

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: STEPHANIE ADAMS**

**(Case No. 12050)**

A hearing was held after due notice on November 6, 2017. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the side yard and rear yard setback requirements.

Findings of Fact

The Board found that the Applicant is seeking a variance of 3.8 feet from five (5) feet side yard setback requirement on the east side for an existing shed, a variance of one (1) foot from the five (5) feet rear yard setback requirement for an existing shed, a variance of 4.7 feet from the five (5) feet rear yard setback requirement for an existing shed, a variance of five (5) feet from the five (5) feet rear yard setback requirement for an existing cover, and a variance of five (5) feet from the five (5) feet side yard setback requirement on the west side for an existing cover. This application pertains to certain real property located on the south side of First Street approximately 595 feet east of Bald Eagle Road (911 Address: 37448 First Street, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number: 3-34-19.16-13.00.

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 August 21, 2017.
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 Stephanie Adams was sworn in to testify about the Application. Harold Dukes, Esquire, presented the case on behalf of the Applicant and submitted exhibits for the Board to review including pictures and letters of support.
4. The Board found that Mr. Dukes stated that his client purchased the Property earlier this year from an elderly couple and the Applicant discovered that the sheds encroached into the setback areas.
5. The Board found that Mr. Dukes stated that the Property is located in the Bay Vista development which was created in 1952.
6. The Board found that Mr. Dukes stated that there are many encroachments on lots in Bay Vista. When the development was created, Bay Vista was not served by central water or sewer and septic systems were placed in the front yard and wells were located in the rear yard.
7. The Board found that Mr. Dukes stated that most units in the area have structures located near the rear property lines.
8. The Board found that Mr. Dukes stated that the situation was not created by the Applicant and the issue was created by prior owners of the Property.
9. The Board found that Mr. Dukes stated that the Applicant spoke with her neighbors and received letters of support for this application.
10. The Board found that Mr. Dukes stated that the Applicant has no intent to enhance these structures.
11. The Board found that Mr. Dukes stated that the home is a small house and the structures are necessary for the Applicant to reasonably use the home. The Applicant is active in outdoor recreational activities.
12. The Board found that Ms. Adams testified that she purchased the home on September 1, 2017, and she learned of the encroachments right before settlement.

13. The Board found that Ms. Adams testified that the storage area provided by the sheds was a major factor in her purchasing the Property.
14. The Board found that Ms. Adams testified that she spoke with her neighbors and they were surprised that there were not variances already in place for these structures.
15. The Board found that Ms. Adams testified that she is unsure if the fence behind the sheds belongs to her or her neighbor.
16. The Board found that Ms. Adams testified that the cover is a roof supported by posts but it is not big enough to be a carport.
17. The Board found that no parties appeared in support of or in opposition to this Application.
18. 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 due to its unique size. The Property is quite small and consists of only 5,000 square feet as evidenced by the survey. The Property is also unique as it was originally developed as part of the Bay Vista subdivision prior to the enactment of the Sussex County Zoning Code. The development was served by well and septic at that time, which led to structures, such as sheds, being placed in the rear yards near property lines. The unique characteristics of this Property have thus limited the buildable area available to the Applicant and have created an exceptional practical difficulty for the Applicant who seeks to retain two (2) reasonably sized sheds and a cover 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 has a unique size and the buildable area thereof is limited due to its size. The Applicant seeks to retain two (2) reasonably sized sheds and a cover but is 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 Applicant to retain two (2) reasonably sized sheds and a cover on the Property. The Board is convinced that the shape and location of these structures are also reasonable, which is confirmed when reviewing the survey provided by the Applicant.
  - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual size of the Property. Bay Vista was originally developed as a community with small lot sizes prior to the enactment of the Sussex County Zoning Code. The unique lot size has resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. 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 Applicant but was created the lot's unique characteristics. The Board also notes that the structures were placed on the lot by a prior owner.
  - 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 structures will have no effect on the character of the neighborhood. Other structures are similarly situated on neighboring properties and neighbors support the Application. 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. This lack of evidence is telling since the structures are already on the Property, and, if the structures somehow altered the character of the neighborhood, the Board would expect evidence of such.

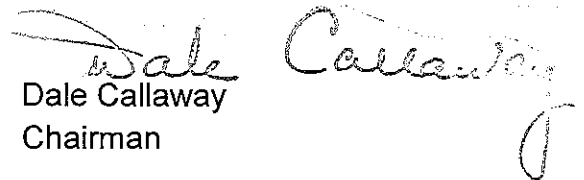
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain two reasonably sized sheds and a car port on the Property. No extensions 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. Bruce Mears, Mr. John Mills, 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 January 9, 2018.