

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

**IN RE: GAUTAMKUMAR I. BRAHMBHATT**

**(Case No. 11203)**

A hearing was held after due notice on May 6, 2013. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front yard and side yard setback requirements.

Findings of Fact

The Board found that the Applicant was a variance of five (5) feet from the five (5) feet rear yard setback requirement for an existing shed and a variance of 3.7 feet from the six (6) feet rear yard setback requirement for an existing above ground pool with an attached deck. The Applicant has requested that the aforementioned requested variances be granted as they pertain to certain real property located south of Route 534 (Tharp Road) corner of Elm Street and being approximately 800 feet west of Road 535 (Middleford Road).; said property being identified as Sussex County Tax Map Parcel Number 3-31-6.00-270.00. After a hearing, the Board made the following findings of fact:

1. Guatamkumar Brahmbhatt was sworn in to testify about the Application.
2. The Board found that Mr. Brahmbhatt testified that he purchased the Property in 2005 and that the pool, deck and a small eight (8) feet by twelve (12) feet shed existed on the Property at that time.
3. The Board found that Mr. Brahmbhatt testified that he added onto the existing shed and it now measures fourteen (14) feet by eighteen (18) feet.
4. The Board found that Mr. Brahmbhatt testified that he obtained a building permit after being notified by the Planning & Zoning Department that he needed a permit.
5. The Board found that Mr. Brahmbhatt testified that he believed the shed was too small to require a permit.
6. The Board found that Mr. Brahmbhatt testified that the addition to the shed does not further encroach into the setback any further than the existing shed.
7. The Board found that Mr. Brahmbhatt testified that the shed is 0.1 feet from the property line.
8. The Board found that Mr. Brahmbhatt testified that there will be an A-style roof on the shed when complete.
9. The Board found that Mr. Brahmbhatt testified that the in ground pool is located behind the dwelling.
10. The Board found that Mr. Brahmbhatt testified that the roof will overhand to the sides of the shed and not onto his neighbor's property.
11. The Board found that Mr. Brahmbhatt testified that he is aware that his neighbor Mark Allen objects to the Application.
12. The Board found that Mr. Brahmbhatt submitted pictures to the Board.
13. The Board found that Mark Allen was sworn in and testified in opposition to the Application.
14. The Board found that Mr. Allen testified that he owns the adjacent property to the rear of the Property and that he has tried numerous times to explain to the Applicant that the shed does not comply with the setback requirements.

15. The Board found that Mr. Allen testified that he has had surveys completed to show the encroachment and that the shed now encroaches over the property line and onto his property by 0.4 feet.
16. The Board found that Mr. Allen testified that the original shed was 0.1 feet from the property line so the new shed is larger.
17. The Board found that Mr. Allen testified that he offered to help the Applicant build a shed that complies with the Zoning and Building Codes.
18. The Board found that Mr. Allen testified that when the Applicant built the addition and enclosed the existing shed, it created a further encroachment over the property line.
19. The Board found that Mr. Allen testified that the pool complies with the Zoning Code and he would like to see the deck removed since it does not comply with the Zoning Code.
20. The Board found that Mr. Allen testified that there is no uniqueness to the Applicant's property.
21. The Board found that Mr. Allen testified that the shed can be built in compliance with the Zoning Code because the Applicant has space on other portions of his lot.
22. The Board found that Mr. Allen testified that the Applicant is disregarding the property line.
23. The Board found that Mr. Allen testified that he would want to erect a fence exceeding the height requirement to provide privacy if the deck is not removed.
24. The Board found that Mr. Allen submitted exhibits to the Board to review.
25. The Board found that Mr. Brahmbhatt testified that he purchased the Property with all the existing improvements.
26. The Board found that Mr. Brahmbhatt testified that the existing shed stores the pump system for the existing pool and that the pool has been on the Property since 1987 or 1993.
27. The Board found that Mr. Brahmbhatt testified that he can move shed so it is not over the property line.
28. The Board found that Melissa Thibodeau of the Planning & Zoning Office stated that the Certificates of Compliance were issued on all structures in 2009.
29. The Board found that no parties appeared in support of the Application.
30. The Board found that one (1) party appeared in opposition to the Application.
31. The Board tabled the case until June 3, 2013.
32. Based on the findings above and the testimony presented at the public hearing and the public record, the Board determined that a portion of the Application met the standards for granting a variance and a portion of the Applicant did not meet the standards for granting a variance. The Board granted the Applicant's request for a variance of 3.7 feet for the existing above-ground pool and attached deck be approved based on the record made at the public hearing and for the following reasons. The Property is unique since the pool and deck already existed at the time the Applicant purchased the Property. The variance is necessary to enable reasonable use of the Property. The difficulty was not created by the Applicant. The variance will not alter the essential character of the neighborhood. The variance sought is the minimum variance to afford relief.
33. The Board denied the Applicant's request for a variance of five (5) feet for the shed be denied based on the record made at the public hearing because the difficulty has been created by the Applicant.

The Board approved the request for a variance of 3.7 feet for the existing above-ground pool and attached deck finding that it met the standards for granting a variance

and the Board denied the request for a variance of 5.0 feet for the shed finding that it failed to meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the Application was approved in part and denied in part. The Board Members voting to approve the request for a variance of 3.7 feet for the existing above-ground pool and attached deck and to deny the request for a variance of 5.0 feet for the shed were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. Norman Rickard, and Mr. Brent Workman. Mr. John Mills voted against the Motion to Approve the request for a variance of 3.7 feet for the existing above-ground pool and attached deck and to Deny the request for a variance of 5.0 feet for the shed.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY

  
Dale Callaway  
Chairman

If the use is not established within one (1)  
year from the date below the application  
becomes void.

Date July 16, 2013