

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

**IN RE: ROY WEISMILLER & DINO DAICHINO**

**(Case No. 11582)**

A hearing was held after due notice on June 8, 2015. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the side yard setback requirement, the separation requirement between units, the maximum lot coverage requirement in a Mobile Home Park, the minimum lot width requirement, and the minimum lot area requirement.

Findings of Fact

The Board found that the Applicants were seeking a variance of 0.6 feet from the five (5) feet side yard setback requirement for an existing screen porch, a variance of 1.1 feet from the twenty (20) feet separation requirement between units, a variance of 0.9 feet from the five (5) feet side yard setback requirement for an existing sunroom, a variance of 9.9 feet from the twenty (20) feet separation requirement, a variance of 3.5 feet from the twenty (20) feet separation requirement, a variance of 300 square feet from the 5,000 square feet lot size requirement, a variance of 28 feet from the fifty (50) feet minimum lot width requirement, and a variance of 1% from the maximum 35% lot coverage requirement in a mobile home park. This application pertains to certain real property located on Waterview Court in the Angola Beach Mobile Home Park located on the east side of Angola Beach Road (911 Address: None Available); said property being identified as Sussex County Tax Map Parcel Number 2-34-1800-1.00-Unit 12961.

1. The Board was given copies of the Application, a letter from Sussex County Planning & Zoning, a portion of the tax map of the area, and a survey of the Property dated March 10, 2015.
2. The Board found that the Office of Planning & Zoning had not received any correspondence in support of or in opposition to the Application.
3. Roy Weismiller, Dino Daichino, and Ronald Simmons were sworn in to testify about the Application.
4. The Board found that Mr. Weismiller testified that they purchased the Property in 2012.
5. The Board found that Mr. Weismiller testified that the Applicants are both on disability and must use a hot tub on a daily basis.
6. The Board found that Mr. Weismiller testified that there was a concrete pad with a deck on the Property when they bought the lot.
7. The Board found that Mr. Weismiller testified that they wanted to enclose the hot tub so it could be used year round and they hired Patio Systems to construct a sunroom for the hot tub.
8. The Board found that Mr. Weismiller testified that they received a notice from Sussex County that they did not pass the final inspection.
9. The Board found that Mr. Simmons testified that he is the contractor for the Applicants and that his office made a mistake regarding the setback violations. The sunroom was constructed a couple of years ago but they only recently learned of the mistake.
10. The Board found that Mr. Simmons testified that the Property is located in Angola by the Bay. The community was originally designed as a part-time mobile home park.

11. The Board found that Mr. Simmons testified that the existing dwelling is very small and has a small addition to the rear.
12. The Board found that Mr. Simmons testified that the sunroom made the home usable for the Applicants.
13. The Board found that Mr. Simmons testified that the Property is very narrow and is pie-shaped making the Property is unique.
14. The Board found that Mr. Simmons testified that there is no possibility that the sunroom could be relocated in compliance with the setback requirements.
15. The Board found that Mr. Simmons testified that the variances are necessary to allow continued use of the sunroom.
16. The Board found that Mr. Simmons testified that the Applicants need the sunroom due to their disabilities and the sunroom provides protection for the Applicants to access the hot tub year-round.
17. The Board found that Mr. Simmons testified that the Applicants would suffer a hardship if the variance were not granted.
18. The Board found that Mr. Simmons testified that the sunroom is an attractive enclosure that would not be detrimental to the character of the neighborhood.
19. The Board found that Mr. Simmons testified that the use is not detrimental to the public welfare.
20. The Board found that Mr. Simmons testified that the sunroom could not be built smaller due to the size of the hot tub and stairs in the room to access the tub. The variance requested is the minimum variance to afford relief.
21. The Board found that Mr. Simmons testified that the prior deck was a raised structure and the hot tub existed prior to the construction of the sunroom. The sunroom was constructed on the existing concrete pad and the deck was removed. The sunroom slopes up to the roof of the mobile home.
22. The Board found that Lawrence Lank, Planning & Zoning Director, stated that the park was developed in 1968 or 1969 and that the lots were designed in a wheel shape around that street, making the lots irregular in shape.
23. The Board found that Mr. Daichino testified that the existing unit is a 1978 model measuring twelve (12) feet wide.
24. The Board found that Mr. Daichino testified that they purchased the Property in 2012 and built the sunroom in 2012 so that they could use the hot tub year-round. The Applicants live in the unit year around.
25. The Board found that Mr. Daichino testified that they have made improvements to the mobile home since purchasing the Property but the sunroom is the only exterior change they have made to the lot. All other improvements were on the lot when the Applicants purchased the lot.
26. The Board found that Mr. Daichino testified that the neighbors have no objection to the Application.
27. The Board found that Mr. Daichino testified that the neighboring mobile homes were located in their current locations when they purchased the Property.
28. The Board found that Mr. Lank stated that the survey shows the lot as being 32 feet wide in the front and 60 feet wide in the rear.
29. The Board found that one (1) party appeared in support of the Application.
30. The Board found that no parties appeared in opposition to the Application.
31. 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 unrebutted, 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 has a unique shape which is apparent when reviewing the survey attached the Application. The Property has a narrow front yard which angles outward to the rear but creates a very small building

envelope. The Property is also located on a cul-de-sac with other properties that were designed to look like a wheel. This unique development is quite clear when reviewing the tax map. The uniqueness of the Property and the development of the community have created an exceptional practical difficulty for the Applicants who seek to retain a sunroom on the Property.

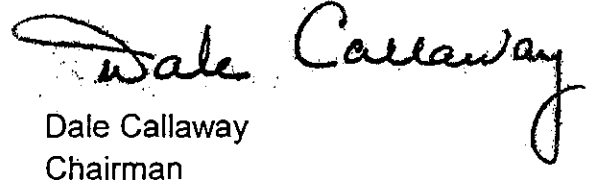
- b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants seek the requested variances in order to retain the existing sunroom on the Property. The sunroom cannot be placed elsewhere on the Property due to the unique shape of the Property and the unusual development of neighboring properties. The Board is convinced that the sunroom is a reasonable size and shape as it will allow the Applicants to use the space for a hot tub; which the Applicants use daily for reasons related to their disabilities. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the Applicants to retain a reasonably sized sunroom, shed, and mobile home on the Property. The Board is convinced that the shape and location of the sunroom, shed and mobile home are also reasonable; which is confirmed when reviewing the survey.
- c. The exceptional practical difficulty was not created by the Applicants. The Property's unique shape has created a unique building envelope. The difficulty is clear when reviewing the survey. The Applicants did not create the unique shape of the Property nor did the Applicants create the unique development of the community. The Applicants did not place the shed or mobile home on the Property and, thus, did not create the need for the variances related to those structures. The Applicants arranged for the construction of the sunroom but relied on a contractor to build the sunroom in compliance with the Sussex County Zoning Code. The contractor, however, made a mistake to the Applicants' detriment. It is clear to the Board that the exceptional practical difficulty was not created by the Applicants.
- d. 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 sunroom, mobile home, and shed will not have a negative impact on the neighborhood. The home and shed have been in their present locations for many years and neighboring homes have been in their present locations for many years as well. The sunroom has been in its location since 2012 and the Applicants have not heard any complaints from neighbors nor were any complaints proffered to the Board. Ultimately, 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.
- e. 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 for the existing sunroom, mobile home, and shed as shown on the survey to remain in their present locations and that no additional variances are being requested. The Board is convinced that the size of the sunroom is the minimum size to afford the Applicants with a reasonable use thereof and that the Applicants could not locate the sunroom elsewhere on the Property.

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 were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, and Mr. Brent Workman. No Board Members voted against the Motion to approve the variance application.

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 21, 2015.