

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JAMES McGARVEY

(Case No. 11754)

A hearing was held after due notice on April 18, 2016. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the separation requirement between units in a mobile home park, side yard setback, front yard setback, and maximum lot coverage requirements.

Findings of Fact

The Board found that the Applicant is seeking a variance of 5.2 feet from the twenty (20) feet separation requirement between units in a mobile home park, a variance of one (1) foot from the five (5) feet side yard setback requirement for an existing deck on the south side, a variance of 0.9 feet from the five (5) feet front yard setback requirement for an existing shed, and a variance of 6.55% from the 35% maximum allowable lot coverage in a mobile home park. This application pertains to certain real property located at the end of Bay Winds Lane in Rehoboth Shores (911 Address: 33314 Bay Winds Lane, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 2-34-24.00-35.00-44414.

1. The Board was given copies of the Application, a survey of the Property dated January 6, 2016, and a building permit issued on August 28, 2015.
2. The Board found that the Office of Planning & Zoning received one (1) letter in opposition to the Application and no correspondence in support of the Application.
3. The Board found that Todd East was sworn in to testify about the Application.
4. The Board found that Mr. East testified that the Applicant only recently purchased the Property and he is the contractor who constructed the deck in the rear yard.
5. The Board found that Mr. East testified that he lived in the neighborhood and the decks and sheds have been in the neighborhood for years. The existing structures were already encroaching.
6. The Board found that Mr. East testified that, when he obtained the building permit for the deck, he was told it would meet the requirements.
7. The Board found that Mr. East testified that the steps and walkway on the north side of the house were there at the time he constructed the deck on the rear of the dwelling. The new portion of that deck measures only the width of the existing dwelling. The shed and deck on the front of the lot existed prior to his construction of the rear deck.
8. The Board found that Mr. East testified that the building permit department advised him that they made a mistake in issuing the permit.
9. The Board found that Mr. East testified that it would be a hardship to remove or move the deck into compliance.
10. The Board found that no parties appeared in support of or in opposition to the Application.
11. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, 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 due to its small size and unique shape. The Property is quite narrow and the front of the Property is adjacent to a cul-de-sac so much of the square footage of the front yard is unbuildable due to the angle at which the cul-de-sac intrudes. The small size of the lot has created an exceptional practical difficulty for the Applicant who seeks to retain an existing dwelling, decks, and shed on the Property but cannot do so in compliance with the Sussex County Zoning Code. The situation is also unique because the structures, other than the deck in the rear yard, were on the Property prior to the Applicant's purchase of the lot and the Applicant's builder was told by the permitting department that the deck could be added to the Property. The Applicant's builder appears to have relied on this representation to his detriment.
- b. Due to the uniqueness of the Property and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to retain a reasonably sized dwelling, decks, and shed but is unable to do so without violating the Code. The variances thus necessary to enable reasonable use of the Property. The Board is convinced that the shape and location of these structures are also reasonable (which is confirmed when reviewing the survey). The shed will provide storage and the decks will provide reasonable outdoor space. The Board notes that there is a shed on a neighboring lot.
- c. The exceptional practical difficulty was not created by the Applicant. As noted above, the lot is small and oddly shaped and these conditions have created an exceptional practical difficulty for the Applicant. The Applicant did not create the size of the lot or place the dwelling, the steps on the north side of the Property, the deck on the front of the Property, or the shed on the Property. Furthermore, the Applicant's builder was led to believe that he could place the new deck in the rear yard on the Property. The Applicant also did not place the shed on the adjacent lot so close to the property line. The unique conditions of the Property and the development of adjacent lots have created an exceptional practical difficulty for the Applicant who seeks to retain a reasonably sized dwelling, decks, and shed on the Property.
- 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 structures will not have a negative impact on the neighborhood. The dwelling, the steps on the north side of the Property, the deck on the front of the Property, and the shed on the Property were located on the Property prior to the Applicant's purchase thereof and the location of these structures appears to have gone unnoticed by neighbors. The un rebutted testimony confirms that those structures have been on the Property for many years. The opposition is concerned that the lot coverage requirement is being exceeded but the structures on the Property prior to the construction of the new deck already exceeded the lot coverage requirement. If there was some negative impact to the essential character of the community, evidence should have been presented by the opposition to that effect. Ultimately, the Board was not convinced 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 Applicant has demonstrated that

the variances sought will allow the Applicant retain the dwelling, decks, and shed on the Property. No additions to those existing structures are being sought.

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, Mr. Norman Rickard, 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 June 21, 2016