

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: KELLY CONWAY

(Case No. 12236)

A hearing was held after due notice on December 10, 2018. 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 a variance from the side yard setback and separation distance requirement for existing structures.

Findings of Fact

The Board found that the Applicant is seeking a variance of 4.1 feet from the five (5) feet side yard setback requirement on the side adjacent to Lot 78 for an existing shed, a variance of 4.0 feet from the five (5) feet side yard setback requirement on the side adjacent to Lot 78 for an existing shed, a variance of 5.7 feet from the twenty (20) feet separation distance requirement between accessory structures and other manufactured homes within a manufactured home park for an existing shed and an existing dwelling on Lot 78, a variance of 12.1 feet from the twenty (20) feet separation distance requirement between accessory structures and other manufactured homes within a manufactured home park for an existing shed and an existing dwelling on Lot 78, a variance of 9.3 feet from the twenty (20) feet separation distance requirement between accessory structures and other manufactured homes within a manufactured home park for an existing deck and an existing dwelling on Lot 78, a variance of 7.1 feet from the twenty (20) feet separation distance requirement between accessory structures and other manufactured homes within a manufactured home park for an existing deck and handicap ramp and an existing dwelling on Lot 78, a variance of 4.9 feet from the twenty (20) feet separation distance requirement between accessory structures and other manufactured homes within a manufactured home park for an existing handicap ramp and an existing dwelling on Lot 78, and a variance of 6.5 feet from the twenty (20) feet separation distance requirement between manufactured homes within a manufactured home park for an existing dwelling and an existing dwelling on Lot 78. This application pertains to certain real property on the east side of Seafarer Road, approximately 519 feet south of W. Harbor Drive (911 Address: 27339 Seafarer Road, Millsboro) said property being identified as Sussex County Tax Map Parcel Number 2-34-30.00-6.00-5735.

1. The Board was given copies of the Application, a survey of the Property dated September 10, 2018, a building permit application, a letter from Danielle Bruder, MD, 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 no correspondence in support of or in opposition to the Application.
3. The Board found that Kelly Conway was sworn in to testify about the Application.
4. The Board found that Ms. Conway testified that her mother had a stroke and she is constructing a handicap ramp to allow her mother with better access to the home. The ramp will lead to a deck adjacent to an existing door to the manufactured home.
5. The Board found that Ms. Conway testified that the Property is unique because it is narrow and because the position of the door does not allow for the ramp to be placed elsewhere on the Property.
6. The Board found that Ms. Conway testified that, due to the location of the door and the narrowness of the Property, the Property could not otherwise be developed.
7. The Board found that Ms. Conway testified that the exceptional practical difficulty was not created by the Applicant as the shed was already on the Property when the

- current owner bought it and the ramp is necessary for her mother who suffered a stroke.
8. The Board found that Ms. Conway testified that the variances will not alter the character of the neighborhood and is consistent with surrounding properties. She has spoken with her neighbor at Lot 78 about this application.
 9. The Board found that Ms. Conway testified that the variances are the minimum variances requested to meet ADA requirements for the ramp and are minimum variance requests to allow shed to remain in current location. The shed was placed on the lot by a prior owner.
 10. The Board found that Ms. Conway testified that the structures do not affect the water views of neighbors.
 11. The Board found that Ms. Conway testified that the dwelling has been on the lot for decades and she only purchased the home in 2017.
 12. The Board found that Ms. Conway testified that she received permits from White House Beach and Sussex County.
 13. The Board found that Ms. Conway testified that she relied on her contractor.
 14. The Board found that Ms. Conway testified that the shed can be moved but there is no other place to locate it on the lot. There is a back door to the house so the shed cannot be located in the rear yard.
 15. The Board found that no parties appeared in support of or in opposition to the Application.
 16. 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 narrow and shallow lot. The Property is only 42.02 feet wide and 69.90 feet deep. 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 proximity of the structures on the Property are too close to the dwelling on adjacent Lot 78. 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 Applicant who seeks to retain an existing handicap ramp, deck, shed, and dwelling 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 Applicant has no control over the placement of those homes and structures.
 - b. Due to the uniqueness of the Property and the placement of the manufactured home on the neighboring lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant proposes to retain a reasonably sized handicap ramp, deck, shed, and dwelling but is 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 handicap ramp, deck, shed, and dwelling are also reasonable (which is confirmed when reviewing the survey). Notably, the shed is used for outdoor storage and the ramp and deck provide the Applicant's disabled mother with safe access to the home.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the size of the lot or place the existing dwelling and

shed on the Property. Rather, a prior owner placed the dwelling and shed on the Property. The Applicant also did not place the dwelling on Lot 78 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 the adjacent lot have created an exceptional practical difficulty for the Applicant who seeks to retain the handicap ramp, deck, shed, and dwelling on the Property.

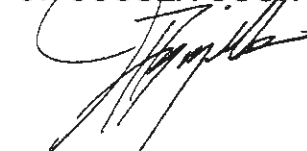
- d. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the structures will not have a negative impact on the neighborhood. The dwelling and shed have been in their present location for many years yet no complaints were noted in the record about their location. The ramp and deck are located adjacent to an existing door to the home which has been there for many years. 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. The lack of evidence is telling since the dwelling and shed have been on the Property for many years.
- 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 the handicap ramp, deck, shed, and dwelling 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. Bruce Mears, Mr. John Mills, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



John Mills
Chairman

If the use is not established within two (2) years from the date below the application becomes void.

Date February 5, 2019.