

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DONNA M. SULECKI & BRENDA L. BLACKBURN

(Case No. 12433)

A hearing was held after due notice on June 1, 2020. 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 variances from the front yard setback and side yard setback requirements for existing structures.

Findings of Fact

The Board found that the Applicants are requesting a variance of 23.6 feet from the thirty (30) feet front yard setback requirement for an existing carport and a variance of 3.4 feet from the five (5) feet side yard setback requirement on the northeast side for an existing shed. This application pertains to certain real property that is located on the northeast side of Rose Lane within the Orchard Manor subdivision (911 Address: 28337 Rose Lane, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 2-34-34.08-28.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey of the property dated January 16, 2020, building permit information, photographs, correspondence from the Office of Planning & Zoning, 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 no correspondence in support of and one letter in opposition to the Application.
3. The Board found that Donna Sulecki and Brenda Blackburn were sworn in to give testimony about the Application.
4. The Board found that Ms. Sulecki testified that a variance is being requested for the carport in the front yard setback for the storage of vehicles and boat.
5. The Board found that Ms. Sulecki testified that the Property is unique as there are 4 sheds in the rear and there was no other area on the lot to place the carport.
6. The Board found that Ms. Sulecki testified that the rear yard is fenced.
7. The Board found that Ms. Sulecki testified that the sidewalk would not allow them to move the carport farther back.
8. The Board found that Ms. Sulecki testified that you can see through the carport.
9. The Board found that Ms. Sulecki testified that the Applicants were not aware of the 30 feet property setback line.
10. The Board found that Ms. Sulecki testified that the carport was installed last summer.
11. The Board found that Ms. Sulecki testified that the carport will not alter the essential character of the neighborhood as it will not obstruct lines of vision and there are other carports in the area.
12. The Board found that Ms. Sulecki testified that the variance requested is the minimum variance to allow the carport to remain in its current location.
13. The Board found that Ms. Blackburn testified that the carport is secured to the ground with 3 foot metal rods down into the grass on either side of the driveway.
14. The Board found that Ms. Blackburn testified that she does not have a cost of removing sections of the carport but she has contacted the carport installation company about cutting it down and rebuilding it.
15. The Board found that Ms. Blackburn testified that there is approximately 20 feet between the front property line and the edge of paving.

16. The Board found that Ms. Blackburn testified that there is no well or septic on the Property.
17. The Board found that Ms. Blackburn testified that two neighbors have complained to other residents on the block about the carport.
18. The Board found that Ms. Blackburn testified that the carport does not block visibility.
19. The Board found that Ms. Blackburn testified that the shed / outhouse in the rear of the Property will be brought into compliance and they are only seeking a variance for the carport.
20. The Board found that no one appeared in support of or opposition to the Application.
21. The Board voted to leave the public hearing open for the limited purpose of having the builder appear to answer questions from the Board on July 6, 2020.
22. On July 6, 2020, the Board held a limited public hearing whereby Angelo Delapo of Delway Contracting was sworn in and testified via telephone.
23. The Board found that Mr. Delapo testified that he is the owner of Delway Contracting and he obtained the permit for the Applicants as a courtesy for the Applicants but he did not build the carport. Rather, he testified that the carport was built by a company from North Carolina and was on the lot when he obtained the permit.
24. 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 Applicants failed to prove that the Property could not be reasonably developed in strict conformity with the Sussex County Zoning Code. The Applicants propose to retain a carport close to the front property line and the carport will encroach significantly into the front yard setback areas. While the Applicants argued that they are constrained by the size and conditions of the lot, the lot is a rectangular shaped lot with no unique conditions which appear to limit its development. There was no unique topography and the Property does not have a well or septic in the building envelope which limits the development of the Property. Rather, the Applicants have chosen to use a significant portion of the lot for other structures. Notably, the survey shows that there are 4 sheds in the rear yard. The Board was simply not convinced that the Applicants could not otherwise develop the Property in compliance with the Code. Likewise, the Board was not convinced that the variance is necessary to enable reasonable use of the Property.
 - b. The Board finds that the Applicants are creating their own exceptional practical difficulty by proposing to a develop the Property with the carport which does not fit within the building envelope. The Applicants' decision to construct the new carport on this site is the reason for the need for 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 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 Applicants seek to have the carport on the lot for purposes of convenience, profit, and / or caprice. The need for the variance is something created by the Applicants' wants rather than an unusual physical condition relating to the Property. The Applicants have thus created their 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 the Applicants failed to

demonstrate that the Property could not otherwise be developed in compliance with the Sussex County Zoning Code.

- d. The Board also notes that the Application initially included a side yard variance request for an existing shed but the Applicants stated they no longer sought that variance and would bring the shed into compliance. Accordingly, the Board finds that no variance is needed for that structure either.

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, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to deny 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 17, 2020.