

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MELISSA STOLTZ

(Case No. 12486)

A hearing was held after due notice on October 19, 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 side yard setback requirement.

Findings of Fact

The Board found that the Applicant is requesting the following variances: 1) a variance of 4.4 feet from the ten (10) feet side yard setback requirement on the south side for a proposed addition and 2) a variance of 0.3 feet from the five (5) feet side yard setback requirement on the north side for an existing shed. The Applicant withdrew her requests for the following variances: 1) a variance of 6 feet from the six (6) feet rear yard setback requirement for an above-ground pool; and 2) a variance of 3 feet from the pool walkway requirement of three (3) feet. This application pertains to certain real property located on the west side of Park Circle within the Banksville Park subdivision (911 Address: 36425 Park Circle, Ocean View); said property being identified as Sussex County Tax Map Parcel Number 1-34-12.00-1299.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, an aerial photograph of the Property, an undated survey of the Property, a septic site plan dated June 23, 2004, a drawing of the home, letters in support of the request, a legal description, pictures, a survey of the Property dated July 9, 2020, a deed of easement, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received three letters in support of and no correspondence in opposition to the Application.
3. The Board found that Melissa Stoltz was sworn in to testify about the Application.
4. The Board found that Ms. Stoltz testified that the Property is unique because of the placement of the dwelling. She argued that the dwelling should have been placed in the center of the lot but was placed to one side.
5. The Board found that Ms. Stoltz testified that the lot measures 100 feet by 100 feet.
6. The Board found that Ms. Stoltz testified that an additional bedroom is necessary to accommodate her family.
7. The Board found that Ms. Stoltz testified that she has retired to the Property and her family visits regularly.
8. The Board found that Ms. Stoltz testified that the Property cannot otherwise be developed and this is the only possible location for the addition.
9. The Board found that Ms. Stoltz testified that the exceptional practical difficulty was not created by the Applicant but by the placement of the modular house on the lot.
10. The Board found that Ms. Stoltz testified that the addition of a bedroom will not alter the essential character of the neighborhood as the addition will match the existing house.
11. The Board found that Ms. Stoltz testified that her neighbors support the variance requests.
12. The Board found that Ms. Stoltz testified that the addition will measure 11 feet by 16 feet.
13. The Board found that Ms. Stoltz testified that she wanted a larger room but is planning a smaller bedroom for the children.

14. The Board found that Ms. Stoltz testified that she needs a variance for the shed because her son constructed the shed a few inches off.
15. The Board found that Ms. Stoltz testified that the variance requested is the minimum variance to allow for an additional bedroom on the current dwelling.
16. The Board found that Ms. Stoltz testified that the tree will be removed for the addition.
17. The Board found that Ms. Stoltz testified that the lot was previously serviced by septic in the front yard but is now serviced by sewer. She doubts the septic system affected the placement of the house.
18. The Board found that two people appeared in support of and no one appeared in opposition to the Application.
19. 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 unique condition existed that has created an exceptional practical difficulty. The lot measures 100 feet by 100 feet and appears to have no unique conditions which would limit its development. The lot is not serviced by a septic system which would limit some areas of the building envelope and the Applicant presented no substantial evidence of a physical condition of the Property which otherwise limits its development. Moreover, the Property is already heavily developed with a home, covered porch, above-ground pool, two decks, and two sheds; one of which encroaches into the setback area (as does the pool) and it appears that the significant development of the lot, not a unique condition of the lot, has limited where the addition could be constructed. The Board finds that this lot is a square lot with no unusual conditions that have created an exceptional practical difficulty.
 - b. The Applicant failed to demonstrate that the Property cannot be developed in strict conformity with the Sussex County Zoning Code and that the variances are necessary to enable reasonable use of the Property. The lot is a square lot with no unusual physical conditions. The Applicant had a shed placed on the Property and that shed encroaches into the setback area. The Board notes that the Applicant has another shed and there was no evidence that the encroaching shed could not be moved into compliance with the Code. Furthermore, the Board was not convinced that an addition could not be otherwise located on the Property or that the addition was necessary to enable reasonable use of the Property. The lot is already heavily developed and, in some cases, by structures which already violate the setback requirements. The addition will only further develop the Property in violation of the Sussex County setback requirements. The Board was simply unconvinced that the variances were necessary to enable reasonable use of the Property.
 - c. The Board finds that the Applicant is creating her own exceptional practical difficulty by proposing to construct an addition and by placing a shed which do not fit within the building envelope. The Applicant's decision to construct this addition and to place the shed in these locations is the reason for the need for a variances 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 is square and there was no unique condition to the Property which would inherently limit development of the lot. Rather, the Board was not convinced that the variance requests were the product of a *need*. Instead, the variance requests appear to be the product of a *want* as the Applicant seeks to build

the addition as proposed and to retain the shed in its present location for purposes of convenience, profit, and / or caprice. Since the Applicant can comply the Sussex County Zoning Code, the need for the variances 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.

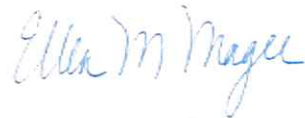
- d. Since the variances are not necessary to enable the reasonable use of the Property, the Board also finds that the variances requested are not the minimum variances necessary to afford relief. Furthermore, the Board finds that no variance is needed to afford relief the lot is a square lot with no unusual physical conditions which warrant such variances.

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, and Mr. John Williamson. Ms. Ellen Magee and Mr. Brent Workman 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 December 21, 2020.