

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: CARL J. PIERCE & PAMELA K. PIERCE

(Case No. 11948)

A hearing was held after due notice on April 17, 2017. 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 setback requirement on a through lot.

Findings of Fact

The Board found that the Applicants are seeking a variance of 27.3 feet from the forty (40) feet front yard setback requirement on a through lot for an existing shed and a variance of 8.0 feet from the forty (40) feet front yard setback requirement on a through lot for an existing deck. This application pertains to certain real property located on the west side of Ridge Court approximately 331 feet north of Oak Crest Drive (911 Address: 30817 Ridge Court, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-6.00-553.00.

1. The Board was given copies of the Application, aerial photographs of the Property, photographs of the Property, a survey dated October 13, 2016, and a portion of the tax map.
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 Carl Pierce was sworn in to testify about the Application. Mr. Pierce submitted a drawing of the community.
4. The Board found that Mr. Pierce testified that the homeowners association requires all sheds be located behind the house and he went through the homeowners association approval process prior to placement of the shed.
5. The Board found that Mr. Pierce testified that the shed was placed on high ground for flooding reasons.
6. The Board found that Mr. Pierce testified that the Property is a through lot and abuts Beaver Dam Road. There are 10 or 11 other properties in the community which also abut Beaver Dam Road and variances have been granted to other homes along Beaver Dam Road.
7. The Board found that Mr. Pierce testified that he had no realization that the Property was considered a "through lot".
8. The Board found that Mr. Pierce testified that the shed is attractive and neighbors have not complained about the shed.
9. The Board found that Mr. Pierce testified that there is no other place to place the shed and moving it would be difficult.
10. The Board found that Mr. Pierce testified that the rear yard floods and the shed was placed on the highest available ground.
11. The Board found that Mr. Pierce testified that the shed is hidden by shrubbery and trees.
12. The Board found that Mr. Pierce testified that there are three other sheds in the community which are similarly situated.
13. The Board found that Mr. Pierce testified that the traffic along Beaver Dam Road has increased.
14. The Board found that Mr. Pierce testified that the permit was obtained by the company from whom the shed was purchased. The shed was placed on the Property

in 2005 and he relied on the contractor to place the shed in compliance with the Sussex County Zoning Code.

15. The Board found that Mr. Pierce testified that the shed is needed for storage of outdoor equipment.
16. The Board found that Mr. Pierce testified that the Property fronts on an interior street with Beaver Dam Road being buffered by a wooded area. He has no access to Beaver Dam Road.
17. The Board found that Eugene Greco was sworn to testify in support of the Application.
18. The Board found that Mr. Greco testified that he was the Applicant's neighbor of 7 years and he has no issue with the location of the shed. He has spoken with other neighbors and they have no issues with the placement of the shed either.
19. The Board found that Mr. Greco testified that the placement of the shed is due to the homeowners association requirements and that there is no other location to place the shed.
20. The Board found that Mr. Pierce testified that the deck is 12 feet wide. A deck was on the house when he moved into the house and he had the deck repaired.
21. The Board found that Mr. Pierce testified that it would be difficult to remove the deck.
22. The Board found that one (1) party appeared in support of the Application.
23. The Board found that no parties appeared in opposition to the Application.
24. 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 unrebutted, 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 lot with road frontages on two roads and the lot is not particularly large. These conditions greatly restrict the building envelope on the Property. While the Property is considered a through lot, the Applicants do not have direct access to Beaver Dam Road and only access the Property from Ridge Court. The deck was placed on the Property by a prior owner and the Applicants relied on their contractor to place the shed in compliance with the Sussex County Zoning Code only to learn many years later of the setback violation. It is clear to the Board that the lot's unique characteristics and the placement of the deck by a prior owner and the deck by the Applicant's contractor have created an exceptional practical difficulty for the Applicants who seek to retain an existing deck and shed on the lot.
 - 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 bordered on two sides by roads and has unique setback requirements even though the Applicants can only access the Property from one of those roads. The Applicants seek to retain an existing deck and shed of reasonable size but are 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 the Applicants to retain an existing deck and shed on the Property. The Board is convinced that the shape and location of the deck and shed are also reasonable, which is confirmed when reviewing the survey provided by the Applicants. The Board notes that a shed and deck that would comply with the Code would likely be too small to be reasonably used. The Applicants are also constrained in the placement options for the deck due to flooding in the rear yard and homeowner association requirements.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the shape and size of the lot or enact the setback

- requirements which have limited the building envelope of the lot. The Applicants did not create the flooding problems in the rear yard or the homeowner association restrictions which further limit the building envelope. The Applicants did not construct the existing deck on the lot either and they relied, to their detriment, on their contractor to place the shed in compliance with the Sussex County Zoning Code. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created the lot's unique characteristics and by the placement of the deck by a prior owner and the shed by a contractor in error.
- 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 shed and deck will have no effect on the character of the neighborhood. The deck has been on the Property for many years and the shed has been on the Property since 2005 yet no complaints were noted in the record about their locations. Rather, the Board heard from a neighbor who supported the Application. From the pictures provided by the Applicants, the shed appears to be in good condition. Furthermore, 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.
- e. The variances sought is 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 an existing deck and shed on the Property. No additions to the deck and shed are being proposed.

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 Member 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 May 16, 2017