

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MARK HARBOLD

(Case No. 12321)

A hearing was held after due notice on June 17, 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 the separation distance requirements for existing structures.

Findings of Fact

The Board found that the Applicant is requesting a variance of 2.6 feet from the twenty (20) feet separation distance requirement from existing manufactured home located on the property adjacent to the east for an existing deck and a variance of 2 feet from the twenty (20) feet separation distance requirement from a manufactured home located on the property adjacent to the west for an existing shed. The Property is located on the southwest side of King Street approximately 175 feet west of East State Drive within the Camelot Manufactured Home Park (911 Address: 36260 King Street, Lot #179, Rehoboth Beach) said property being identified as Sussex County Tax Map Parcel Number: 3-34-13.00-308.00 Unit 50947.

1. The Board was given copies of the Application, a building permit, photographs, an email from Eric Bagan, a survey of the Property dated April 15, 2019, 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 Mark Harbold and Mark Hartman were sworn in to testify about the Application.
4. The Board found that Mr. Harbold testified that the lot is unique as it is undersized and narrow.
5. The Board found that Mr. Harbold testified that the house on this lot is centered on the lot but the house on the adjacent lot is not centered and is only 8.6 feet from the property line. The neighboring house was placed on the lot after the Applicant's house was placed on the lot. The houses are not parallel either.
6. The Board found that Mr. Harbold testified that the Property cannot otherwise be developed as the Applicant wishes to use the existing sidewalk to access the deck. The sidewalk provides the only access to the house.
7. The Board found that Mr. Harbold testified that the house was placed on the lot by a prior owner.
8. The Board found that Mr. Harbold testified that the exceptional practical difficulty was not created by the Applicant the home predates his purchase and the sidewalk was already in place as well.
9. The Board found that Mr. Harbold testified that the prior deck was rotted and needed to be replaced.
10. The Board found that Mr. Harbold testified that the prior deck went to the width of the house.
11. The Board found that Mr. Harbold testified that the deck and screen porch are consistent with the neighborhood.

12. The Board found that Mr. Harbold testified that the variances will not affect the affect the essential character of the neighborhood as the structures are in keeping with the other homes in the area.
13. The Board found that Mr. Harbold testified that, due to the large holly trees on the Property, the deck cannot be seen from the road.
14. The Board found that Mr. Harbold testified that there have been no complaints from neighbors.
15. The Board found that Mr. Harbold testified that new deck and screened porch are in the same footprint as the original deck and the variance is the minimal amount to allow functional access to the deck from the side yard.
16. The Board found that Mr. Hartman testified that the shed was in place prior to the Applicant purchasing the Property and the shed was compliant with the 20 feet separation setback but the neighbor made improvements to his dwelling and these improvements made the shed non-compliant.
17. The Board found that Mr. Hartman testified that the neighbors support this application.
18. The Board found that Mr. Harbold testified that a screened porch is necessary to enjoy the outdoors due to bugs.
19. The Board found that one person appeared in support of and no parties appeared in opposition to the Application.
20. 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 Applicant is restricted on where to place certain structures due to those requirements. The development on neighboring properties has significantly constrained the Applicant. The Applicant's home is centered on the lot but a neighboring dwelling is located close to the shared lot line. The home on the other side of the lot has been improved since the placement of the shed and those improvements have made the shed non-compliant. These conditions have created an exceptional practical difficulty for the Applicant who seeks to retain a shed, porch, and deck but is 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 Applicant seeks to retain a reasonable shed, porch, and deck on the Property 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 those structures remain 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 Applicant. The Board also notes that the screen porch is necessary due to bug problems which make it difficult to utilize the outdoor space.
 - c. The exceptional practical difficulty was not created by the Applicant. 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 Applicant did not develop the Property with the dwelling. Rather, the dwelling was placed on the

Property by a prior owner. The Applicant is unable to retain a shed, porch, and deck due to the existing layout of the home and the construction on neighboring lands.

- 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 Applicant seeks to retain a shed, porch, and deck. Similar structures are found in the neighborhood and neighbors 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.
- 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 a shed, porch, and deck. 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 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



Ellen M. Magee
Chair

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

Date August 6, 2019.