

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: GLEN FERN, LLC

(Case No. 11752)

A hearing was held after due notice on April 18, 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 side yard setback requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of five (5) feet from the ten (10) feet side yard setback requirement for a proposed second floor addition. This application pertains to certain real property located on the south side of Carolina Street approximately 150 feet east of Coastal Highway (Route 1) (911 Address: 38448 Carolina Street, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-20.09-185.00.

1. The Board was given copies of the Application, a site plan of the proposed addition, a survey of the Property dated November 3, 2015, and a portion of the tax map.
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 Dr. Ted Wilson was sworn in to testify about the Application. Dennis Schrader, Esquire, presented the case to the Board on behalf of the Applicant and submitted exhibits for the Board to review.
4. The Board found that Mr. Schrader stated that the Property has been in the Applicant's family since 1950.
5. The Board found that Mr. Schrader stated that the Property is also known as Lot 24 of Killen's Addition in Rehoboth Beach.
6. The Board found that Mr. Schrader stated that the lot is 72 feet wide in the front of the Property and 38 feet wide in the rear. Lots are no longer allowed to be designed in this fashion and the Property was created prior to the development of the adjacent Rehoboth by the Sea community.
7. The Board found that Dr. Wilson testified that the original dwelling consisted of only one (1) bedroom, and over the years additions have been made.
8. The Board found that Dr. Wilson testified that Rehoboth by the Sea was created in the 1960s. The neighboring land in Rehoboth by the Sea is leased and there have been no complaints about the existing structure from neighbors.
9. The Board found that Dr. Wilson testified that the lot was believed to have been a rectangular shaped lot measuring 90 feet by 100 feet but a survey completed in 1994 showed the lot line to be angled creating a trapezoid shaped lot. A fence along the incorrect, rectangular lot line was moved to the correct, trapezoid lot line at that time.
10. The Board found that Dr. Wilson testified that there is no through traffic on Carolina Street.
11. The Board found that Dr. Wilson testified that the dwelling will be renovated and the renovations and addition to the existing dwelling will be within the same footprint as the existing dwelling.
12. The Board found that Dr. Wilson testified that the statements made by Mr. Schrader are true and correct.

13. The Board found that Dr. Wilson testified that the Property is unique due to its shape and unique history.
14. The Board found that Dr. Wilson testified that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
15. The Board found that Dr. Wilson testified that the exceptional practical difficulty was not created by the Applicant.
16. The Board found that Dr. Wilson testified that the variance will not alter the essential character of the neighborhood and the use does not impair the development or uses of the neighboring and adjacent properties.
17. The Board found that Dr. Wilson testified that the variance will not have a negative impact to the Property values.
18. The Board found that Dr. Wilson testified that the variance requested is the minimum variance to afford relief and is the least modification of the regulation at issue.
19. The Board found that no parties appeared in support of or in opposition to the Application.
20. 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 unrebutted, 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 clearly unique as it is a small lot with an odd shape. The Property was created and developed prior to the enactment of the Sussex County Zoning Code and consists of only 5,840 square feet; as is clearly shown on the survey. The small size of the Property has created an exceptional practical difficulty for the Applicant and this difficulty is exacerbated by the narrowness of the rear of the Property which is only 38.86 feet wide. These unique physical conditions have created an unusual and limited building envelope for the Applicant. Additionally, the Property, when developed was thought to be larger than it actually is.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The dwelling was constructed many years ago and the Applicant seeks to renovate and make additions to the existing dwelling on the same footprint 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 with reasonable renovations and additions to remain on the Property. The Board is convinced that the shape and location of this dwelling with renovations and additions are reasonable, which is confirmed when reviewing the survey provided by the Applicant. If the Property was rectangular shaped (as originally believed by the Applicant's family), no variance would likely be needed for these renovations and additions.
 - c. The exceptional practical difficulty was not created by the Applicant. The Property was created and developed prior to the enactment of the Sussex County Zoning Code and is an undersized lot with an unusual shape. The Board notes that the rear yard is particularly narrow which greatly limits the building envelope of the lot. The narrowness of the rear yard was not discovered until well after the existing dwelling had been constructed. The Applicant did not build the dwelling or create the size and shape of the lot. Rather, those conditions pre-existed the Applicant's acquisition of the Property. These unique physical conditions have resulted in a limited building envelope and have created the exceptional practical difficulty for the Applicant.

- 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 dwelling has been on the Property for many years without recorded complaints and the renovations and additions will all be within the footprint of the existing dwelling. Despite the longstanding location of the dwelling and notification to neighbors, no complaints were noted in the record about its location. 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.
- 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 make reasonable renovations and additions to the existing dwelling on the same footprint.

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 June 21, 2016