

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JEFFREY GABER & SYNDY GABER

(Case No. 12476)

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 rear yard setback requirement and the minimum aggregate front yard and rear yard requirements for a proposed structure.

Findings of Fact

The Board found that the Applicants are requesting a variance of 10.7 feet from the forty (40) foot minimum aggregate yard requirement for a townhouse and a variance of 4.3 feet from the five (5) feet rear yard setback requirement for an accessory structure under 600 square feet. The Property is located on the west side of Harbor Road within the North Shores subdivision (911 Address: 61 Harbor Road, Rehoboth Beach) said property being identified as Sussex County Tax Map Parcel Number: 3-34-8.17-147.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, construction drawings, a shed proposal, an elevation certificate, photographs, a survey of the Property dated March 30, 2020, 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 Mark Wilson, who is the Applicants' builder, was sworn in to give testimony about the Application.
4. The Board found that Mr. Wilson testified that the Applicants wish to build a shed which will be similar to a neighbor's shed and that the shed will be used to store bicycles and beach equipment.
5. The Board found that Mr. Wilson testified that the Property is unique as it is narrow and small.
6. The Board found that Mr. Wilson testified that there is no other place for the shed to be located and that the only possibility for the shed is to get a variance.
7. The Board found that Mr. Wilson testified that the exceptional practical difficulty has not been created by the Applicants but by the size of the lot.
8. The Board found that Mr. Wilson testified that the shed will measure 10 feet by 5.5 feet and will replace the existing fence.
9. The Board found that Mr. Wilson testified that the shed will open to the common area in the rear of the property.
10. The Board found that Mr. Wilson testified that granting the variance will not alter the essential character of the neighborhood as there are many similar sheds in the area.
11. The Board found that Mr. Wilson testified that the homeowners association has approved the shed.
12. The Board found that Mr. Wilson testified that the variances requested are the least variances requested to allow for a small storage shed.
13. The Board found that Mr. Wilson testified that the Applicants have owned the property for approximately 2 years.
14. The Board found that Mr. Wilson testified that the Applicants are removing part of the fence and the shed will serve as the fence.

15. The Board found that Mr. Wilson testified that the driveway is not part of the lot.
16. The Board found that Mr. Wilson testified that the shed will measure 7 feet tall and the fence measures 6 feet tall.
17. The Board found that Ms. Patricia Ward participated in the meeting by teleconference and was sworn in to give testimony about the Application.
18. The Board found that Ms. Ward testified that that she lives in an adjoining property and has owned her property for 44 years.
19. The Board found that Ms. Ward testified that the prior owner to the Applicants' property built out the unit and changed the fence line so that the fence projected 3 feet on the north end.
20. The Board found that Ms. Ward testified that the parking space behind the Applicants' unit is too small and their son often parks in her space.
21. The Board found that Ms. Ward testified that she does not object to the shed but would like the door for the shed to be at the side farthest from her dwelling and she would like the parking spot to be reinstated because she does not want access to her property blocked by the Applicants.
22. The Board found that Mr. Wilson testified that he does not object to moving the fence and that the corner of the fence will be flush with the shed.
23. The Board found that Mr. Wilson testified that the door will be centered.
24. The Board found that Mr. Wilson testified that that the Applicants will gain 2-3 feet for parking as part of the plan.
25. The Board found that no one appeared in support of and one person appeared in opposition to the Application.
26. 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 with conditions. The findings below further support the Board's decision to approve the Application.
 - a. The Property is unique due to its unique size and history. The Property is an exceptionally narrow lot consisting of only 2,067 square feet. The Property was originally developed prior to the enactment of the Sussex County Zoning Code and the townhouse and the rear yard is particularly small. The unique characteristics of this Property limit the buildable area available to the Applicants and have created an exceptional practical difficulty and unnecessary hardship for the Applicants who seek to construct a 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 a unique size and the buildable area thereof is limited due to its size. The Applicants seek to construct a shed of reasonable size 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 Applicant to construct a reasonable shed. The Board is convinced that the shape and location of the shed are also reasonable, which is confirmed when reviewing the survey and pictures provided by the Applicants.
 - d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicants. The Applicants did not create the unusual size of the Property. The unique lot size has resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty and unnecessary hardship. Furthermore, the townhouse was placed on the Property by a prior owner years ago. The

unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty and unnecessary hardship were not created by the Applicants but was created the lot's unique characteristics.

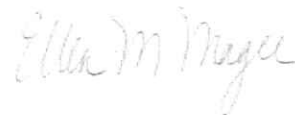
- e. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the proposed shed will have no effect on the character of the neighborhood. The shed is similar to others in the neighborhood and no complaints were noted in the record about the proposed location of the shed. Rather, the neighbor to the Property supports the request provided that certain conditions, to which the Applicants consent, are imposed. Furthermore, 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.
- 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 construct a shed in a reasonable manner consistent with the development of the neighborhood.
- 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.
- h. The Board's approval is subject to the following conditions:
 - i. The shed shall be located as far north on the rear yard as possible.
 - ii. The Applicants shall remove part of the existing fence that projects into the rear parking space so that the parking space to the rear of the lot can be used for a vehicle.

The Board granted the variance application with conditions 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 conditions. The Board Members in favor of the motion to approve with conditions 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 with conditions. Mr. Jeff 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