

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: SUSAN MACHADO

(Case No. 12347)

A hearing was held after due notice on August 19, 2019. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, and Mr. John Williamson.

Nature of the Proceedings

This is an application for a variance from the side yard setback and rear yard setback requirements for proposed structures.

Findings of Fact

The Board found that the Applicant is seeking a variance of 3 feet from the five (5) feet side yard setback requirement on the northeast side and a variance of 3 feet from the five (5) feet rear yard setback requirement for a proposed shed. This application pertains to certain real property located on the east side of Dodd Avenue at the intersection of Carla Avenue and Dodd Avenue in the Ann Acres subdivision (911 Address: 21071 Dodd Avenue, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-20.13-102.00. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, an aerial photograph of the Property, a survey of the Property dated June 20, 2019, pictures, a certificate of occupancy, a landscape plan dated June 2019, property record information, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received one letter in support of and no correspondence in opposition to the Application.
3. The Board found that Susan Machado and Stuart Ortel were sworn in to testify about the Application. Mr. Ortel submitted additional letters of support and two photographs showing an example of the proposed shed.
4. The Board found that Mr. Ortel testified that the Property is a corner lot in Ann Acres with front setbacks on two sides. The house was oriented away from the intersection.
5. The Board found that Mr. Ortel testified that the Applicant does not want to place the shed along Dodd Avenue for safety reasons and vehicular visibility.
6. The Board found that Mr. Ortel testified that the rear yard is shallow so the only place to develop the Property for a shed is in the proposed location.
7. The Board found that Mr. Ortel testified that the Applicant intends to erect a 6 foot tall fence to mitigate the view.
8. The Board found that Mr. Ortel testified that the setback will allow adequate room for maintenance.
9. The Board found that Mr. Ortel testified that the shed will measure 12 feet tall at its tallest point.
10. The Board found that Mr. Ortel testified that the "gravel area" noted on the survey is a patio area. The patio will measure 20 feet by 22 feet and will accommodate seating and dining.
11. The Board found that Mr. Ortel testified that the Property has public water and sewer and there are no drainage issues
12. The Board found that Mr. Ortel testified that the variance will not alter the essential character of the neighborhood as it will not be seen from the road. He noted that the shed will match the siding on the dwelling.
13. The Board found that Mr. Ortel testified that the variance requested is the minimum variance to afford relief to allow for a 2 ft. space between the shed and the fence.
14. The Board found that Ms. Machado testified that the shed will be used for storage.

15. The Board found that Lynn Wong and Christopher Andrews were sworn in to give testimony in support of the Application. They are neighbors who support the request.
16. The Board found that Jonathan Skolnik, who lives on adjacent property near the location of the proposed shed, was sworn in to give testimony in opposition of the Application.
17. The Board found that Mr. Skolnik testified that he owns a small cottage adjacent to the Property and that the shed will be located in the area where his views will be. He argued that the shed will effectively create a 12 foot tall wall and he does not want to see a shed when he sits on his screened porch.
18. The Board found that Mr. Skolnik suggested the Applicant construct the shed farther off the property line.
19. The Board found that two parties appeared in support of and one party 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 weighed and considered, the Board determined that the application failed to meet the standards for granting a variance. The findings below further support the Board's decision to deny the Application.
 - a. The Applicant failed to prove that a reasonably sized shed could not be built in strict conformity with the Sussex County Zoning Code. The Applicant is constructing a new shed on this lot and she has worked with an architect to design the shed, patio, and porch such that the shed will encroach into the rear and side yard setback areas. The Applicant argues that there is no other place the shed could be located but it is clear that a significant portion of the building envelope will be used for a patio. It is clear to the Board that the Applicant has chosen to use this portion of the lot for something other than the shed. Notably, the patio will be larger than the footprint of the shed. Additionally, there is room within the building envelope on the other side of the proposed porch. The Board was simply not convinced that the Applicant could not otherwise place the shed on the Property in compliance with the Code. The rear of the Property is essentially a blank slate for the Applicant to design her shed, porch, and patio in compliance with the Code. The Applicant failed to convince the Board that a shed could not be constructed in compliance with the Code. Perhaps the shed would not be in the exact location where the Applicant wants it to be located but the Property appears to have a large enough building envelope for the Applicant to construct a reasonably sized shed in compliance with the Sussex County Zoning Code. For these reasons, the Board finds that the Property could be developed in strict conformity with the Code and that the variances are not necessary to enable reasonable use of the Property.
 - b. The Board finds that the Applicant is creating her own exceptional practical difficulty by proposing to a construct a shed which does not fit within the building envelope. The Applicant's decision to construct this shed in this location is the reason for the need for a variance and has nothing to do with the size, shape, or condition of the Property. There is no unusual condition to the Property which has created this difficulty. The building envelope appears to otherwise be able to fit a shed without the need for the variance. The Board was not convinced that the variance request was the product of a *need*. Instead, the variance request appears to be the product of a *want* as the Applicant seek to build the shed as proposed for purposes of convenience, profit, and / or caprice. Since the Applicant can build a shed that can comply the Sussex County Zoning Code, the need for the variance is something created by the Applicant's wants rather than an unusual

physical condition relating to the Property. The Applicant has thus created her own exceptional practical difficulty.

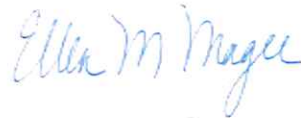
- c. Since the variance is not necessary to enable the reasonable use of the Property, the Board also finds that the variance requested is not the minimum variance necessary to afford relief. Furthermore, the Board finds that no variance is needed to afford relief since there is space to build a reasonably sized shed on the Property in compliance with the Sussex County Zoning Code.

The Board denied the variance application finding that it failed to meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was denied. The Board Members in favor of the Motion to deny were Dr. Kevin Carson, Mr. Jeffrey Chorman, Ms. Ellen Magee, and Mr. John Williamson. No Board Member voted against the Motion to deny the variance application. Mr. Brent Workman did not participate in the discussion or vote on this 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 October 22, 2019