

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ROBERT MCLAUGHLIN

(Case No. 11701)

A hearing was held after due notice on January 25, 2016. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Norman Rickard, 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 is seeking a variance of 10.1 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling. This application pertains to certain real property located on the west end of Jefferson Avenue approximately 205 feet west of South Bayshore Drive. (911 Address: 104 Jefferson Avenue, Milton); said property being identified as Sussex County Tax Map Parcel Number 235-4.17-10.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, and a survey dated June 27, 2014.
2. The Board found that the Office of Planning & Zoning had not received any correspondence in support of or in opposition to the Application.
3. The Board found that Robert McLaughlin was sworn in to testify about the Application.
4. The Board found that Mr. McLaughlin testified that he purchased the Property in 2014 and the existing cottage on the Property was built in the 1940s.
5. The Board found that Mr. McLaughlin testified that the Property is adjacent to the wildlife refuge and the creek. A portion of the Property is in the wetlands.
6. The Board found that Mr. McLaughlin testified that the house was serviced by a cesspool and the existing cesspool had to be replaced. The new septic system takes up a large portion of the Property due to state and federal regulations and the existing cottage had to be removed to allow room for the required septic system.
7. The Board found that Mr. McLaughlin testified that the neighbors support or have no objection the Application.
8. The Board found that Mr. McLaughlin testified that the proposed dwelling will consist of approximately 1,200 square feet with parking underneath. The proposed dwelling will be 19.9 feet from the front property line which is the same distance from the front property line as the previous cottage.
9. The Board found that Mr. McLaughlin testified that the proposed dwelling, which is small, will allow for single floor living which is important to the Applicant.
10. The Board found that Mr. McLaughlin testified that the proposed setback will be similar to the setback for another home nearby and that the proposed dwelling will not alter the character of the neighborhood.
11. The Board found that Mr. McLaughlin testified that the Property is located on a dead end street with only four houses located off of the street.
12. The Board found that Mr. McLaughlin testified that the exceptional practical difficulty was not created by the Applicant.
13. The Board found that Mr. McLaughlin testified that the Department of Natural Resources and Environmental Control ("DNREC") building restriction lines encroach into the building envelope and further limit the ability of the Applicant to

construct the proposed dwelling in strict conformity with the Sussex County Zoning Code.

14. The Board found that no parties appeared 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 lot subject to wetland regulations which limit the building envelope of the Property. The building envelope was further limited by the regulations which direct where the septic tank may be located. When the prior cesspool system needed to be replaced, the placement of the new septic system led to the removal of a portion of the existing dwelling from the Property. Consequently, the Applicant has limited area where he can place a new dwelling. It is clear to the Board that the lot's unique characteristics and the regulations which apply due to the lot's uniqueness have created an exceptional practical difficulty for the Applicant who seeks to build a new dwelling on the lot.
 - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property is a lot near tidal wetlands and is subject to federal and state wetland regulations which limit the building envelope as well as the placement options for a septic system to service the Property. The Applicant seeks to build a dwelling of a reasonable size but is unable to do so without violating the Sussex County Zoning Code. The Board notes that the dwelling consists of only 1,200 square feet. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the Applicant to build a reasonably sized dwelling on the Property. The Board is convinced that the shape and location of this dwelling are also reasonable, which is confirmed when reviewing the survey provided by the Applicant.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the size of the lot, the wetlands, or the wetlands regulations; all of which limit the building envelope on the Property. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created the lot's unique characteristics.
 - d. 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 Board is convinced that the dwelling will have no effect on the character of the neighborhood. The prior dwelling was on the Property since the 1940s and was located only 19.9 feet from the front property line. The proposed dwelling will be located the same distance from the front property line and no complaints were noted in the record about the location of the dwelling. Furthermore, no evidence was presented which would indicate that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board also notes that the adjacent Jefferson Avenue is a dead end road with very few homes located on properties along the road.
 - e. 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 construct a reasonably sized dwelling on the Property. The Board notes that the house will be only approximately 1,200 square feet in size; which is modest.

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 were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Member voted against the Motion to approve 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 March 22, 2016