

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ROBERT L. PALMER & SUE ANN PALMER

(Case No. 11864)

A hearing was held after due notice on November 7, 2016. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the separation requirement between accessory structures in a mobile home park, side yard setback, and rear yard setback requirements.

Findings of Fact

The Board found that the Applicants are seeking a variance of 6.1 feet from the twenty (20) feet separation distance requirement between accessory buildings in a mobile home park for a proposed garage, a variance of 2.4 feet from the fifteen (15) feet side yard setback requirement on the west side for an existing shed, and a variance of 3.7 feet from the twenty (20) feet rear yard setback requirement for an existing shed. This application pertains to certain real property located the south side of Barque Road in the White House Beach Development off of White House Road (911 Address: 35432 Barque Road, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 2-34-30.00-6.00-22037.

1. The Board was given copies of the Application, a portion of the tax map of the area, a survey dated August 17, 2016, and an aerial photograph of the area.
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 Robert Palmer was sworn in to testify about the Application. Tim Willard, Esquire, presented the case on behalf of the Applicants and submitted a letter of support from White House Beach, Inc.
4. The Board found that Mr. Willard stated that White House Beach is a conditional use mobile home park that is unique.
5. The Board found that Mr. Willard stated that the Applicants plan to retire and live in the area. The Applicants purchased the home in White House Beach in 2013.
6. The Board found that Mr. Willard stated that the lot is irregular in shape and consists of approximately 6,000 square feet.
7. The Board found that Mr. Willard stated that the mobile home was located on the Property when the Applicants purchased the Property.
8. The Board found that Mr. Willard stated that the Applicants inquired about constructing a garage on the Property and the Applicants received approval from White House Beach for the garage. The Applicants obtained a building permit for the garage in June 2016. The concrete pad has been poured and some framing of the proposed garage has been started.
9. The Board found that Mr. Willard stated that accessory buildings in a mobile home park must be separated by 20 feet per the Sussex County Zoning Code.
10. The Board found that Mr. Willard stated that the Applicants seek a variance from the proposed garage and a corn crib on a property to the rear of the lot. The corn crib is approximately 100 years old and is identified as a shed on the survey.
11. The Board found that Mr. Willard stated that there are sheds existing on the Property which encroach into the setback areas. Those sheds were on the Property as well when the Applicants purchased the lot but the existing sheds may be removed once the proposed garage is complete.

12. The Board found that Mr. Willard stated that the size and shape of the Property are unique.
13. The Board found that Mr. Willard stated that the Applicants did not create the need for the variance.
14. The Board found that Mr. Willard stated that the corn crib has created the difficulty.
15. The Board found that Mr. Willard stated that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
16. The Board found that Mr. Willard stated that the existing mobile home was placed at an angle and the proposed garage has been designed to meet the angle of the home.
17. The Board found that Mr. Willard stated that the variances are necessary to enable reasonable use of the Property as the garage will provide the Applicants with reasonable storage space.
18. The Board found that Mr. Willard stated that exceptional practical difficulty was not created by the Applicants.
19. The Board found that Mr. Willard stated that the Applicants did not place the corn crib so close to the property line.
20. The Board found that Mr. Willard stated that the variances will not alter the essential character of the neighborhood as there are other outbuildings and accessory buildings in the neighborhood.
21. The Board found that Mr. Willard stated that the variances are the minimum variance necessary to afford relief.
22. The Board found that Mr. Palmer, under oath, affirmed the statements made by Mr. Willard and testified that the framing for the garage was started before the realizing the separation requirement was not going to be met.
23. The Board found that Mr. Palmer testified that his neighbors and the park support the Application.
24. The Board found that a variance was granted in 1985 for the mobile home.
25. The Board found that no parties appeared in support of or in opposition to the Application.
26. The Board voted to leave the record open for the limited purpose of having the Planning & Zoning Office investigate the history of the corn crib on the neighboring property.
27. On November 21, 2016, the Board discussed the Application. Board Member Norman Rickard advised the Board that he listened to the audio of the public hearing and reviewed the public record.
28. 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 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 as it is a small lot with an odd shape in a manufactured home community. The building envelope on the Property is particularly small due to the small size of the lot and the unique angle of the property lines. The small building envelope is exacerbated by the development of adjacent properties and the separation distance requirements. The small size of the lot and the separation distance requirements have created an exceptional practical difficulty for the Applicants who seek to retain sheds and to construct a garage on the Property but cannot do so in compliance with the Sussex County Zoning Code. The situation is also unique because neighboring homes and sheds have been placed on other lots and the Applicants have no control over the placement of those structures.

- b. Due to the uniqueness of the Property and the placement of the shed on neighboring property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants seek to construct a garage but are unable to do so without violating the separation distance requirements between accessory structures in a mobile home park. Likewise, the Applicants seek to retain sheds which were placed on the Property by a prior owner but are unable to do so without violating the side yard and rear yard setback requirements. The variances are thus necessary to enable reasonable use of the Property. The Board is convinced that the shape and location of the structures are also reasonable (which is confirmed when reviewing the survey) and that the variances are necessary to enable the reasonable use of the Property.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not place the sheds on the Property. Those sheds were located on the Property when the Applicants purchased the Property in 2013. The Applicants also did not place the shed on the adjacent lot so close to the property line thereby limiting the building envelope on the Property. The Board also notes that the Property has a unique angle and a previous owner placed the mobile home at an odd angle on the Property. In order to construct a garage that aligns with the home, the Applicants had to angle the garage at a unique angle as well. The unique conditions of the Property and the development of the adjacent lot have created an exceptional practical difficulty for the Applicants who seek to retain reasonably sized shed and to construct a garage on the Property. The placement of the shed on the adjacent property has limited the Applicants' building envelope.
 - 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 sheds and garage will not have a negative impact on the neighborhood. As noted by the Applicants, there are similar structures in the neighborhood and the sheds have been on the Property for years yet there has been no complaint noted about them in the record. 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 regulation at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to retain reasonably sized sheds and to construct a reasonably sized garage on the Property. The Board notes that the Applicants have designed the rear of the garage at an odd angle to meet the side yard and rear yard setback requirements. The existing sheds will not be expanded and the variances are only to allow them to remain in their present locations.
29. The Board directed the Planning & Zoning Office to investigate the shed on the neighboring property to determine whether it has been legally placed.

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 2/7/2017