

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MATTHEW M. COLIMORE

(Case No. 12325)

A hearing was held after due notice on July 1, 2019. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the corner front setback requirement for a proposed shed.

Findings of Fact

The Board found that the Applicant is requesting a variance of 3.7 feet from the fifteen (15) feet corner front setback requirement for a proposed shed. This application pertains to certain real property located on the southwest corner of Harbor Road and Holly Road (911 Address: 85 Harbor Road, Rehoboth Beach) said property being identified as Sussex County Tax Map Parcel Number 3-34-8.17-135.00. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey of the Property dated October 5, 2016, a survey with the Property with the proposed location of the shed, drawings of the proposed shed, an elevation certificate, a letter from the North Shores Board of Governors, a subdivision plan, 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 Matthew Colimore was sworn in to give testimony about the Application.
4. The Board found that Mr. Colimore testified that the Property is improved by a townhouse and he seeks to construct an attached shed which will measure 17 feet long by 6.5 feet wide.
5. The Board found that Mr. Colimore testified that the Property is unique because there is no room in the rear for a shed but there is 17.5 feet on the side.
6. The Board found that Mr. Colimore testified that similar sheds are located in the neighborhood and the homeowners association has approved the shed.
7. The Board found that Mr. Colimore testified that there is an additional space of almost 15 feet from the property line to the edge of pavement and this additional space is owned by the community.
8. The Board found that Mr. Colimore testified that neighbors have received rear yard variances but, in this case, it is more appropriate to build to the side.
9. The Board found that Mr. Colimore testified that the Property cannot be developed for a shed without the variance as there is no other area to place the shed.
10. The Board found that Mr. Colimore testified that there are trees along the property line and the trees will shield the shed from the road.
11. The Board found that Mr. Colimore testified that the shed will be adjacent to the HVAC system and will abut to the fence surrounding the HVAC system.
12. The Board found that Mr. Colimore testified that the shed will be flat to the ground with no steps and the area around the shed will be landscaped per homeowner association regulations.
13. The Board found that Mr. Colimore testified that the shed will be built to blend in with the wall of the townhome.

14. The Board found that Mr. Colimore testified that neighbors have not objected to the request.
15. The Board found that Mr. Colimore testified that the request is a minimum variance necessary to allow for a long narrow shed to be constructed on the lot.
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 for the variances 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 and narrow lot. The lot is only 38.67 feet wide and consists of only 3,733 square feet. The Property is also unique because it is a corner lot. As such, the building envelope is exceptionally limited. These unique physical conditions have created an exceptional practical difficulty for the Applicant who seeks to construct an attached shed on the Property.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to construct an attached shed but is 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 a reasonably sized shed to be constructed on the Property. The Board is convinced that the shape and location of this shed 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. There was no evidence that the Applicant created the unique size and shape of the Property. These unique conditions have created an unusually limited building envelope and have created the exceptional practical difficulty for the Applicant who seeks to construct an attached shed on the lot.
 - 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 Board is convinced that the attached shed will have no effect on the character of the neighborhood. The un rebutted evidence confirms that the homeowners association has reviewed the application and approved the location of the proposed attached shed. The shed will be constructed to blend in with the existing townhouse and should result in improvement to the Property. No evidence was presented 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 is approximately 15 feet from the property line to the edge of paving of the adjacent road so the encroachment will not be as noticeable.
 - 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 Applicant has demonstrated that the variance sought will allow the Applicant to construct an attached shed on the Property. The Board notes that the shed is quite narrow and will be constructed parallel to Holly Road so that the shed will not extend significantly into the setback area. The shed will also be constructed without steps so there will not be additional encroachments into the setback area. The Board is convinced that the Applicant took steps to minimize the size

of the encroachment by limiting the width of the shed and placing it in this location.

The Board approved 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. Jeff Chorman, Mr. John Williamson, and Mr. Brent Workman. Dr. Kevin Carson and Ms. Ellen Magee 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 20, 2019