

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: KELLY BIVINS

(Case No. 11932)

A hearing was held after due notice on March 20, 2017. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the separation requirement between units and a variance from the rear yard setback requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 7.9 feet from the twenty (20) feet separation requirement to a shed on Lot #2, a variance of 2.7 feet from the twenty (20) feet separation requirement to a dwelling on Lot #2, a variance of 10.5 feet from the twenty (20) feet separation requirement from a screen porch on Lot #2, a variance of 10.6 feet from the twenty (20) feet separation requirement from a screen porch on Lot #2, a variance of 2.3 feet from the twenty (20) feet separation requirement from a dwelling on Lot #2, a variance of 2.3 feet from the twenty (20) feet separation requirement from a dwelling on Lot #4, a variance of 3.1 feet from the twenty (20) feet separation requirement from a dwelling on Lot #4, a variance of 8.0 feet from the twenty (20) feet separation requirement from a shed on Lot #1, a variance of 0.8 feet from the twenty (20) feet separation requirement from a dwelling on Lot #1, and a variance of 1.9 feet from the five (5) feet rear yard setback requirement for a manufactured home. This application pertains to certain real property located approximately 1,074 feet west of Coastal Highway (Route 1) on the north side of Route 54 (911 Address: 39024 Reilly Place, Fenwick Island); said property being identified as Sussex County Tax Map Parcel Number 1-34-23.20-68.00-55509.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, and a survey dated September 30, 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 finds that the Property is identified as Lot 3 on the survey attached to the Application.
4. The Board found that Kelly Bivins was sworn in to testify about the Application.
5. The Board found that Ms. Bivins testified that the Property is unique because the mobile home park was designed to accommodate mobile homes which are 12 feet wide but homes that small are no longer made.
6. The Board found that Ms. Bivins testified that she is proposing to place a manufactured home which is fourteen (14) feet wide and is the smallest available home on the market.
7. The Board found that Ms. Bivins testified that she did not create the existing lot, which is located at Mason-Dixon Annex at Reilly Place.
8. The Board found that Ms. Bivins testified that the previous manufactured home was forty years old and was abandoned. The lot has been vacant for a couple of years and is the only vacant lot in the neighborhood.
9. The Board found that Ms. Bivins testified that most of the manufactured homes in the community are older homes. Neighboring manufactured homes are 10 to 12 feet wide and manufactured in the 1970s or 1980s.
10. The Board found that Ms. Bivins testified that she is allotted two parking spots and would propose to move the home closer to the rear yard to allow for better parking.

11. The Board found that Ms. Bivins testified that she has had no discussion with neighbors but a letter was written by the owner of the park in favor of the proposed manufactured home. She leases the lot from Tom Reilly.
12. The Board found that no parties appeared in support of or in opposition to the Application.
13. The Board voted to leave the case open until April 3, 2017, at which time the Board held a second public hearing on this matter.
14. On April 3, 2017, Thomas Reilly and Kelly Bivins were sworn in and submitted exhibits for the Board to review.
15. The Board found that Mr. Reilly testified that his grandfather founded the Mason-Dixon Mobile Home Park and his mother, Nancy Spicer, is the current owner of the manufactured home park. He is the Park's Manager and is here on behalf of his mother who is 85 years old.
16. The Board found that Mr. Reilly testified that the Mason-Dixon Mobile Home Park consists of 4 parcels. His mother's trust owns 3 of the parcels and his cousin owns the fourth parcel. The parcel in question is the portion of the Park known as the Mason-Dixon Annex which was created in the late 1960s with eleven lots.
17. The Board found that Mr. Reilly testified that the Mason-Dixon Annex was expanded in 1980, adding an additional five units. The expansion was conforming to Sussex County Zoning Code at the time.
18. The Board found that Mr. Reilly testified that the Park is open seasonally from April to November and is zoned Commercial.
19. The Board found that Mr. Reilly testified that the Board previously approved a variance request from the separation distance between units requirement from his mother in 2008 (Case No. 10155). Building permits have been granted for three manufactured homes on nonconforming lots in the community since 2009.
20. The Board found that Mr. Reilly testified that the same size fourteen feet manufactured home was installed in 2008 with two variance requests approved.
21. The Board found that Mr. Reilly testified that the Applicant seeks a variance in this case for Lot 3.
22. The Board found that Mr. Reilly testified that, in 2013, the Justice of the Peace Court granted ownership of the abandoned manufactured home on Lot 3 to Nancy Reilly.
23. The Board found that Mr. Reilly testified that a demolition permit was issued in 2014 to remove the previous manufactured home which was vandalized and rendered unusable. Lot 3 has been vacant since that time but Ms. Bivins rents Lot 3 now.
24. The Board found that Mr. Reilly testified that his mother has no intent to change the character of the neighborhood and his mother has not received rent for Lot 3 since 2012.
25. The Board found that Mr. Reilly testified that the Applicant seeks approval to use the lot as it has been used for the past 50 years.
26. The Board found that Mr. Reilly testified that the Property is unique because it is narrow and that the mobile home proposed to be placed on the lot by the Applicant is the smallest mobile home that they could find to fit on the lot.
27. The Board found that Mr. Reilly testified that the variances will not alter the essential character of the neighborhood.
28. The Board found that Mr. Reilly testified that the variances requested represent the minimum variances necessary to afford relief.
29. The Board found that Ms. Bivins testified that the proposed manufactured home measures 14 feet by 60 feet and that the previous manufactured home on the lot was smaller.
30. The Board found that Mr. Reilly testified that there is no possible way to relocate the existing manufactured homes that are at least fifty years old.
31. The Board found that Mr. Reilly testified that the parcel in question was developed prior to the enactment of the Sussex County Zoning Code.

32. The Board found that Mr. Reilly testified that they intend to keep the Park "as is".
33. The Board found that Mr. Reilly testified that the Annex has eleven lots on slightly more than 2 acres.
34. The Board found that Mr. Reilly testified that 4 other units have been replaced in the past 7 years in the entire Park.
35. The Board found that Mr. Reilly testified that Nancy Reilly owns the land but not the units.
36. The Board found that Mr. Reilly testified that the neighboring property has encroaching structures.
37. The Board found that Mr. Reilly testified that the requested manufactured home is the same size as the manufactured home placed in 2008 in the Park.
38. The Board found that Mr. Reilly testified that the only manufactured homes that are 10 or 12 feet wide were built in the 1960s or 1970s.
39. The Board found that Mr. Reilly testified that the variance granted in 2008 was for a lot located in the Park and not the Annex. The Annex is located across the street from the Park and that the lot in question (Lot 3) is located in the Annex.
40. The Board found that Ms. Bivins testified that the boundaries of Lot 3 have been in place since 1968 and she had no control over the creation of the lot
41. The Board found that Ms. Bivins testified that a shed is placed on the rear neighboring property and encroaches onto Lot 3.
42. The Board found that Ms. Bivins testified that the shed on Lot 2 is the water pump for the Park and cannot be moved.
43. The Board found that Ms. Bivins testified that the porch on the neighboring property was pre-existing and is encroaching.
44. The Board found that Ms. Bivins testified that the variances requested are the minimum variances necessary to afford relief.
45. The Board found that Ms. Bivins testified that a front yard variance is not needed because she wants to move the proposed manufactured home closer to the rear.
46. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board has weighed and considered, the Board determined that the application failed to meet the standards for granting a variance. The findings below further support the Board's decision to deny the Application.
 - a. The Applicant failed to convince the Board that the Property could not be developed in strict conformity with the Sussex County Zoning Code. Likewise, the Board was not convinced that the variance was necessary to enable the reasonable use of the Property. The Mason-Dixon Annex consists of more than 2 acres but contains 11 lots used for manufactured homes. The Annex is one of 4 parcels which is part of the Mason-Dixon Manufactured Home Park. The owner of the Annex entered into an agreement with the Applicant to lease Lot 3 in the Annex, which has been vacant since 2014. The Applicant seeks to place a home on Lot 3 but needs 10 different variances to place the home thereon. The Annex, however, is simply too small to safely accommodate 11 units. The owner has allowed other homes to be expanded or replaced with larger units thereby shrinking the separation distances normally required between units. As such, the Board finds that the owner is already reasonably using the Property through its development of the Property. Notably, a similarly sized parcel adjacent to the Annex contains only 5 manufactured home lots.
 - b. The Board finds that the exceptional practical difficulty by proposing to place a dwelling which does not fit within the building envelope is self-created. Had the owner of the Annex not allowed for expansion of other units and overdevelopment of the community, perhaps a home could be placed on Lot 3. Notably, however, the Annex already houses 10 other units and is

being reasonably used. This lot, meanwhile, has been vacant for several years and the owner now seeks to lease the lot to further maximize rental income from the Annex. As such, the Board was not convinced that the variance request was the product of a *need*. Instead, the variance request appears to be the product of a *want* as the owner seeks to place the dwelling as proposed for purposes of convenience and profit, and / or caprice.

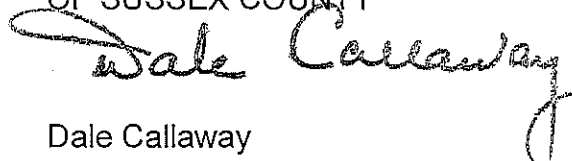
- c. The variances requested will alter the essential character of the neighborhood. The number of variances sought by the Applicant is staggering (particularly the number of variances from other units and structures in a mobile home park) and it is difficult to see how the granting of these variances would not alter the ability of neighboring properties or lots in the Annex to be developed. The proposed dwelling needs separation distance variances from at least 3 existing homes, including one home in an entirely different development (Lot #1 in the Dolores Gray Savage Subdivision). The granting of these variances would only exacerbate a problem within this community where there are simply too many homes in such a small space.
- d. Furthermore, since the Annex is already developed by 10 lots and Lot 3 has been vacant for several years, the Board finds that the variance for the dwelling is not the minimum variance necessary to afford relief. Rather, no variance for the dwelling will be needed since the owner is already utilizing the Annex.

The Board denied the variance application 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 denied. The Board Members in favor of the motion to deny were Mr. Dale Callaway, Mr. Norman Rickard, and Mr. Brent Workman. Mr. John Mills voted against the Motion to deny the variance application. Mr. Jeff Hudson did not participate in the discussion or vote on this 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 May 16, 2019