

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JENNIFER CUNNINGHAM & DUSTIN FRITZ

(Case No. 12475)

A hearing was held after due notice on October 5, 2020. The Board members present were: Dr. Kevin Carson, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the side yard setback and rear yard setback requirements for an existing structure.

Findings of Fact

The Board found that the Applicants are requesting a variance of 2.2 feet from the five (5) feet side yard setback requirement on the north side for an existing shed and a variance of 1 foot from the five (5) feet rear yard setback requirement for an existing shed. The Property is located on the northeast side of E. Pond Circle within the Keenwick Sound subdivision (911 Address: 37729 E. Pond Circle, Selbyville) said property being identified as Sussex County Tax Map Parcel Number: 5-33-19.00-397.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, photographs, letters in support of the Application, a survey of the Property dated March 17, 2011, a building permit application, a drawing of the shed's location, a letter from Gretchen Hoffman, 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 one letter in support of and no correspondence in opposition to the Application.
3. The Board found that Jennifer Cunningham was sworn in to give testimony about the Application.
4. The Board found that Ms. Cunningham testified that the shed was placed on the Property by the previous owner in February 2019 and that the Applicants acquired the Property earlier this year.
5. The Board found that Ms. Cunningham testified that a neighbor has a similar shed close to the property line.
6. The Board found that Ms. Cunningham testified that the Property is unique as it is a shallow lot with the rear lot line at a diagonal angle.
7. The Board found that Ms. Cunningham testified that the shed would be too close to the porch if moved and there is no other location on the lot to place the shed.
8. The Board found that Ms. Cunningham testified that the Applicant did not create the exceptional practical difficulty.
9. The Board found that Ms. Cunningham testified that the shed measures 8 feet by 12 feet.
10. The Board found that Ms. Cunningham testified that there are a number of similar sheds in the neighborhood so the variances will not alter the essential character of the neighborhood.
11. The Board found that Ms. Cunningham testified that some sheds in the neighborhood are less than 2 feet from the property line.
12. The Board found that Ms. Cunningham testified that there is less than 15 feet from the porch to the shed.
13. The Board found that Ms. Cunningham testified that the shed is used for storage of patio furniture, tools, and beach equipment.

14. The Board found that Ms. Cunningham testified that there have been no complaints from neighbors and one neighbor has given a letter of support.
15. The Board found that Ms. Cunningham testified that the variances requested are the minimum variances to allow the shed to remain in the current location.
16. The Board found that Ms. Cunningham testified that the shed has a wooden floor on a concrete block foundation with no electricity.
17. The Board found that Ms. Cunningham testified that the shed is necessary for storage because there is limited storage in the house.
18. The Board found that Ms. Cunningham testified that the rear yard angle makes it difficult to move off the side yard.
19. The Board found that no one appeared in support of or opposition to the Application.
20. 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, narrow, angled lot. The Property is wedge-shaped and the rear yard property line is oddly shaped. These conditions have created a unique and limited building envelope. Furthermore, the situation is unique because the prior owner placed the dwelling and shed on the Property. These conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek to retain a small shed on the lot but are unable to do so without a variance.
 - 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 situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has unique conditions and the shed is needed to allow for storage of the Applicants' belongings. The Applicants seek to retain the shed on the lot 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 the shed to be retained on the Property. The Board is convinced that the shape and location of the shed are reasonable, which is confirmed when reviewing the survey provided by the Applicants. Notably the shed measures only 8 feet by 12 feet.
 - d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicants. The Property has unique conditions, as discussed above, and those conditions have limited the building envelope on the Property and have created an exceptional practical difficulty. Importantly, the Applicants did not create the shape of the lot or place the shed on the lot. Rather, a prior owner placed the shed on the Property. The Applicants are unable to retain a shed on the lot due to the unique conditions of the Property and these conditions have not been created by the Applicants. The Board notes that the angle of the rear property line and the narrow shape of the front property line create a significantly limited building envelope.
 - 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 Applicants seek to retain a small shed on the lot for storage. Similar structures are found in the neighborhood and a neighbor supports the request. No evidence was presented that the variances would somehow alter the

essential character of the neighborhood or be detrimental to the public welfare. Furthermore, the Applicants have not received complaints about the structure.

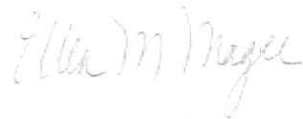
- f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to retain a shed on the Property. no additions or modifications to the shed 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 were Dr. Kevin Carson, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Mr. Jeffrey Chorman did not participate in the discussion or vote on this 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 December 14, 2020.