

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JOSEPH A. BRADY & KAREN M. BRADY

(Case No. 11828)

A hearing was held after due notice on September 12, 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 1.8 feet from the thirty (30) feet front yard setback requirement for an existing dwelling, a variance of 15.6 feet from the thirty (30) feet front yard setback requirement for an existing deck, a variance of 0.7 feet from the five (5) feet side yard setback requirement on the west side for an existing shed, and a variance of 0.4 feet from the five (5) feet rear yard setback requirement for an existing shed. This application pertains to certain real property is located on the west side of 2nd Street approximately 391 feet south of Midway Drive in the Tru Vale Acres Subdivision (911 Address: 615 2nd Street, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-13.00-99.01.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the area, and a survey dated June 17, 2016.
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 Shannon Carmean Burton, Esquire, appeared on behalf of the Applicants and submitted an affidavit from Norman Saunders, Jr., with exhibits.
4. The Board found that Ms. Burton stated that the Applicants recently purchased the Property from Norman Saunders, Jr. Mr. Saunders purchased the Property with his wife in 1981 and, in 1987, the Property was conveyed to Mr. Saunders individually.
5. The Board found that Ms. Burton stated that, in 1992, Mr. Sanders replaced the manufactured home and a Certificate of Compliance was issued for the new manufactured home.
6. The Board found that Ms. Burton stated that, in 1994, Mr. Saunders had a deck and shed built on the Property. A Certificate of Compliance was issued in 1995 for the deck and shed.
7. The Board found that Ms. Burton stated that Mr. Saunders was unaware of any encroachments until a survey completed for settlement for the sale of the Property to the Applicants was prepared and that the Applicants applied for the variance application immediately.
8. The Board found that Ms. Burton stated that the Property is unique due to its topography and physical conditions.
9. The Board found that Ms. Burton stated that the grass in the front yard and the existing driveway extend well into the right-of-way which could reasonably cause an owner to believe that the front of the Property was larger than it actually is.
10. The Board found that Ms. Burton stated that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
11. The Board found that Ms. Burton stated that the variances are necessary to enable reasonable use of the Property.

12. The Board found that Ms. Burton stated that the exceptional practical difficulty was not created by the Applicants or by Mr. Saunders since he believed the Property to be in compliance with the Code.
13. The Board found that Ms. Burton stated that the variances do not alter the essential character of the neighborhood and the use is not detrimental to the public welfare. There have been no complaints from the neighbors.
14. The Board found that Ms. Burton stated that the variances are the minimum variances needed to afford relief.
15. The Board found that no parties appeared in support of or in opposition to the Application.
16. 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 variances met the standards for granting a variance. The findings below further support the Board's decision to approve the Application.
 - a. The situation is unique as the Applicants recently purchased the Property and a survey for settlement showed that the existing dwelling, deck, and shed encroach into the setback requirements. The previous owner placed those structures on the Property and obtained Certificates of Compliance from the Sussex County Planning & Zoning Department over twenty (20) years ago. These encroachments appear to be due to an error made by the builder in placing the structures on the Property. The previous owner relied on his builder to place the dwelling, deck, and steps in compliance with the Sussex County Zoning Code. The Applicants seek to retain these structures but cannot do so. The front yard of the Property is also unique because it does not match the edge of paving for the adjacent Second Street thereby making the front yard appear to be larger than it actually is. It is likely that the encroachments in the front yard were not discovered due to this discrepancy. These conditions have created an exceptional practical difficulty for the Applicants who seek to retain those structures on the Property.
 - b. Due to the uniqueness of the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The structures which encroach into the setback areas have been on the Property for many years and cannot be moved into compliance with the Sussex County Zoning Code. The prior owner contracted with a builder to place the structures on the lot and obtained the necessary Certificates of Compliance only to later learn that the structures do not comply with the Code. It is clear to the Board that the variances are necessary to enable reasonable use of the Property as the reasonably sized home, deck and shed cannot be retained on the Property without a variance. The Board is convinced that the shape and location of the dwelling, deck, and shed are also 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 place the dwelling, deck, and shed on the Property. Rather, a prior owner placed the structures on the lot and obtained the necessary Certificates of Compliance from Sussex County. The prior owner detrimentally relied on these Certificates of Compliance and reasonably believed that the structures did not encroach into the setback areas. The mistake in placement is reasonable and one which the prior owner clearly relied on to his detriment. Notably, the edge of paving of Second Street does not extend to the front property line so the front yard is actually shorter than it appears.

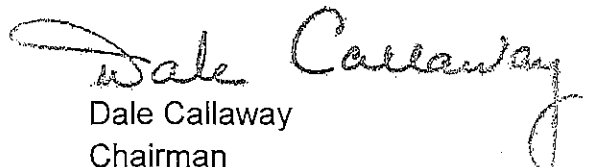
- d. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the structures will have no effect on the character of the neighborhood. No complaints were noted in the record about the location of the dwelling, deck, or steps and this lack of evidence is telling since the structures have been in their present locations for more than twenty (20) years. 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. The Board also notes that the encroachments into the side and rear yard setback areas for the shed is very small and is unlikely to be noticed without a survey. Meanwhile, the encroachments into the front yard setback area are also unlikely to be noticed due to the difference between the edge of paving and the property line.
- 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 a reasonably sized dwelling, deck, and shed 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.

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 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 November 9, 2016