

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: PEGGY GREENWELL

(Case No. 12413)

A hearing was held after due notice on February 17, 2020. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the side yard setback requirement for an existing structure.

Findings of Fact

The Board found that the Applicant is seeking a variance of 3 feet from the five (5) feet side yard setback requirement on the southwest side for an existing shed. This application pertains to certain real property located on the northwest side of Jetty Lane within the Marina at Peppers Creek subdivision (911 Address: 38141 Jetty Lane, Dagsboro) said property being identified as Sussex County Tax Map Parcel Number 2-33-7.00-245.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, correspondence with the Marina at Pepper's Creek HOA, an approval permit from the Marina's at Pepper's Creek, a survey of the Property dated October 5, 2018, photographs, 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 three (3) letters in support of and one (1) letter in opposition to the Application.
3. The Board found that Peggy Greenwell and James Thomas Greenwell were sworn in to testify about the Application.
4. The Board found that Ms. Greenwell testified that the Property is unique as it slopes down in the rear.
5. The Board found that Ms. Greenwell testified that there is a flooding issue which the Applicants are working on with the developer and that there is a swale in the backyard. The rear yard floods when it rains and the flooding compromises the soil.
6. The Board found that Ms. Greenwell testified that there is a hill in the rear yard.
7. The Board found that Ms. Greenwell testified that there is no other place on the Property to place the shed due to the drainage issue.
8. The Board found that Ms. Greenwell testified that the HVAC system is on the other side of the house.
9. The Board found that Ms. Greenwell testified that the situation was caused by the developer, Insight Homes, who has not yet corrected the drainage problem.
10. The Board found that Ms. Greenwell testified that the Applicants went to the Marina at Pepper's Creek Homeowners Association and received an approval. According to Ms. Greenwell, the Applicants' original request for a smaller shed was denied by the Association.
11. The Board found that Ms. Greenwell testified that they were unaware that a building permit was required from Sussex County as they relied on information provided to them by Seascape. When the Applicants were made aware of the violation, they filed for a building permit and variance.
12. The Board found that Mr. Greenwell testified that the Applicants moved into the house in November 2018, that the shed was built in March 2019, and that the Applicants went to their neighbors before building the shed.
13. The Board found that Ms. Greenwell testified that one of the reasons they chose this neighborhood was the fact that sheds were allowed by the homeowners association.

14. The Board found that Mr. Greenwell testified the shed, which measures 8 feet by 8 feet, was purchased from Pine Ridge.
15. The Board found that Ms. Greenwell testified that the information given to them by the homeowners association and Seascope was that the shed had to be two feet off the house and two feet off the property line.
16. The Board found that Charles Cimino and Robert Connor were sworn in to give testimony in support of the Application. Both men testified that they live in the neighborhood and that there are flooding problems on the Applicants' lot. Mr. Cimino even testified that the Applicants' property often has more water than his own lot.
17. The Board found that Mr. Connor testified that he is a member of the Architectural Review Committee ("ARC") and that the Association rules require a 2 foot separation distance.
18. The Board found that Ray Steele was sworn in to give testimony in opposition to the Application.
19. The Board found that Mr. Steele testified that there are eleven (11) sheds in the neighborhood and that all sheds are in the rear yard except for two.
20. The Board found that Mr. Steele testified that, if the Applicants could move the shed over, he would not object to an administrative variance up to one foot.
21. The Board found that four people appeared in support of and one in opposition to the Application.
22. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered, the Board determined that the application for the variances met the standards for granting a variance. The findings below further support the Board's decision to approve the Application for the variances for those structures.
 - a. The Property is unique due to its topography and flooding problems. While the lot is rectangular in shape, the lot is not large. The Applicants seek to retain a shed on the property but are unable to do so because the rear of the lot floods and slopes. These conditions greatly limit an already limited building envelope. Consequently, the Applicants are unable to fit the shed in the building envelope. The Applicants are also constrained by the homeowner association requirements which differ from the Sussex County setback requirements. These conditions have thus created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek to retain an existing 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 unique physical characteristics and the buildable area thereof is limited due to those characteristics. The Applicants seek to retain an existing shed on the lot but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow this reasonably sized structure to remain on the lot. The Board is convinced that the shape and location of the shed are also reasonable, which is confirmed when reviewing the survey provided by the Applicants. The Applicants are also limited by homeowner association rules which further limit placement options for the shed.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. The Property was created by a prior owner and the Applicants did not create the unusual conditions of the lot. The unique conditions of the lot are clear from the testimony and evidence in the record. These conditions have created a limited building envelope on the Property

and the unnecessary hardship and exceptional practical difficulty. The building envelope is also limited due to homeowner association requirements.

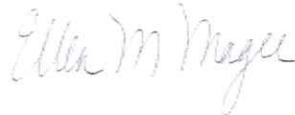
- e. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the existing shed will have no effect on the character of the neighborhood. The record is clear that there are similar structures on nearby properties. No evidence was presented which convinced the Board that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board notes that the Applicants have received approval from the homeowners association and that multiple neighbors have indicated their support for the request.
- f. The variance sought is the minimum variance necessary to afford relief and the variance requested represent the least modification possible of the regulation at issue. The Applicants have demonstrated that the variance sought will allow the Applicants to retain the existing shed on the lot. No additions or modifications to the shed are proposed. The Board also notes that the Applicants are unable to move the shed into compliance with the Code due to homeowner association requirements and the condition of the lot.
- 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. Jeff Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. Dr. Kevin Carson voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



Ellen M. Magee
Chair

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

Date May 5, 2020.