

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

**IN RE: LOUISE GRIFFIN & LAWRENCE GRIFFIN**

**(Case No. 11789)**

A hearing was held after due notice on June 20, 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 variances from the front yard, side yard and rear yard setback requirements.

Findings of Fact

The Board found that the Applicants are seeking a variance of 1.7 feet from the ten (10) feet side yard setback requirement for a set of steps, a variance of 2.4 feet from the five (5) feet rear yard setback requirement for a shed, a variance of 1.7 feet from the five (5) feet rear yard setback requirement for a shed, a variance of 6.4 feet from the ten (10) feet side yard setback requirement for a pool, a variance of 1.5 feet from the twenty (25) feet front yard setback requirement for a set of steps, and a variance of 1.9 feet from the fifteen (15) feet side yard setback requirement for a dwelling. This application pertains to certain real property is located on the southwest corner of 2<sup>nd</sup> Street and Midway Drive (911 Address: 106 Midway Drive, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-13.00-35.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the area, a survey dated March 2, 2016, minutes from the March 3, 2008, Board of Adjustment meeting, an email from Louise Griffin, and assessment records.
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 a side yard variance was granted by the Board in 2008 for the existing dwelling. Second Street is considered the front yard and Midway Drive is considered the corner side yard. The previous variance granted was for the dwelling along Midway Drive and that the dwelling encroaches further than previously allowed by the Board.
4. The Board found that Louise Griffin was sworn in to testify about the Application.
5. The Board found that Ms. Griffin testified that a concrete shed and a metal shed existed on the Property at the time of purchase. The Applicants purchased another shed, removed the metal shed, and placed the new shed in line with the existing concrete shed. The concrete shed could not be moved. According to Ms. Griffin, the new shed could not be placed in compliance due to the existing well on the Property. The well and concrete shed were on the Property when the Applicants purchased the Property. The well is located near the doorway to the new shed.
6. The Board found that Ms. Griffin testified that the shed closest to Midway Drive is the newest shed, is movable, and is serviced by electricity.
7. The Board found that Ms. Griffin testified that the Applicants installed the new shed and obtained a building permit but did not read the setback information on the permit.
8. The Board found that Ms. Griffin testified that the house has three openings for steps. A contractor poured concrete steps on the Midway Drive side of the Property. The set of steps on the Second Street side came with the home and the contractor never informed them the steps did not comply.

9. The Board found that Ms. Griffin testified that the pool needed to be close to the house because the pump servicing the pool needs access to electricity. The Applicants also wanted the pool to be located near the hot tub.
10. The Board found that Ms. Griffin testified that the pool cannot be seen from Midway Drive and is difficult to see from Second Street and neighboring properties.
11. The Board found that Ms. Griffin testified that their neighbor installed the pool for them and the Applicants were not aware of the setback requirements. The neighbor has since moved away. The Applicants relied on the pool installer to obtain the permit for the pool.
12. The Board found that Ms. Griffin testified that the pool is an above-ground pool but a portion of the pool is below ground. The is serviced by an electric pump and a propane heater.
13. The Board found that Ms. Griffin testified that the structures do not alter the character of the neighborhood.
14. The Board found that Ms. Griffin testified that she relied on her builder to install the dwelling and structures in compliance with the Sussex County Zoning Code.
15. The Board found that Ms. Griffin testified that a large portion of the yard has been covered in pavers. There are pavers around the pool as well.
16. The Board found that Ms. Griffin testified that the sheds and pool are within a fenced in area of the Property.
17. The Board found that Ms. Griffin testified that the steps on the Second Street side of the house are the steps that were installed when the home was placed. The steps along Midway Drive are poured concrete steps which were placed when the home was installed.
18. The Board found that one (1) party appeared in support of the Application.
19. The Board found that no parties appeared in opposition to the Application.
20. The Board voted to leave the record open for the limited purpose of allowing the Applicants to provide pictures to the Board of the Property for review. On July 18, 2016, the Board reviewed those pictures and discussed the Application.
21. 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 for the requested 1.7 foot variance from the side yard setback requirement for existing steps, the 1.7 foot variance from the rear yard setback requirement for an existing shed, the 1.9 foot variance from the side yard requirement for the existing dwelling and the 1.5 foot variance from the front yard setback requirement for existing steps met the standards for granting a variance. The findings below further support the Board's decision to approve in part the Application.
  - a. The Property is unique as it is a small, corner lot consisting of only 5,000 square feet. The size of the lot has created a small building envelope. The Applicants previously obtained a variance from the side yard setback requirement for the placement of a dwelling but the dwelling and the steps accessing the home in the front and side yards encroach into the setback areas. These encroachments appear to be due to an error made by the builder in placing the dwelling. The Applicants relied on their builder to place the dwelling and steps in compliance with the Sussex County Zoning Code. Meanwhile, the concrete shed located on the Property encroaches into the rear yard. The Applicants seek to retain these structures but cannot do so. The exceptional practical difficulty was created by the small size of the lot which limits the buildable area of the lot and by the error in placement by the builder.
  - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property is quite small and the building envelope is very limited. The Applicants contracted

with a builder to place the dwelling on the lot and the dwelling cannot fit within the setback area. A variance for the dwelling was previously obtained but the builder made an error in placing the home and steps which has resulted in a slight encroachment into the setback areas. It is clear to the Board that, due to the small size of the lot, the variances are necessary to enable reasonable use of the Property as a reasonably sized home with reasonable access thereto cannot be placed on the Property without a variance. Likewise, due to the small building envelope, a reasonably sized shed cannot be retained on the lot without a variance. The Board is convinced that the shape and location of the dwelling, steps, and concrete shed are reasonable, which is confirmed when reviewing the survey provided by the Applicants.

- c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the small size of the lot and the small building envelope. The Applicants also relied on their builder to place the dwelling and steps in compliance with the Sussex County Zoning Code but the home was not placed in compliance with the Code. The edges of paving of Second Street and Midway Drive do not extend to the front and side property lines so the front and side yards are actually shorter than they appear. The mistake in placement is reasonable and one which the Applicants relied on to their detriment. The Applicants also did not place the concrete shed in the rear yard as the shed was placed on the lot by a prior owner. Ultimately, however, the exceptional practical difficulty was created by the lot's small building envelope which greatly limits the available area where the structures can be placed.
  - 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 have no effect on the character of the neighborhood. No complaints were noted in the record about the location of the concrete shed, steps, or dwelling. No evidence was presented which would indicate that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board also notes that the encroachments into the setback areas for these structures are quite small. The encroachments into the front and side yard setbacks are also unlikely to be noticed due to the difference between the edge of paving and the property lines.
  - 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 the Applicants to retain reasonably sized concrete shed, steps, and dwelling on the Property. No additions to those structures are being proposed and the Board finds that these structures are the minimum size needed to afford reasonable use of the Property.
22. 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 for the 2.4 feet variance from the rear yard setback requirement for an existing shed and the 6.4 feet variance from the side yard setback requirement for an existing pool failed to meet the standards for granting a variance. The findings below further support the Board's decision to deny in part the Application.
- a. While the Property is unique due to its small size, the small size of the Property has not created the exceptional practical difficulty for the Applicants regarding the new shed and the pool. Both of these structures were installed on the Property by the Applicants after purchasing the

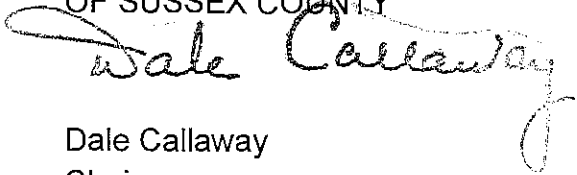
Property. The Applicants were issued building permits by Sussex County but admitted not to have read those permits. Instead, the Applicants installed, or arranged to have installed, the pool and shed on the Property in the setback areas. Had the Applicants read the building permits, they would have known that the structures would not meet the setback requirements. The Board finds that the variance requests for these structures were the result of the Applicants' failure to conduct their due diligence rather than due to some unique feature or condition of the Property. In other words, the Applicants have created their own difficulty.

- b. The Board also notes that there are 2 distinctions between the variances granted above and these variances which are denied. First, the shed in this instance was installed by the Applicants and the Applicants have admitted the shed can be moved. The other shed, however, is a concrete shed which cannot be moved and was installed by a prior owner. Second, the variances granted for the steps and dwelling were for variances along a portion of the Property which was adjacent to roadways and the edge of paving did not match the property line thereby giving a false impression of the property lines. The variances sought for the new shed and the pool, however, are not along those same property lines and there is no evidence of such ambiguity as to the location of those property lines. Rather, the errors made by the Applicants in placing the shed and pool appear to be the result of the Applicants' carelessness. The Board is not inclined to rescue the Applicants from their mistake. The Board also notes that the Applicants previously obtained a variance for the dwelling and knew or should have known that Sussex County had strict setback requirements regarding where certain structures could be placed.
- c. The Board is not convinced that the variances for the pool and shed are necessary to enable reasonable use of the Property. First, the shed, as noted by the Applicant, can be moved and there appears to be room on the Property where it could be moved into compliance. Though the location may not be the location preferred by the Applicants, the fact that the shed could fit on the Property without a variance indicates that the variance is not necessary to enable reasonable use of the Property. Second, the Board is not convinced that a second shed is even necessary. There is another existing shed already on the Property and the Board was not convinced that the existence of a second shed is necessary for the Applicants to reasonably use the Property. Likewise, the pool was placed on the Property and is exceptionally close to the side yard property line. The Applicants already have a hot tub, patio, and screen porch in the rear yard. Again, the Board is not convinced that the addition of a pool in the rear yard is necessary to enable reasonable use of the Property as the Property is already being reasonably used by other structures which meet the setback requirements.
- d. Since the Board has found that the new shed and the pool are not necessary to enable reasonable use of the Property, the variances are, thus, not the minimum variances necessary to afford relief. The Board is also not convinced that the new shed cannot be moved elsewhere on the Property in compliance with the Sussex County Zoning Code.

The Board granted the variance application in part finding that it met the standards for granting a variance and denied the variance application in part finding that it failed to meet the standards for granting a variance.

#### Decision of the Board

Upon motion duly made and seconded, the variance application was approved in part and denied in part. The Board Members in favor of the Motion were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Member voted against the Motion.

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 September 13, 2016.