the deck.
15. The Board found that Mr. Smith testified that the steps were built a little bit wider so that they could get furniture in and out of the house easier because the entrance to the front of the house is only 3 feet wide. He noted that, with the narrowness of the entryway, it is difficult getting refrigerators and furniture into the house.
16. The Board found that Mr. Smith testified that the deck was built before they purchased Lot 53.
17. The Board found that Mr. Smith testified that there is nowhere else on the Property to place the pool because, if you moved the pool to the other side of the Property, you would have the same problem. He noted that the entire front of the house is a driveway and that the back yard does not have enough room and has a larger setback than the side yard.
18. The Board found that Ms. Smith testified that the previous structure was unsafe and that the decision to build the deck was made during the Covid-19 pandemic when everything was shut down.
19. The Board found that Ms. Smith testified that, when they get deliveries, they do not know which side of the house to enter.
20. The Board found that Ms. Smith testified that, in order to put a home on the Property that would be sufficient for her family, she maximized the amount of room which is right around a 1200 square foot home. She noted however, that, for a family of four (4) people, this is already a small home and they really do not have a lot of room outside for family space.
21. The Board found that Ms. Smith testified that they purchased Lot 53 to have more space for her children as her youngest son plays football and they have dogs.
22. The Board found that Ms. Smith testified that she has always wanted to buy Lot 53 from the very beginning so it would not be built upon and that, by purchasing Lot 53, this gave her room to expand.
23. The Board found that Ms. Smith testified that the variances will not negatively impact anyone in the neighborhood because the Applicants also own Lot 53.
24. The Board found that Ms. Smith testified that this is a rundown neighborhood which is starting to improve as they are finally getting the gang and drugs out of the neighborhood.
25. The Board found that Ms. Smith testified that the plan in the next couple years is to combine the lots together but the Applicants need to get out of their current loan first.
26. The Board found that no one appeared in support of or in opposition to the Application.
27. The Board tabled the Application until December 12, 2022, to allow Board Members Travis Hastings and John Williamson to review the record and vote. At the December 12th meeting, the Board discussed and voted on the Application. Mr. Hastings and Mr. Williamson both affirmed that they had reviewed the record and testimony prior to that discussion and vote.
28. 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 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 as it is a small and narrow lot laid out measuring only 4,500 square feet. The lot was developed prior to the enactment of the Small Lot Ordinance so the house is centered on the lot away from the side property lines. The lot is 50 feet wide and is adjacent to Lot 53, which is also owned by the Applicants. Due to the small size of the lot and the prior development of the lot, the building envelope is limited. The situation is also unique because the Applicants own Lot 53 and would consolidate those lots if not for financing issues. These conditions have created an exceptional practical difficulty and unnecessary hardship for the Applicants who seek to retain the existing deck and pool but cannot do so in compliance with the Sussex County Zoning Code.
- 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 propose to retain the deck and pool on the lot but are unable to do so without violating setback requirements. The variances are thus necessary to enable reasonable use of the Property. The Board is convinced that the shape and location of the structures are also reasonable (which is confirmed when reviewing the survey). The Board notes that the deck provides the Applicants with better access to the home and the deck and pool provide the Applicants with reasonable outdoor space. Since the Property and Lot 53 cannot be consolidated at this time, those structures must remain on the lot where the principal dwelling is located.
- d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicants. The Applicants did not create the narrowness of the lot or create the financing issue that limits their ability to consolidate the lots thereby restricting the building envelope on the Property. This building envelope is further limited due to the small size of the lot. The unique conditions of the Property and the unique situation have created an exceptional practical difficulty and unnecessary hardship for the Applicants who seek to retain the existing deck and pool on the lot.
- 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 be detrimental to the public welfare. The Board is convinced that the structures will not have a negative impact on the neighborhood. The Board notes that no complaints were noted in the record about the existing structures and no evidence was presented which would indicate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board also notes that the structures will be located close to a shared property line to property also owned by the Applicants which the Applicants plan to consolidate with the Property when financing is available.
- f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to retain the deck and pool on the lot. No additions or modifications are proposed.
- 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 the variance were Dr. Kevin Carson, Mr. Jeffrey Chorman, and Mr. Travis Hastings. Mr. Jordan Warfel and Mr. John Williamson voted against the Motion to approve the variance application.

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 February 6, 2023.