

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: POT-NETS HOMES, LLC

(Case No. 12455)

A hearing was held after due notice on August 3, 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 a variance from the separation distance requirement between units for a manufactured home.

Findings of Fact

The Board found that the Applicant is requesting a variance of 3 feet from the twenty (20) feet separation distance requirement between the manufactured home on Lot E-4A and the gazebo on Lot E-5. This property is identified as Lot E-4A on a survey dated April 10, 2020. The Property is located on the north side of Sloop Avenue approximately 450 feet west of Ringbolt Avenue within the Pot-Nets Bayside Manufactured Home Park (911 Address: 28176 Sloop Avenue, Millsboro) said property being identified as Sussex County Tax Map Parcel Number: 2-34-30.00-3.00-56182. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a drawing of the site, photographs, a letter from Jacqueline Duchesneau, a survey of the Property dated April 10, 2020, 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 Lincoln Davis was sworn in to testify about the Application.
4. The Board found that Mr. Davis testified that the Application meets the criteria for a variance.
5. The Board found that Mr. Davis testified that the Applicant placed the new home and the home meets all setback requirements but does not meet the separation distance requirement from the gazebo on the neighboring lot.
6. The Board found that Mr. Davis testified that the gazebo is only 6 feet from the property line and 17 feet from the house. He believes that the gazebo has been on the neighboring lot since at least 1998.
7. The Board found that Mr. Davis testified that the lot is very narrow with a newly constructed home and attached garage.
8. The Board found that Mr. Davis testified that the new home meets setbacks but the gazebo on the adjoining property created the separation distance encroachment.
9. The Board found that Mr. Davis testified that it is not economically feasible to relocate the home or to make the home narrower.
10. The Board found that Mr. Davis testified that the gazebo has been in place for at least 22 years and having it remain will not alter the essential character of the neighborhood or affect property values.
11. The Board found that Mr. Davis testified that the variance request is the minimum variance to afford relief to allow the gazebo to remain on lot E-5 as the current owner of the neighboring lot would prefer not to have it removed.
12. The Board found that Mr. Davis testified that the owner of Lot E-5 has submitted a letter in support of the variance request.

13. The Board found that Mr. Davis testified that the Property is subject to a ground lease.
14. The Board found that no one appeared in person or online in support of or in opposition to the Application.
15. 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 and narrow lot with a dwelling which was recently constructed. The home, which cannot be easily relocated or narrowed, encroaches into the separation distance requirements. Notably, the house meets the side, rear, and front yard setback requirements. The Property is subject to separation distance 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. Notably, the neighboring property (Lot E-5) has a gazebo which is only 6 feet from the shared property line. If the gazebo met the side yard setback requirements, there would be sufficient separation between the dwelling and neighboring structures. Due to the location of the neighbor's gazebo, however, the Applicant's building envelope is narrow and limited. These conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to retain a dwelling but is unable to do so without a variance.
 - b. The unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code.
 - c. Due to the uniqueness of the Property and situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The gazebo was constructed by a neighbor and the Applicant seeks to retain the dwelling on his lot 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 the dwelling to remain on the Property. The Board is convinced that the shape and location of the structure is reasonable, which is confirmed when reviewing the survey provided by the Applicant.
 - d. The exceptional practical difficulty and unnecessary hardship were 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 place the gazebo on the neighboring lot so close to the shared property line. The Applicant is unable to construct a reasonable dwelling due to the unique size of the Property and the construction on neighboring lands.
 - e. 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 dwelling on Lot E-4A meets all setback requirements but does not meet the separation distance requirement due a neighboring gazebo which is located within the setback area. The Applicant seeks to retain this reasonably sized dwelling. No evidence was presented that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. Moreover, the neighbor most affected by the request supports the request.

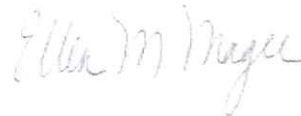
- f. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to retain a reasonable home on the Property. No additions or modifications to the dwelling are proposed.
- g. The condition or situation of the Property and the intended use of the Property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.

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 Dr. Kevin Carson, Mr. Jeffrey Chorman, Ms. Ellen Magee, 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 October 5, 2020.