

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: RAYMOND BAGGERLY & LISA BAGGERLY

(Case No. 12016)

A hearing was held after due notice on September 11, 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 distance requirement.

Findings of Fact

The Board found that the Applicants are seeking a variance of 3.9 feet from the 15 feet separation distance requirement between structures in a manufactured home park. The variance is needed for a shed located on the Property which is located 11.1 feet from a manufactured home on the neighboring Lot 38. This application pertains to certain real property located the north side of Colonial Lane, approximately 862 feet east of Colonial Lane (911 Address: 40 Colonial Lane, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel 3-34-6.00-335.00- 52267.

1. The Board was given copies of the Application, a portion of the tax map of the area, aerial photographs of the Property, a building permit, a certificate of compliance, minutes from Case Nos. 8921 and 9498, and a survey dated June 26, 2017.
2. The Board found that the Property is located in the Colonial East community and this community has a blanket variance which reduces the separation distance requirement in the community to 15 feet.
3. The Board found that the Office of Planning & Zoning received one (1) letter in support of and no letters in opposition to the Application.
4. The Board found that Lisa Baggerly and Raymond Baggerly were sworn in to testify about the Application. Mrs. Baggerly submitted additional letters in support of the Application.
5. The Board found that Mrs. Baggerly testified that the Applicants purchased the manufactured home in August 2015 and have made improvements to the home by adding an awning and improving the landscaping surrounding the home.
6. The Board found that Mrs. Baggerly testified that the Applicants received all necessary approvals from the community and the Applicants contacted the property manager regarding the placement of a shed on the Property. The property manager subsequently marked the location of where the shed could be placed.
7. The Board found that Mrs. Baggerly testified that the Applicants received a building permit and installed the shed and that the inspection conducted after the shed was constructed uncovered the encroachment. The shed measures 12 feet by 12 feet.
8. The Board found that Mr. Baggerly testified that the park management instructed the Applicants as to where to place the shed and he did not realize that the separation distance requirement applied to sheds.
9. The Board found that Mrs. Baggerly testified that the Applicants would not have placed the shed if they had known that the shed would violate the Sussex County Zoning Code.
10. The Board found that Mrs. Baggerly testified that their neighbors do not object to the shed.
11. The Board found that Mrs. Baggerly testified that the home does not have much storage space and the shed is needed for storage.

12. The Board found that Mrs. Baggerly testified that the Property is unique due to its size and the proximity of other structures on nearby properties.
13. The Board found that Mrs. Baggerly testified that the Property cannot other be developed in strict conformity with the Sussex County Zoning Code.
14. The Board found that Mrs. Baggerly testified that the exceptional practical difficulty was not created by the Applicants.
15. The Board found that Mrs. Baggerly testified that there is no other location to place the shed.
16. The Board found that Mrs. Baggerly testified that the variance will not alter the essential character of the neighborhood as there are other sheds in the neighborhood.
17. The Board found that Mrs. Baggerly testified that the variance requested is the minimum variance necessary to afford relief.
18. The Board found that Mr. Baggerly testified that the previous shed on the Property measured 8 feet by 10 feet and that the new shed cannot be moved.
19. The Board found that John Finch and Patrick Shire were sworn in to testify in support of the Application.
20. The Board found that Mr. Finch testified that he witnessed the park manager mark where the shed should be located prior to the placement of the shed.
21. The Board found that Mr. Finch testified that the Applicants have improved the Property.
22. The Board found that Mr. Shire testified that there are lots of varying sizes in the community and the shed is an improvement to the park
23. The Board found there were seven (7) parties in support of the Application.
24. The Board found that no parties appeared in opposition to the Application.
25. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board finds 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 narrow. The Property is also unique because the home on the adjacent Lot 38 is located close to the shared property line thereby significantly reducing the building envelope of the Property. 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 retain a replacement shed on the Property. The situation is also unique because the neighboring property to the west (Lot 38) received a separation distance variance in 2005 which allowed the home on that property to be closer to the previous shed on the Property 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 and oddly shaped and these conditions have created an exceptionally limited building envelope. The Applicants seek permission to retain a shed but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the shed to remain on the Property. The Board is convinced that the shape and location of this shed are reasonable, which is confirmed when reviewing the survey provided by the Applicants. The shed will provide reasonable storage for the Applicants and cannot be moved into compliance.

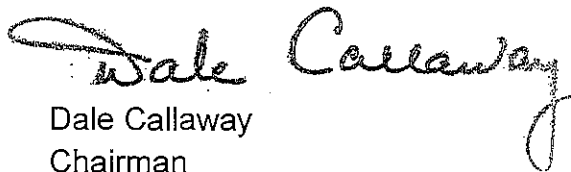
- c. The exceptional practical difficulty was not created by the Applicants. The Property is an oddly shaped lot with an oddly shaped building envelope. The neighboring property has also received a variance which allows the dwelling on that lot to be placed closer to the structures on the Property. When the shed on the Property was removed, the Applicants needed a variance on their own lot to simply replace the shed. 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. The Board also notes that the Applicants reasonably relied upon information provided to them by their property manager as to where the shed could be located.
- d. The variance 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 shed replaced a prior shed on the Property in a similar footprint as the previous shed. While the shed is slightly larger, no complaint was noted in the record about its location. Rather, neighbors appeared to support the Application. 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. The Board also notes that there are other sheds located in the neighborhood.
- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicants have demonstrated that the variance sought will allow the Applicants to retain the shed on the Property in a location similar to the previous shed on the lot. The Board notes that the shed cannot otherwise be located on the lot in compliance with the Code.

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 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 November 7, 2017