

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JOSE SANCHEZ & LISA NIEDZIELSKI

(Case No. 12005)

A hearing was held after due notice on August 7, 2017. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. Norman Rickard and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the separation requirements and side yard setback requirements.

Findings of Fact

The Board found that the Applicants are seeking a variance of 4.7 feet from the twenty (20) feet separation requirement from a dwelling on Lot #100 for a porch, a variance of 4.5 feet from the twenty (20) feet separation requirement from a dwelling on Lot #100 for a porch, a variance of 0.9 feet from the twenty (20) feet separation requirement from a dwelling on Lot #96 for a dwelling, a variance of 6.5 feet from the twenty (20) feet separation requirement from a shed on Lot #96 for a dwelling, a variance of 1.1 feet from the twenty (20) feet separation requirement from a dwelling on Lot #99 for an existing dwelling, and a variance of 2.9 feet from the five (5) feet side yard setback requirement on the northeast side of the Property for a dwelling and HVAC system. This application pertains to certain real property located on north side of Atlantic Avenue approximately 50 feet east of Tanglewood Avenue (911 Address: 20088 Atlantic Avenue, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-13.00-310.00-3060. The Property is also identified as Lot #98 in Sea Air Village.

1. The Board was given copies of the Application, a letter dated June 6, 2017, from Sherri Bigelow, a site plan of the Property dated May 25, 2017, a violation notice from Sussex County, a building permit application and related documentation, an Exterior Improvement Request, pictures, an aerial photograph of the Property, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received three (3) letters in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Jose Sanchez, Sheri Bigelow, and Lisa Niedzielski were sworn in to testify about the Application.
4. The Board found that Ms. Niedzielski testified that the Applicants purchased the Property in 2015 and, in 2016, a contractor was hired to enclose the existing porch due to mosquito issues. An inspection was completed and a violation notice was issued a month after completion of the inspection.
5. The Board found that Ms. Bigelow testified that the Property is unique because it is 42 feet wide and there are no property markers in the community.
6. The Board found that Ms. Bigelow testified that no survey was completed prior to enclosing the porch. The enclosed porch was built over the existing deck and the porch is 12 feet wide. There are several steps to the porch from the dwelling.
7. The Board found that Ms. Bigelow testified that the previous owner built the deck and it was approved by Sussex County. The porch does not extend any farther than the deck.
8. The Board found that Ms. Bigelow testified that other lots in the community violate the separation distance requirement.
9. The Board found that Ms. Bigelow testified that four months after the screen porch was completed, a violation letter was issued and she never had indication that the porch needed a variance at any point during the construction phase.

10. The Board found that Ms. Bigelow testified that she has done work in mobile home parks previously but was unaware of the separation distance requirement.
11. The Board found that Ms. Bigelow testified that, when she applied for the building permit, she showed pictures and drawings of what was proposed to be constructed.
12. The Board found that Ms. Bigelow testified that she showed the plans to the park manager as well and was never told of the separation distance issues. She had difficulty dealing with the park manager when trying to find information regarding property markers.
13. The Board found that Ms. Bigelow testified that many other lots in the community are in violation.
14. The Board found that Ms. Niedzielski testified that she rents the Property. She asked where the property line was when she purchased the home and that she was told the light pole that determined the property line had been moved so they were unsure of the location.
15. The Board found that Ms. Niedzielski testified that the home, which was a 1974 model, was on the Property when she purchased the home.
16. The Board found that Ms. Niedzielski testified that the Applicants have only been on the Property for two (2) years and the neighboring structures have been on those lots since they moved to the Property.
17. The Board found that Ms. Niedzielski testified that she relied on her builder to build the porch in compliance with the Sussex County Zoning Code.
18. The Board found that no parties appeared in support of or in opposition to the Application.
19. 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 narrow and shaped at an angle. The Property is only 42.01 feet wide. The Property is also unique because it is located in a manufactured home park and is constrained by separation distance requirements which limit the placement of structures on the lot based upon the location of structures on neighboring properties. In this case, the structures on nearby properties are located close the property lines. The effect of the placement of these structures combined with the already narrow shape of the lot have led to an exceptionally small building envelope. These conditions have created an exceptional practical difficulty for the Applicants who seek to retain an existing manufactured home and screen porch on the Property but cannot do so in compliance with the Sussex County Zoning Code. The situation is unique because neighboring homes have been placed on other lots and the Applicants have no control over the placement of those homes and structures. The situation is further complicated by the fact that the dwelling and a deck were located on the Property when the Applicants purchased the Property two (2) years ago and the Applicants relied on a builder to constructed a screen porch over the existing deck in compliance with the Sussex County Zoning Code only to later learn of the encroachments.
 - b. Due to the uniqueness of the Property and the placement of the manufactured homes on neighboring lots, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants propose to retain a reasonably sized manufactured dwelling and screen porch but are unable to do so without violating the separation distance requirements between structures in a mobile home park and the side yard setback requirement. The variances are thus necessary to enable

reasonable use of the Property. The Board is convinced that the shape and location of the dwelling and porch are also reasonable (which is confirmed when reviewing the survey). Notably, the porch is located the identical footprint as a previous deck on the Property. The Applicant also testified to problems with mosquitoes. The porch, thus, provides the Applicants with usable outdoor space free from mosquitoes.

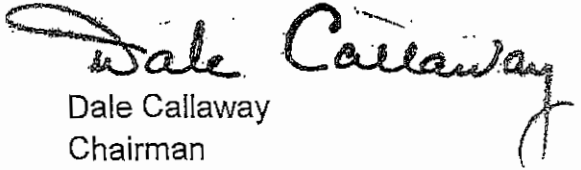
- c. The exceptional practical difficulty was not created by the Applicants. The Applicants only recently acquired an interest in the Property and did not create the size of the lot or place the existing dwelling and deck on the Property. Rather, a prior owner placed the dwelling and a deck on the Property. The porch is located on the same footprint as the deck. The Applicants also did not place the structures on the neighboring properties so close to the property line thereby restricting the building envelope on the Property. This building envelope is further limited due to the narrowness the lot. The unique conditions of the Property and the development of adjacent lots have created an exceptional practical difficulty for the Applicants who seek to retain the manufactured home and screen porch on the Property. The Board also notes that the Applicants relied on their builder to construct the porch in compliance with the Sussex County Zoning Code only to later discover the builder error related to the porch.
- 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 home and porch will not have a negative impact on the neighborhood. The home has been in its present location for many years yet no complaints were noted in the record about its location. Likewise, no complaints were noted about the porch which was placed in nearly the same location as the previous deck. Ultimately, 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. Rather, the Board received documentation and testimony that the community supports the Application.
- 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 retain a manufactured home and screen porch on the Property. No additions or modifications to those structures are 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, Ms. Ellen Magee, 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 September 19, 2017