

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JAMES COLEMAN & ROBIN COLEMAN

(Case No. 11970)

A hearing was held after due notice on June 19, 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.

Findings of Fact

The Board found that the Applicants are seeking a variance of 2.2 feet from the twenty (20) feet separation requirement from a unit to the west and a variance of 0.2 feet from the twenty (20) feet separation requirement from a unit to the east. This application pertains to certain real property located on the north side of Fisherman Road approximately 110 feet southwest of Seafarer Road (911 Address: 35287 Fisherman's Road, Millsboro); said property being identified as Sussex County Tax Map Parcel 2-34-30.00-6.00-Unit 44573.

1. The Board was given copies of the Application, a portion of the tax map of the area, aerial photographs of the Property, the Findings of Fact for Case No. 8345-2003, and a survey dated March 18, 2017.
2. The Board found that the Office of Planning & Zoning received one (1) letter in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Ryan Class was sworn in to testify about the Application. David Hutt, Esquire, presented the case on behalf of the Applicants and submitted exhibits for the Board to review including a deed to the Property, property information from the Sussex County website, letters of approval from White House Beach, Inc., and pictures of the Property.
4. The Board found that Mr. Hutt stated that the Property is located in the White House Beach Mobile Home Park and is identified as Lot 89. White House Beach has been in existence for nearly 50 years.
5. The Board found that Mr. Hutt stated that a new home was placed on the Property in the same footprint of the old home. The new home is 17.8 feet from the dwelling to the west (Lot 88) and 19.8 feet from the dwelling to the east (Lot 90).
6. The Board found that Mr. Hutt stated that the Property is oddly shaped as the front property line is 92.28 feet wide but the rear property line is only 24.89 feet wide. The normal minimum lot width for a manufactured home lot is 50 feet.
7. The Board found that Mr. Hutt stated that White House Beach submitted a letter in September 2016 approving the placement of the home.
8. The Board found that Mr. Hutt stated that the community manager is the neighbor on Lot 88 and the community manager wrote the letter of support.
9. The Board found that Mr. Hutt stated that the fence surrounding Lot 88 hid the existing deck located thereon.
10. The Board found that Mr. Hutt stated that the Property is unique due to its trapezoidal shape and narrow rear width and the building envelope has a unique shape.
11. The Board found that Mr. Hutt stated that the variances are necessary to enable the reasonable use of the Property.
12. The Board found that Mr. Hutt stated that the exceptional practical difficulty was not created by the Applicants.

13. The Board found that Mr. Hutt stated that the variances will not alter the essential character of the neighborhood.
14. The Board found that Mr. Hutt stated that the dwelling is similar to other dwellings in the area and the dwelling was placed in the exact same location as the previous dwelling that was replaced.
15. The Board found that Mr. Hutt stated that the variances requested are the minimum variances necessary to afford relief.
16. The Board found that Mr. Class, under oath, affirmed the statements made by Mr. Hutt.
17. The Board found that Mr. Class testified that he learned of the need for the variances when he tried to acquire a certificate of occupancy for the home and he was notified that the dwelling did not meet the separation distance requirements. A certificate of occupancy has not yet been issued and only will be issued if the variances are approved.
18. The Board found that Mr. Class testified that Property meets the 35% lot coverage regulation.
19. The Board found that Mr. Class testified that the home was placed on the Property in November 2016. The prior home was placed on the lot in 1978.
20. The Board found that no parties appeared in support of or in opposition to the Application
21. 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 irregularly shaped and has an exceptionally narrow rear yard. Manufactured home lots have a minimum of 50 feet in width but the Property is less than 25 feet wide in the rear yard. The lot is located in the White House Beach community which is nearly 50 years old and the Property was previously developed with a manufactured home that needed to be replaced. The unique shape of the Property has created an oddly shaped building envelope and the Applicants replaced the previous dwelling with a new dwelling on largely the same footprint. It is clear to the Board that the lot's unique characteristics have resulted in a limited building envelope and have created an exceptional practical difficulty for the Applicants who seek to replace the dwelling on the Property. The situation is also unique because the neighboring property to the west (Lot 88) received a separation distance variance in 2003 which allowed the home on that property to be closer to the previous dwelling on Lot 89 than would otherwise be allowed by the Sussex County Zoning Code. This unique situation has also created an exceptional practical difficulty for the Applicants.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property is narrow in the rear yard and is oddly shaped and these conditions have created an exceptionally limited building envelope. The Applicants seek permission to replace the dwelling 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 replacement dwelling to remain on the Property. The Board is convinced that the shape and location of this dwelling are reasonable, which is confirmed when reviewing the survey provided by the Applicants.

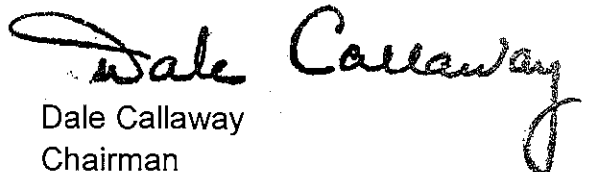
- c. The exceptional practical difficulty was not created by the Applicants. The Property is an oddly shaped lot with an oddly shaped building envelope. The neighboring property has also received a variance which allows the dwelling on that lot to be placed closer to the previous home on Lot 89. When the home on Lot 89 was removed, the Applicants needed a variance on their own lot to simply replace the dwelling in the same location. The Board is convinced that these unique physical conditions and this situation have resulted in a limited building envelope and have created the exceptional practical difficulty for the Applicants.
- 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 dwelling replaced an existing dwelling on the Property in a similar footprint as the previous home. The encroachments are not significant as the dwelling is only inches into the setback area with Lot 90 and the dwelling is too close to the deck on Lot 88 but the homes appear to be at least 20 feet apart. The deck on Lot 88 is actually hidden from view due to a fence separating the two lots. Given these circumstances, it is unlikely that the encroachments would even be noticeable without a survey. The Board also notes that no complaint was noted in the record about its location. 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 Applicants have demonstrated that the variances sought will allow the Applicants to retain the replacement dwelling on the Property in a location similar to the previous dwelling on the lot.

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. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Members voted against the Motion to approve the variance application. Ms. Magee 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 August 22, 2017.