

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

**IN RE: JOSEPHINE BRETT**

**(Case No. 11893)**

A hearing was held after due notice on December 19, 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 side yard and rear yard setback requirements.

Findings of Fact

The Board found that the Applicant is seeking a variance of 3.4 feet from the ten (10) feet rear yard setback requirement for a second floor screen porch, a variance of 2.6 feet from the ten (10) feet rear yard setback requirement for an existing shed, a variance of three (3) feet from the ten (10) feet side yard setback requirement on the north side for an existing shed, a variance of five (5) feet from the ten (10) feet side yard setback requirement on the south side for an existing deck, and a variance of 2.7 feet from the five (5) feet side yard setback requirement on the west side for an existing shed. This application pertains to certain real property located on the east side of Crazy Lane end of 3<sup>rd</sup> Street in Bay Vista (911 Address: 21021 Crazy Lane, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-19.16-142.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the area, and a survey of the Property dated September 30, 2016.
2. The Board found that the Office of Planning & Zoning received one (1) letter of support to the Application and no correspondence in opposition to the Application.
3. The Board found that Sandy Leigh and Josephine Brett were sworn in to testify about the Application. Chad Meredith, Esquire, presented the case on behalf of the Applicant and submitted pictures for the Board to review.
4. The Board found that Mr. Meredith stated that Ms. Brett is the owner of the Property and Ms. Leigh is her realtor. Ms. Brett is selling the Property and a survey completed for settlement showed the encroachments.
5. The Board found that Mr. Meredith stated that the shape of the Property is unique. The front yard property line is only forty (40) feet wide and the property line is not a straight line.
6. The Board found that Mr. Meredith stated that the Property is wooded.
7. The Board found that Mr. Meredith stated that the neighboring property to the south is a yacht basin water canal used by the residents of Bay Vista to access the Rehoboth Bay.
8. The Board found that Mr. Meredith stated that the sheds are labeled on the survey as movable but the sheds cannot be moved into compliance. The sheds are on a concrete block foundation.
9. The Board found that Mr. Meredith stated that the shed in the rear yard is surrounded by landscaping which poses a challenge in moving the structure. This shed also has a unique character and a cupola.
10. The Board found that Mr. Meredith stated that the shed located on the southwest side of the Property has a concrete landing to access the shed and limits where the shed can be placed.
11. The Board found that Mr. Meredith stated that the porch in the rear yard is a second story porch.

12. The Board found that Mr. Meredith stated that the existing deck is less than twenty-four (24) inches above grade.
13. The Board found that Mr. Meredith stated that the ground slopes towards the bulkhead and rip rap and deck is elevated due to this change in elevation. The Property is also located in the flood zone which is another reason why the deck is slightly elevated.
14. The Board found that Mr. Meredith stated that the deck boards have recently been replaced.
15. The Board found that Mr. Meredith stated that a permit was issued for the recent repair to the deck but he is unsure if permits were issued for all improvements.
16. The Board found that Mr. Meredith stated that the variances requested are simply to allow these structures to remain in their current locations.
17. The Board found that Mr. Meredith stated that the slope of the Property is unique.
18. The Board found that Mr. Meredith stated that the Property cannot otherwise be developed.
19. The Board found that Mr. Meredith stated that the Property has been improved for some time and the use does not adversely affect the uses of neighboring and adjacent properties.
20. The Board found that Mr. Meredith stated that the variances will enable reasonable use of the Property.
21. The Board found that Mr. Meredith stated that the exceptional practical difficulty was not created by the Applicant.
22. The Board found that Mr. Meredith stated that the Applicant relied on contractors when improvements were made to the Property.
23. The Board found that Mr. Meredith stated that the variances do not alter the essential character of the neighborhood. There are several sheds in the development which appear to be similarly situated. Furthermore, the structures have been on the Property since the late 1990s or early 2000s and there have been no complaints from the neighbors.
24. The Board found that Mr. Meredith stated that the letter of support received by the Board was from the owner of Lot D which is the Property adjacent to the north of the Property.
25. The Board found that Mr. Meredith stated that the variances are the minimum variances necessary to afford relief.
26. The Board found that Ms. Leigh testified that she has been a realtor in the area for over sixteen (16) years and that the variances will not adversely affect the values of neighboring properties.
27. The Board found that Ms. Brett under oath, affirmed the statements made by Mr. Meredith.
28. The Board found that Ms. Brett testified that the second floor screened-in porch existed when she purchased the Property and she hired a contractor to extend the existing porch. The addition to the porch did not extend any closer to the property line than what existed.
29. The Board found that Ms. Brett testified that she replaced the deck boards but did not change any of the structure as she only replaced the boards that were on the deck when she acquired the Property. The deck was on the Property in its current location when she purchased the Property.
30. The Board found that Ms. Brett testified that, when she purchased the sheds, she relied on the contractor to obtain any required permits and place the sheds in compliance with the Sussex County Zoning Code.
31. The Board found that one (1) party appeared in support of the Application.
32. The Board found that no parties appeared in opposition to the Application.
33. 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 due to its odd shape and topography. The Property has a small and narrow front yard but opens up significantly 25 feet into the lot. The unusual shape of the Property has created an oddly shaped building envelope which results in the Property having 3 side yard property lines. The Property is also adjacent to a yacht basin and slopes towards the basin. This uneven topography has led to a portion of a deck being elevated near the basin. The deck is also slightly elevated because the Property is located in a flood zone. The unique characteristics of this Property limit the buildable area available to the Applicant and have created an exceptional practical difficulty for the Applicant who seeks to retain the existing sheds, deck, and porch the lot. The situation is also unique because the deck and porch were on the Property prior to the Applicant's acquisition thereof and the sheds were installed by the Applicant's contractor and she relied on the contractor to comply with the Sussex County Zoning Code when installing the sheds.
- b. Due to the uniqueness of the lot and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique shape and the buildable area thereof is limited due to its shape. The Applicant seeks to retain a porch, deck and sheds of reasonable size but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow these structures to remain on the Property. The Board is convinced that the shape and location of the structures are also reasonable, which is confirmed when reviewing the survey provided by the Applicant.
- c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual shape of the Property. The unique lot shape has resulted in a limited building envelope on the Property and the small building envelope has created an exceptional practical difficulty. The Property's unique topography has also created an exceptional practical difficulty because the Property slopes towards the yacht basin and the deck is elevated due to this slope and due to the Property's flood zone classification. The unique characteristics of the Property are clear when reviewing the survey and photographs provided by the Applicant. The exceptional practical difficulty was also created regarding the deck and porch because those structures were placed on the Property by a prior owner. While the Applicant repaired those structures, the structures were not made to further encroach into the setback areas. It is clear to the Board that the difficulty for those structures were created, in part, by the decision of a prior owner to place the structures in those locations. The Applicant has also experienced an exceptional practical difficulty due to her reliance on contractors to place the sheds on the Property in compliance with the Sussex County Zoning Code only to later find out that the sheds were placed in the setback areas. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created by the lot's unique characteristics, the errors by the Applicant's contractor, and by the placement of structures by a prior owner.
- 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. The structures have been in their present locations for years yet, despite notice to neighboring property owners, no complaints were noted in the record about their location. The Board also received a letter of support from a neighboring property owner. Unrebutted testimony also demonstrates that there are other sheds in the neighborhood which appear to be similarly situated. 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.

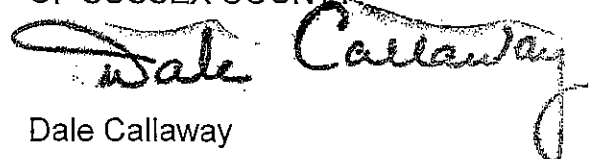
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain the structures on the Property. The structures are permanent structures and cannot be easily moved. The sheds are located on concrete foundations. One of the sheds is surrounded by thick landscaping which makes moving the shed difficult and the other shed has a concrete landing to access the shed. The shed cannot be moved without complete removal or relocation of that landing. The Applicant does not seek approval to add to the existing structures. Rather, the variances are to allow those structures, which have been on the Property for years, to remain in their existing locations.

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