

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

**IN RE: JOSEPH C. FAMULARE & KATHLEEN T. FAMULARE**

**(Case No. 12296)**

A hearing was held after due notice on May 6, 2019. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from separation distance for proposed structures.

Findings of Fact

The Board found that the Applicant is requesting variances of 4 feet from the forty (40) feet separation distance requirement on the southwest side for a proposed trash enclosure and an outdoor shower. The Property is the northwest side of Fairway Drive approximately 330 feet south of West Pebble Beach Drive in the Forest Landing subdivision (911 Address: 37065 Fairway Drive, Frankford) said property being identified as Sussex County Tax Map Parcel Number: 1-34-16.00-40.00 Unit 71.

1. The Board was given copies of the Application, a site of the Property dated March 15, 2017, portions of the Condominium Declaration Plan, a letter from Taylor Wilkerson, homeowner association paperwork, 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 no correspondence in support of or in opposition to the Application.
3. The Board found that Joseph Famulare and Kathleen Famulare were sworn in to testify about the Application. Mr. Famulare submitted a picture to the Board to review.
4. The Board found that Mr. Famulare testified that the Property is uniquely situated in the Forest Landing subdivision and is located 40 feet from the next villa. The Applicants seek to construct an outdoor shower and trash enclosure on the side of their home. The Applicants currently place their trash in the rear yard but they can no longer do so because they are constructing a porch in the rear yard.
5. The Board found that Mr. Famulare testified that the trash enclosure is required because of homeowner association regulations which require that trash either be placed in the rear yard or in an enclosure.
6. The Board found that Mr. Famulare testified that the structures will be placed near existing bushes which should hide their presence.
7. The Board found that Mr. Famulare testified that the plumbing for the outdoor shower would be easily accessed by placing the shower on this side of the home.
8. The Board found that Mr. Famulare testified that the trash enclosure could not be placed next to the screened porch as it would be visible to the neighbor whose home is attached.
9. The Board found that Mr. Famulare testified that the exceptional practical difficulty was not created by the Applicants because, when they purchased the Property, the dwelling was already in place.
10. The Board found that Mr. Famulare testified that the structures will not alter the character of the neighborhood as there are other homes with similar trash enclosures.
11. The Board found that Mr. Famulare testified that the structures will be built to match the home.

12. The Board found that Mr. Famulare testified that the homeowners association and neighbors support the request.
13. The Board found that Mr. Famulare testified that the variances are the minimum variances necessary to afford relief.
14. The Board found that Mrs. Famulare testified that there are many trash enclosures in the neighborhood which are also placed on the side of the dwellings as other neighbors have moved their enclosures to the side yard.
15. The Board found that Mr. Famulare testified that he cannot place the trash in his garage due to the odor.
16. The Board found that no one appeared in support of or in opposition to the Application.
17. 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 a small lot with a dwelling constructed prior to the Applicant's purchase of the Property. The Property is subject to separation requirements from other structures in the neighborhood and the Applicants are restricted on where to place certain structures due to those requirements. The situation is also unique because the Applicants are limited by homeowner association regulations which restrict the placement of trash containers on the site. These conditions have created an exceptional practical difficulty for the Applicants who seek to locate a trash enclosure and outdoor shower on the lot but are unable to do so without a variance.
  - b. Due to the uniqueness of the Property and situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The dwelling was constructed by a prior owner and the Applicants seek to construct a reasonable outdoor shower and trash enclosure on the Property 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 those structures to be constructed on the Property. The Board is convinced that the shape and location of those structures 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 has unique conditions, as discussed above, and those conditions have limited the building envelope on the Property and have created an exceptional practical difficulty. Importantly, the Applicants did not develop the Property with the dwelling. Rather, the dwelling was placed on the Property by a prior owner. The Applicants are unable to construct the trash enclosure and outdoor shower due to the existing layout of the home and the homeowner association regulations.
  - 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 has been on the Property for some time and the Applicants seek to add a reasonable trash enclosure and outdoor shower to the home. Similar structures are found in the neighborhood and the homeowners association and neighbor support the request. No evidence was presented that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board also notes that the homeowners association appears to have a process for regulating

improvements within the community and the Applicants will likely have to receive additional approvals through that process. Furthermore, the enclosure should provide a means to locate trash containers out of the view from neighbors which should benefit the neighborhood.

- 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 construct a reasonable trash enclosure and outdoor shower. The Board is convinced that the Applicants took steps to minimize the encroachment. The Board also notes that the Applicants were unable to construct the structures elsewhere on the lot due to the existing layout of the home and the homeowner association regulations.

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 of the Motion to approve were Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. John Williamson, 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 June 18, 2019.