

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JOHN W. HURD, JR. AND JOHN A. MURPHY, III

(Case No. 11708)

A hearing was held after due notice on February 1, 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 variances from the front yard and side yard setback requirements.

Findings of Fact

The Board found that the Applicants are seeking a variance of 3.4 feet from the five (5) feet side yard setback requirement for an existing shed, a variance of 6.2 feet from the thirty (30) feet front yard setback requirement for an existing deck, and a variance of 8.2 feet from the thirty (30) feet front yard setback requirement for an existing set of steps. This application pertains to certain real property is located on the south side of William F. Street approximately 242 feet east of Coastal Highway. (911 Address: 38272 William F. Street, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-20.09-95.00.

1. The Board was given copies of the Application and a survey of the Property dated September 28, 2015.
2. The Board found that the Office of Planning & Zoning received two (2) letters of support to the Application and no correspondence in opposition to the Application.
3. John Hurd, Jr. was sworn in to testify about the Application. Chad Meredith, Esquire, presented the case to the Board on behalf of the Applicants.
4. The Board found that Mr. Meredith stated that the Property is located in the Dodd's Addition subdivision which was created in the 1930s and 1940s. The area is highly developed.
5. The Board found that Mr. Meredith stated that an open building permit from 1983 for a fence was discovered and the encroachments were discovered when a Sussex County official visited the Property to see if a Certificate of Compliance could be issued for the fence and shed. A subsequent survey verified the encroachments on the Property.
6. The Board found that Mr. Meredith stated that the existing deck is open and unenclosed on the first floor level. The Sussex County Zoning Code allows for a deck to encroach five (5) feet into the front yard setback area but the deck encroaches more than five (5) feet.
7. The Board found that Mr. Meredith stated that the existing shed consists of less than 600 square feet but is located in the side yard and encroaches into the side yard setback area.
8. The Board found that Mr. Meredith stated that the Applicants purchased the Property in September 2015.
9. The Board found that Mr. Meredith stated that there have been no prior complaints about the Property.
10. The Board found that Mr. Meredith stated that a building permit was issued for the dwelling in 1982 and a Certificate of Compliance was issued for the dwelling in 1983. The Applicants believe the deck was also built at that time.
11. The Board found that Mr. Meredith stated that the Property has unique circumstances and conditions as the Property is long and narrow.

12. The Board found that Mr. Meredith stated that there is approximately ten (10) feet between the front property line and the edge of William F. Street which makes the front yard appear larger.
13. The Board found that Mr. Meredith stated that an exceptional practical difficulty exists.
14. The Board found that Mr. Meredith stated that the existing fence, hedgerow, and home make it impossible to move the shed into compliance.
15. The Board found that Mr. Meredith stated that the Property cannot be otherwise developed in strict conformity with the Sussex County Zoning Code.
16. The Board found that Mr. Meredith stated that the exceptional practical difficulty was not created by the Applicants as prior owners placed the structures on the Property.
17. The Board found that Mr. Meredith stated that the variances will not alter the essential character of the neighborhood. There are other sheds in the neighborhood which appear to be similarly situated.
18. The Board found that Mr. Meredith stated that the variances are the minimum variances to afford relief and the variances are the least modifications of the regulations at issue. The use is not detrimental to the public welfare.
19. The Board found that Mr. Hurd, under oath, affirmed the statements made by Mr. Meredith.
20. The Board found that no parties appeared in support of or in opposition to the Application.
21. 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 due to its size. The Property is quite small and narrow as evidenced by the survey. The unique size of the Property has created a limited buildable area available to the Applicants and has created an exceptional practical difficulty for the Applicants who seek to retain an existing deck, steps, and shed 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 has a unique size and the buildable area thereof is limited due to its size. The Applicants seek to retain a deck, steps, and shed of reasonable size but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow a reasonably sized deck, steps, and shed to remain on the Property. These structures have been in their current location for many years. Due to the age of the shed and the conditions of the lot, it is unlikely that the shed can be moved into compliance. The evidence demonstrates that the deck and steps have been on the Property since approximately 1983. The Board is convinced that the shape and location of the deck, steps, and shed are reasonable, which is confirmed when reviewing the survey provided by the Applicants.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual size of the Property. The Property was developed in the 1930s or 1940s which was prior to the enactment of the Sussex County Zoning Code. The unique lot size has resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. The unique characteristics of the Property are clear when reviewing the survey. Furthermore, the

deck, steps, and shed were placed on the Property by a prior owner and have been in their present location for many years. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created the lot's unique characteristics and by the placement of the deck, steps, and shed by a prior owner.

- d. The variances 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 deck, steps, and shed will have no effect on the character of the neighborhood. These structures have been on the Property for many years and, despite the longstanding location of the structures, no complaints were noted in the record about their location. No evidence was presented which would indicate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to retain the deck, steps, and shed on the lot. No additions to those structures are being proposed.

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