

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JAMES MCINTIRE

(Case No. 11587)

A hearing was held after due notice on June 8, 2015. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the front yard setback requirement.

Findings of Fact

The Board found that the Applicant was seeking a variance of thirty (30) feet from the thirty (30) feet front yard setback requirement for an existing pergola. This application pertains to certain real property located on the north side of Harbor Road Extended and northwest of Cedar Road (911 Address: 19 Harbor Road, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-14.05-22.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, a survey of the Property dated March 11, 2015, and a residential design plan dated March 13, 2014.
2. The Board found that the Office of Planning and Zoning received one (1) letter in support of the Application and four (4) letters in opposition to the Application.
3. James McIntire was sworn in to testify about the Application.
4. The Board found that Mr. McIntire testified that he purchased the Property in 1994 and that he built the new dwelling in 2013.
5. The Board found that Mr. McIntire testified that the Property was featured in the Washington Post in June 2014. The design of the dwelling and pergola are very unique to the area.
6. The Board found that Mr. McIntire testified that the existing pergola and bridge are currently over his property line but he plans to move the pergola and bridge behind the existing fence so that the entire structure is located on his property.
7. The Board found that Mr. McIntire testified that the recent improvements have raised the property values and benefitted the neighborhood.
8. The Board found that Mr. McIntire testified that he asked for comments from neighbors in North Shores and received many favorable responses to his request.
9. The Board found that Mr. McIntire testified that the eclectic neighborhood consists of all types of dwellings.
10. The Board found that Mr. McIntire testified that the pergola measures 9 feet by 11 feet.
11. The Board found that Mr. McIntire testified that the existing fence ties in with the pergola and bridge.
12. The Board found that Mr. McIntire testified that he had an arch and bridge for 18 years but he did not obtain a permit for those structures.
13. The Board found that Mr. McIntire requested additional time to prepare his case.
14. The Board found that one (1) party appeared in support of the Application.
15. The Board found that no parties appeared in opposition to the Application.
16. The Board voted to leave the record open until June 22, 2015, at which time the Applicant could present his case to the Board.
17. On June 22, 2015, the Board held a hearing on the Application but no one appeared on behalf of the Applicant. Board Member Norman Rickard reviewed

the testimony and public record presented by the Applicant and participated in the discussion and vote of this Application.

18. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, 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 Property is not unique. Rather, the Property is a large, rectangular lot with a large dwelling thereon. The Board is not convinced by the Applicant that there was any uniqueness to the Property which has created the need for a variance. The Applicant has argued that the Property has a unique look due to the design of the dwelling, pergola, and bridge but the uniqueness of the "look" is entirely self-created and not created by some condition or circumstance unique to the Property.
- b. The Property can be developed in strict conformity with the Sussex County Zoning Code. Based on the survey attached to the application, the dwelling complies with the Sussex County Zoning Code but the Applicant has placed a pergola and bridge in violation of the Code. In fact, the pergola and bridge are partially located on adjacent property not owned by the Applicant. While the Applicant has testified that he can move the structures so that they are entirely on his property, he provided no reason as to why the structures could not be moved into compliance with the Code as well. The Board was also not convinced that the variance was necessary to enable reasonable use of the Property. The Property is clearly already developed by a large home with a deck, porch, and stairs. The Applicant did not persuade the Board how the relocation of the pergola and bridge into compliance with the Code or off of the Property entirely would somehow impact his reasonable use of the Property. As such, the Board finds that the location of the pergola and bridge in their current location are not needed in order for the Applicant to reasonably use his property.
- c. The exceptional practical difficulty has been created by the Applicant. The Applicant placed the pergola and bridge on the Property in clear violation of the Sussex County Code. The structures also clearly encroach onto neighboring lands. The Applicant testified that similar structures were on the Property for many years but he did not obtain permits for those structures. It is clear to the Board that any difficulty which may exist relating to the pergola and bridge were entirely self-created by the Applicant.
- d. The variance, if granted, would alter the essential character of the neighborhood and would substantially or permanently impair the appropriate use or development of adjacent property, and would be detrimental to the public welfare. The pergola and bridge encroach into the front yard setback area as well as onto neighboring property. The pergola, which is a structure measuring over 11 feet tall, is located adjacent to the street. Neighbor Joan Watt submitted an email to the Board which references problems she has experienced in viewing her property due to the height of the pergola and its proximity to the street. The Board found this complaint, as well as pictures of the pergola, indicative of the pergola's negative impact on the neighborhood. The Board is convinced that the pergola and bridge would somehow alter the essential character of the neighborhood and be detrimental to the public welfare; particularly due to its proximity to the adjacent street. The Board is also concerned that approval of this variance request could encourage others to file for similar requests in the neighborhood.

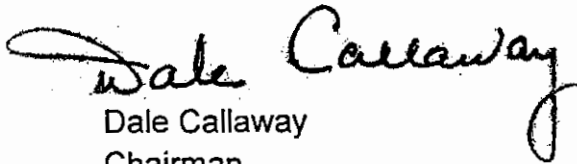
- e. The variance sought is not the minimum variance necessary to afford relief and the variance requested does not represent the least modification possible of the regulation at issue. The Applicant has testified that the pergola and bridge can be moved. No evidence was presented that convinced the Board that a variance of any kind was needed; let alone that the variance requested is the minimum variance necessary to afford relief.

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 were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Members voted against the Motion to deny the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


Dale Callaway
Chairman

If the use is not established within one (1)
year from the date below the application
becomes void.

Date August 4, 2015