

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MARY C. HARRY-WOLF

(Case No. 12415)

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 variances from the rear yard setback and side yard setback requirements for existing and proposed structures.

Findings of Fact

The Board found that the Applicant is requesting a variance of 5 feet from the five (5) feet rear yard setback requirement for an existing shed, a variance of 3 feet from the five (5) feet side yard setback requirement on the northwest side for an existing shed, a variance of 2 feet from the ten (10) feet rear yard setback requirement for a proposed sunroom, a variance of 2 feet from the ten (10) feet rear yard setback requirement for proposed steps, a variance of 1.25 feet from the five (5) feet side yard setback requirement on the northeast side to allow the relocation of an existing shed. The Property is located on the northwest side of Anchor Watch Loop within the Marina at Peppers Creek subdivision (911 Address: 31192 Anchor Watch Loop, Dagsboro) said property being identified as Sussex County Tax Map Parcel Number: 2-33-7.00-228.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, an approval letter from the architectural review committee, letters from the Applicant, a letter of support from neighbors, pictures, a survey of the Property dated September 4, 2014, 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 and one letter in opposition to the Application.
3. The Board found that Mary Harry-Wolf, Albert Wolf, and Matt Whalen were sworn in to give testimony about the Application and they submitted exhibits to the Board to review.
4. The Board found that Mr. Wolf testified that there are 2 sheds on the Property. One shed, which is the smaller of the 2 sheds, is located to the rear of the house and the other is located in the northwest corner of the lot. The Applicants propose to relocate the smaller shed to the side of the house.
5. The Board found that Mr. Wolf testified that he would like to relocate the larger shed but there is not room on the property to relocate it due to the drainage issues.
6. The Board found that Mr. Wolf testified that, when the larger shed was delivered, he had to wait to set the shed due to moisture in the yard.
7. The Board found that Mr. Wolf testified that the location of the shed is the only place it can be located.
8. The Board found that Mr. Wolf testified that the larger shed houses his golf cart and that he is handicapped and needs the golf cart for mobility and the shed also houses a lawn mower. He believes the shed is a necessity.
9. The Board found that Mr. Wolf testified that moving the shed closer to the dwelling would block egress from bedroom windows in case of fire.
10. The Board found that Mr. Wolf testified that the Applicants propose to construct a sunroom which measures 9.6 feet by 20 feet and they need a variance for the sunroom as well.

11. The Board found that Mr. Wolf testified that the larger shed can be relocated off the rear property line by 3 feet.
12. The Board found that Mr. Wolf testified that the relocated shed will need a small side yard variance.
13. The Board found that Mr. Wolf testified that it is a small lot that backs up to common ground and the berm to the rear of the lot is 9 feet tall.
14. The Board found that Mr. Wolf testified that neighboring property would not be affected by the granting of variances.
15. The Board found that Mr. Wolf testified that there is a 12 foot wide easement between lot 20 and 21 which is a sewer line.
16. The Board found that Mr. Wolf testified that these variances are minimum variances to allow for the construction of a sunroom, to move the existing shed where the proposed sunroom will be to the east side of the house, and to allow the large shed to remain on the northwest side of the Property.
17. The Board found that Ms. Harry-Wolf testified that Pine Ridge Barns installed the shed.
18. The Board found that Ms. Harry-Wolf testified that, if the shed were moved, it would be too close to the house.
19. The Board found that Ms. Harry-Wolf testified that there is common property behind the home which consists of a large berm.
20. The Board found that Mr. Whalen, who is the Applicants' contractor, testified that there will be steps off the side of the sunroom but the steps will not encroach farther into the setback than the sunroom
21. The Board found that Mr. Wolf testified that he needed larger doors to drive the golf cart into the larger shed.
22. The Board found that Mr. Wolf testified that he has owned the large shed for 1 year but the smaller shed for 5 years.
23. The Board found that Mr. Wolf testified that his contractor said that he did not need a building permit.
24. The Board found that Ms. Harry-Wolf testified that the shed was located in this position because it was the only place where it could be located.
25. The Board found that Ms. Harry-Wolf testified that there have been no complaints about its location.
26. The Board found that Chris Luxenberger, James Greenwell, Peggy Greenwell, and Charles Cimino were sworn in to give testimony in support of the Application.
27. The Board found that Mr. Luxenberger, who lives adjacent to the Applicants, testified that he received a similar variance.
28. The Board found that Mr. Luxenberger testified that he has no issues with the sheds.
29. The Board found that Mr. Luxenberger testified that the berm is owned by the homeowners association and there is approximately 20 feet between the berm behind the house to the next property.
30. The Board found that Mr. Luxenberger testified that there is a slight depression where water accumulates.
31. The Board found that Mr. Luxenberger testified that no one sees the shed. Mr. Cimino and Mr. Greenwell agreed with that point.
32. The Board found that Mr. Luxenberger testified that the homeowners association has approved the request.
33. The Board found that Mr. Cimino testified that he lives across the street from the Applicants and that there is common area to the rear of the lot
34. The Board found that Mr. Greenwell testified that there is soft ground in the area and that posed trouble with moving the shed.
35. The Board found that Ms. Greenwell testified that the shed installation company did not inform the Applicants that a building permit was required when the shed was purchased and that she supports the Application.

36. The Board found that Ray Steele was sworn in to give testimony in opposition to the Application.
37. The Board found that Mr. Steele testified that he does not oppose the variance for the sunroom but that he objects to the larger shed as it is currently located on homeowner association property and should not be allowed to encroach onto other's property. He has no issues with the other shed.
38. The Board found that Mr. Wolf testified that, if the shed in the rear yard is moved, he is not sure how he would be able to open the doors or use the shed and that, if it was located close to the house, it would block access to the house.
39. The Board found that six (6) people appeared in support of and one (1) party appeared in opposition to the Application.
40. The Board tabled the Application until March 2, 2020, at which time the Board discussed and voted on the Application.
41. 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, as modified, met the standards for granting a variance. The findings below further support the Board's decision to approve the Application with modifications.
 - a. The Board approves the following variances:
 - i. A variance of 1.25 feet from the five (5) feet side yard setback requirement on the northeast side to move the existing shed to the side of the dwelling;
 - ii. A variance of 3 feet from the five (5) feet rear yard setback requirement to move the existing shed on the northwest side of the property off the rear property line;
 - iii. A variance of 2 feet from the ten (10) feet rear yard setback requirement for a proposed sunroom;
 - iv. A variance of 2 feet from the ten (10) feet rear yard setback requirement for a proposed set of steps; and
 - v. A variance of 3 feet from the five (5) feet side yard setback requirement on the northwest side for the relocation of the existing shed in the northwest corner of the lot.
 - b. The Property is unique as it is a small lot with a depression occupying a portion of the rear yard. The dwelling was placed on the lot by the homebuilder and the Applicants seek to retain a shed, to erect sunroom and steps, and to relocate a smaller shed. Due to the small size of the lot, however, the Applicants learned that these structures would not fit on the lot without a variance. The lot's unique conditions limit the buildable area available to the Applicants and have created an unnecessary hardship and an exceptional practical difficulty for the Applicants who seek to retain and construct these structures on the lot. The larger shed is particularly needed because Mr. Wolf is handicapped and needs the shed to store his golf cart and lawn mower.
 - c. The unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code.
 - d. 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 size and the buildable area thereof is limited due to the size of the lot. The Applicants seek to retain and construct these structures but are 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 these reasonably sized structures to be retained and constructed on the Property. The Board is convinced that the shape and location of the structures are also

reasonable, which is confirmed when reviewing the survey provided by the Applicants. The Board notes, however, that the shed in the northwest corner must be located no closer than 2 feet from the side and rear property lines.

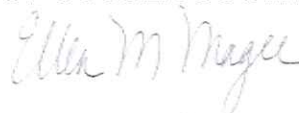
- e. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. The Applicants did not create the unusual size of the Property or place the home on the lot. The unique size of the Property is clear when reviewing the survey. The Board is convinced that the unnecessary hardship and exceptional practical difficulty were not created by the Applicants but was created by the lot's unique characteristics.
- f. 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 have no effect on the character of the neighborhood. The shed, steps, and sunroom will be located to the rear of the Property near common area owned by the homeowners association where a large berm is located. As such, the encroachments are likely unnoticeable without a survey. The Board notes that there was no opposition to the shed in the side yard, the sunroom, or the steps. The opposition to the larger shed argued primarily that the larger shed should be located on the Applicants' lot. As noted above, that shed must be located entirely on the Property and no closer than 2 feet from the side and rear property lines. The Board was not convinced that these variances would somehow affect the neighborhood or alter the essential character of the neighborhood. The Board also notes that several neighbors indicated support of the Application.
- g. 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 Applicants have demonstrated that the variances will allow the Applicants to retain and construct these structures on the Property. The larger shed will be moved as far off the property line as possible while still affording the Applicants with reasonable access to the structure. The Board notes that the steps to the sunroom will project to the side thereby limiting the rear yard encroachment. The shed to the side of the house will be located as close to the house as possible to limit the side yard encroachment. These factors have minimized the encroachments.
- h. 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.
- i. The Board finds that the approval of the variance for the larger shed also represents a reasonable accommodation to a person with a disability.

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 modifications. The Board Members in favor of the motion to approve with modifications were Dr. Kevin Carson, Mr. Jeffrey Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application with modifications.

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.