

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: GORDON W. EMMINIZER & LYNNE C. EMMINIZER**

**(Case No. 12768)**

A hearing was held after due notice on December 12, 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 structures.

Findings of Fact

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

1. A variance of 3.4 feet from the five (5) feet side yard setback requirement on the southwest side for an existing shed;
2. A variance of 1.6 feet from the five (5) feet side yard setback requirement on the northeast side for existing steps;
3. A variance of 0.6 feet from the five (5) feet side yard setback requirement on the northeast side for existing steps and
4. A variance of 1.8 feet from the five (5) feet side yard setback requirement on the northeast side for an existing storage building.

This property is located on the southeast side of Laws Point Road within the Swann Keys Subdivision (911 Address: 36990 Laws Point Road, Selbyville) said property being identified as Sussex County Tax Map Parcel Number 533-12.16-297.00 ("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 September 26, 2022, a property record card, an application for trailer placement, assessment records, an affidavit listing neighboring property owners, Findings of Fact for Case No. 8509-2004, a survey of the Property dated November 22, 2022, an affidavit of Gordon Emminizer, an affidavit of Lynne Emminizer, 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 Robin Thompson was sworn in to testify about the Application. Shannon Carmean Burton, Esquire, appeared on behalf of the Applicants.
4. The Board found that Mrs. Burton stated that the Applicants obtained a side yard variance in 2004 but it was unclear from that approval, which structures were approved for the variance. She noted that the 2004 approval refers to a proposed sunroom on the existing deck and to extend the existing deck. In order to clear up the record, the Applicants seek the proposed variances for the existing steps, storage structure, and shed.
5. The Board found that Mrs. Burton stated that the Applicants purchased the Property on May 16, 1988, and, at the time of purchase, the Property was improved with the existing shed.
6. The Board found that Mrs. Burton stated that, at the time the 2004 application was heard by the Board, the Applicants were unaware that there were any encroachments into the setbacks other than the proposed improvements that they were seeking at that time.

7. The Board found that Mrs. Burton stated that, in 2022, the Applicants entered into a contract to sell the Property to Gilbert and Jeanine Braun. She noted that the Brauns obtained a survey of the Property and, just prior to closing, the parties learned that these existing structures did not comply with the Sussex County Zoning Code as they encroached into setback areas.
8. The Board found that Mrs. Burton stated that the original entrance on the north side of the Property should have been addressed in 2004 like the shed but, for whatever reason, it was not.
9. The Board found that Mrs. Burton stated that, upon learning of the encroachments, the Applicants promptly filed for variances on behalf of the Brauns to bring the Property into compliance with the Sussex County Zoning Code.
10. The Board found that Mrs. Burton stated that the Property is unique because it is a small and narrow lot measuring 40 feet wide by 100 feet deep. She noted that the Applicants had no control over the size of the lot.
11. The Board found that Mrs. Burton stated that the lot is located within the Swann Keys Subdivision and that there have been many variances approved in this community because the lots are small.
12. The Board found that Mrs. Burton stated that the exceptional practical difficulty is due to the uniqueness of the Property and not due to circumstances or conditions generally created by the provisions of the Zoning Code.
13. The Board found that Mrs. Burton stated that the Applicants had no control over the placement of the home or the shed and that the shed was and is in its current location when the Applicants purchased the Property in 1988.
14. The Board found that Mrs. Burton stated that there is no possibility that the Property can be developed in strict conformity within the provisions of the Zoning Code.
15. The Board found that Mrs. Burton stated that, to comply with the Code, the Applicants would have to remove the shed which is wired for electric through an underground cable and junction box which has been in place for 34 years.
16. The Board found that Mrs. Burton stated that the storage structure and steps on the north side of the Property provide storage and ingress and egress to the home.
17. The Board found that Mrs. Burton stated that variances are necessary to enable reasonable use of the Property.
18. The Board found that Mrs. Burton stated that the Applicants did not create the exceptional practical difficulty, nor did the Brauns.
19. The Board found that Mrs. Burton stated that it was the Applicants' belief, until receipt of the survey, that all improvements were placed and constructed in compliance with the applicable zoning laws and that this belief was supported by the issuance of the variance in 2004.
20. The Board found that Mrs. Burton stated that 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 be detrimental to the public welfare. She noted that there have been numerous variances granted within the Swann Keys Subdivision due to the small size of lots.
21. The Board found that Mrs. Burton stated that the improvements have been in their current locations for many years, as set forth in the affidavits signed by the Applicants.
22. The Board found that Mrs. Burton stated that the Applicants have owned this home since 1988 and have never received any complaints about the location of any of the improvements on the Property.
23. The Board found that Mrs. Burton stated that the variances requested are sufficient to bring all of the existing improvements into compliance with the Sussex County Zoning Code and the variances represent the minimum variances necessary to afford relief and represent the least modifications possible of the regulations at issue.

24. The Board found that Mrs. Burton stated that, on the northern side, there are three sets of steps.
25. The Board found that Mrs. Burton stated that the area in question is a storage area that is similar to a small shed and the storage area was not covered by the variance in 2004 and should be 5 feet from the side lot line.
26. The Board found that Mrs. Burton stated that it was very difficult to ascertain exactly what was approved back in 2004 other than the deck and sunroom.
27. The Board found that Mrs. Burton stated that there is nowhere to put the shed if it were to be moved. She noted that the Applicants proposed to relocate the shed but there are not alternative options for placement.
28. The Board found that Mrs. Burton stated that the deck is an elevated deck and was built around the shed. She noted that the deck extension was constructed in 2004.
29. The Board found that Ms. Thompson testified that the representations made by Mrs. Burton are true and correct to the best of her knowledge.
30. The Board found that Ms. Thompson testified that the shed is on a slab of concrete and that the shed is not portable. She is unsure if the shed was built on site or was pre-built.
31. The Board found that Ms. Thompson testified that the deck eliminates a secondary placement option for the shed.
32. The Board found that no one appeared in support of or in opposition to the Application.
33. 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 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 prior to the enactment of the Sussex County Zoning Code. The lot consists of only 4,000 square feet and is 40 feet wide. The Property was developed by a house and related structures, including an existing shed, prior to the Applicants' purchase of the Property in 1988. The Applicants later obtained a variance in 2004 to construct a deck and sunroom. The 2004 approval did not provide clarity as to the approval of the other existing structures on the lot at that time. The Applicants now seek to sell the Property and learned of the encroachments at closing. The unique conditions of the Property have created a small building envelope and those conditions have created an exceptional practical difficulty and unnecessary hardship for the Applicants who seek to retain the existing steps, storage building, and shed on the Property 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 prior development of the Property by a previous owner, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants propose to retain the existing steps, storage building, and shed on the lot but are unable to do so without violating the Sussex County Zoning Code. The variances are thus necessary to enable reasonable use of the Property. The Board is convinced that the shape and location of the existing steps, storage building, and shed are also reasonable (which is confirmed when reviewing the survey). The Board notes that the shed and storage building provide the Applicants with functional storage space that is lacking in the home and the steps provide reasonable access to the dwelling.

- d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicants. The Applicants did not create the size of the lot or place the home and shed on the Property thereby restricting the building envelope on the Property. This building envelope is further limited due to the small size and narrow shape of the lot. The unique conditions of the Property and the development of the adjacent lot have created an exceptional practical difficulty and unnecessary hardship for the Applicants who seek to retain the existing steps, storage building, and shed 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 existing steps, storage building, and shed 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 have been in their present location for many years.
- 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 existing steps, storage building, and shed on the lot. No additions or modifications to those structures are proposed. The Board also notes that the shed is located on a concrete pad with electric and cannot be otherwise moved into or more in compliance with the Code.
- 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, Mr. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member 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.