

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JOSEPH & HOLLIE GORDON

(Case No. 12750)

A hearing was held after due notice on October 17, 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 (Section 115-25 and 115-183 of the Sussex County Zoning Code).

Findings of Fact

The Board found that the Applicant is seeking a variance of 11.86 feet from the fifteen (15) feet side yard setback requirement on the northeast side for an existing shed and a variance of 14.23 feet from the fifteen (15) feet side yard setback requirement on the northeast side for an existing shed on a parcel of land zoned AR-1 Agricultural Residential. The property is identified as Sussex County Tax Map and Parcel Number 135-19.00-50.05, with a 911 address of 22906 East Trap Pond Road, Georgetown, DE 19947.

After the hearing, the Board made the following finding of fact:

1. The Board was given copies of the Application, an aerial photograph, photographs, a survey of the property dated July 14, 2022, and a portion of the tax map of the area.
2. Jamie Whitehouse, of Sussex County, described the case and stated that the Office of Planning and Zoning has not received any correspondence concerning the Application, with zero mail returns.
3. The Board found that Mrs. Hollie Gordon was sworn in and testified that she is seeking a variance of 11.86 feet and 14.23 feet from the 15-foot side yard setback for an existing shed.
4. The Board found that Mrs. Gordon testified that she and her husband purchased the property in 2009, and that the lot is 1.26 acres and that the shed, which is constructed on a concrete slab, existed at the time.
5. The Board found that Mrs. Gordon testified that there was a gravel driveway next to the shed that was being used at the time of purchase causing them to believe that the shed was well within their property, but that she and her husband were young and the realtor they used was not forthcoming and they did not have a new survey completed.
6. The Board found that Mrs. Gordon testified that she and her husband were unaware that the shed was not in compliance until they were trying to have some landscaping done and that the noncompliance was confirmed further by her neighbor's survey when trying to install a fence.
7. The Board found that Mrs. Gordon testified that there was a property marker that they were using which is not correct; instead the boundary line is 10-15 feet off that marker and the property is not the perfect rectangle that everyone assumed it to be.
8. The Board found that Mrs. Gordon testified that they have received no complaints in 13 years about the shed until now.
9. The Board found that Mrs. Gordon testified that her understanding of the property boundaries was based upon a belief that their property is a square but instead the property lines are slanted.
10. The Board found that Mrs. Gordon testified that their neighbor, Ms. Kathy Lingo, brought a complaint about the shed's encroachment and that this application was subsequently submitted to address the issue so that is resolved for her and her husband and also if they ever try to sell the property.

11. The Board found that Mrs. Gordon testified that the shed is not movable and while it is referred to as a shed, it is constructed of 2x4's anchored to a concrete foundation and it was built on site to match the house.
12. The Board found that Mrs. Gordon testified that there is enough room to allow the neighbor to place a fence on her property line if she chose to do so.
13. The Board found that no parties appeared in support of the Application.
14. The Board found that one party, Ms. Kathy Lingo, testified in opposition to the Application, after being sworn in.
15. The Board found that Ms. Lingo testified that she was not aware of where the property line was until she had a survey completed to place a fence prior to the anticipated sale of the property and she is now concerned that the encroachment might affect her ability to sell the property.
16. The Board found that Ms. Lingo testified that she is not necessarily in opposition to the variance but that she believes that the building at a rear corner is $\frac{3}{4}$ of an inch from her property line and about 3 inches from her property line at the rear corner.
17. The Board found that Ms. Lingo testified that she has a prospective buyer for her property but there are concerns that if the Applicants need to do maintenance on the shed that they will need to come on her property to do so. Most of her concern is that if she places a fence on her property that they will not be able to maintain their building and that for example they could not replace the roof of the shed without materials falling onto her property.
18. The Board found that Ms. Lingo testified that she would prefer that they scale down the shed or move it over a few feet because a 3-foot encroachment would not be a concern, but 3 inches is a concern.
19. The Board found that Ms. Lingo testified that her main concern is that if she places a fence along the boundary line of her property then she will not be able to properly maintain it, and the encroachment will force her to move the fence a good number of feet inward onto her property from the property line.
20. Based on the findings above and the testimony and evidence presented during the Public Hearing and contained in the Public Record, which the Board weighed and considered, the Board determined that the Variances from the side yard setback should be granted. The findings below further support the Board's decision to grant the Variance Application:
 - a. The Board found that the proposed variance is for an existing, permanently anchored shed structure on the premises. The shed has been in existence for at least 12 years without issue or complaint, until now.
 - b. The Board found that the Applicants acquired the property with the existing structure that has been in its present location for years without objection; as a result the Applicants did not create the unique characteristics of their lot.
 - c. The Board found that there are unique physical circumstances associated with the Applicant's lot because the lot lines are set at a slight angle and the lot is not perfectly rectangle as they and their neighbor had assumed until recent surveys were completed. The location of the shed was accepted by both property owners without objection until very recently when surveys were completed. These conditions and circumstances have created an exceptional practical difficulty and undue hardship for the Applicants who seek to retain the shed.
 - d. Due to the uniqueness of this situation and the Property, the Property cannot be developed in strict conformity with the Sussex Zoning Code, and the Property is currently not in strict conformity with the Sussex Zoning Code if the requested variance is not granted.
 - e. The variances are necessary to enable the reasonable use of the Property and will allow the existing structure to legally remain upon the property in its current location.
 - f. The Board found that the variances are the minimum necessary to afford relief, by simply allowing the current structure to remain in its present location. No additions or modifications to the structure are proposed.

- g. The Board found that the unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code. Rather the undue hardship and the exceptional practical difficulty are created by the unique condition and history of the property. The Board notes that the shed was placed by a prior owner.
- h. The Board found that the variances will not alter the essential character of the neighborhood or district where the property is located and will not substantially impair the appropriate use and development of adjacent properties are not detrimental to the public welfare. In support of this, the encroachment has been in existence for years, so approving it will not change the neighborhood or district or the appearance of this Property. Also, the shed remains entirely within the Applicants' Property.
- i. The condition or situation of the Property and the intended use of the Property is not of some general or recurring nature as to make it reasonably practical the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.
- j. The Board's approval is conditioned on the Applicants installing a gutter to the shed to direct rainwater away from the neighboring property to the northeast.

Based on the foregoing, the Board approved, with conditions, the variances from the front and side yard setbacks pursuant to Section 115-25 and 115-183 of the Sussex County Zoning Code.

Decision of the Board

Upon motion duly made and seconded, the variance from the front and side yard setbacks pursuant to Section 115-25 and 115-183 of the Sussex County Zoning Code was approved with condition by a vote of 3 members in favor and 2 members opposed. The Board Members in favor of the approval were Mr. John Williamson, Mr. Jordan Warfel, and Mr. Jeffrey Chorman. The Board Members opposed to the Application were Dr. Kevin Carson and Mr. John T. Hastings.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



Jeffrey Chorman
Chairman

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

Date December 19, 2022.