

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JENNIFER FLICHBAUGH & LISA SMITH

(Case No. 11769)

A hearing was held after due notice on May 16, 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, side yard and rear yard setback requirements.

Findings of Fact

The Board found that the Applicants are seeking a variance of 0.4 feet from the ten (10) feet rear yard setback requirement for an existing dwelling, a variance of 0.4 feet from the five (5) feet side yard setback requirement for an existing set of steps, and a variance of 7.0 feet from the ten (10) feet front yard setback requirement for a shed and steps. This application pertains to certain real property is located on the northeast side of 4th Street approximately 140 feet north of South Drive (911 Address: 606 4th Street, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-13.00-92.04.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the area, a survey dated November 23, 2015, pictures of the Property, and a copy of a building permit.
2. The Board found that the Office of Planning & Zoning received four (4) letters of support to the Application and no correspondence in opposition to the Application.
3. The Board found that Ryan Class and Jennifer Flinchbaugh were sworn in to testify about the Application. David Hutt, Esquire, presented the case on behalf of the builder Bayside Homes and submitted exhibits to the Board to review.
4. Testimony for this application was heard at the same time as evidence for the application for Case No. 11770 as the properties are adjacent to each other and owners are the same.
5. The Board found that Mr. Hutt stated that the Property is located in TruVale Acres.
6. The Board found that Mr. Hutt stated that a standard lot in GR zoning is 10,000 square feet in size and a minimum of seventy-five (75) feet wide. The Property measures only 5,000 square feet in size and is only fifty (50) feet wide. The size of the lots and setback requirements only leave a building envelope measuring 30 feet by 60 feet.
7. The Board found that Mr. Hutt stated that Bayside Homes has offered this style home since 2009 and Bayside Homes sets over forty (40) homes a year. When placing a home, Bayside Homes has a survey completed first to determine the corners of the lot and then the footers are dug. The dwelling is set based on this first survey and then a final survey is conducted after the dwelling is placed.
8. The Board found that Mr. Hutt stated that, during the placement of this dwelling, there was a slight error made which resulted in encroachments into the setback areas. The encroachments are so slight that they cannot be noticed by the eye.
9. The Board found that Mr. Hutt stated that Bayside Homes immediately applied for the variances.
10. The Board found that Mr. Hutt stated that the steps which encroach into the side yard on both lots are the steps which provide access to the rear of the dwelling.

11. The Board found that Mr. Hutt stated that the size of the Property makes it unique.
12. The Board found that Mr. Hutt stated that the variances enable reasonable use of the Property and the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
13. The Board found that Mr. Hutt stated that the lots were not created by the Applicants, therefore the exceptional practical difficulty has not been created by the Applicants.
14. The Board found that Mr. Hutt stated that the variances will not alter the essential character of the neighborhood and that the dwelling is similar to other homes in the neighborhood.
15. The Board found that Mr. Hutt stated that there have been no complaints from neighbors about the existing dwelling and steps on the Property.
16. The Board found that Mr. Hutt stated that the variances are the minimum variances to afford relief.
17. The Board found that Mr. Class, under oath, affirmed the statements made by Mr. Hutt.
18. The Board found that Ms. Flinchbaugh testified that she is an owner of the Property and that, in July 2015, the Applicants purchased the shed for the newly constructed home.
19. The Board found that Ms. Flinchbaugh testified that the shed took hours to assemble and was first placed at the rear of the Property. The Applicants were informed that the shed did not comply with the side and rear setback requirements so they moved the shed to the front of the Property after discussion with the Planning & Zoning Department.
20. The Board found that Ms. Flinchbaugh testified that, when placing the shed, the Applicants measured from the edge of the road and not the property line.
21. The Board found that Ms. Flinchbaugh testified that the shed is necessary to provide storage for their tenants.
22. The Board found that Ms. Flinchbaugh testified that there are similar sheds in the area and a neighbor has a shed in the front yard as well.
23. The Board found that Ms. Flinchbaugh testified that the shed is attractive and keeps the yard free of outdoor clutter.
24. The Board found that Ms. Flinchbaugh testified that the neighbors support the Application.
25. The Board found that Ms. Flinchbaugh testified that the small lot makes the Property unique and the Property cannot otherwise be developed.
26. The Board found that Ms. Flinchbaugh testified that the difficulty was not created by the Applicants.
27. The Board found that Ms. Flinchbaugh testified that the variances do not alter the character of the neighborhood and that the variances enable reasonable use of the Property.
28. The Board found that Ms. Flinchbaugh testified that the dwelling is on a permanent foundation.
29. The Board found that two (2) parties appeared in support of the Application.
30. The Board found that no parties appeared in opposition to the Application.
31. 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 small, undersized lot consisting of only 5,000 square feet. The size of the lot has created a small building envelope. The Applicants contracted with Bayside Homes to place a

reasonably sized home on the lot but the builder made a slight error in placing the dwelling thereon. As such, the dwelling encroaches into the rear yard setback area and the steps which provide access to the home encroach into the side yard and front yard setback area. The placement error only affects the rear yard setback requirement as the steps would not fit on the lot without a variance even if the home were placed at the rear yard setback line. Ultimately, however, the exceptional practical difficulty was created by the small size of the lot which greatly limits the buildable area of the lot. The small size of the lot also greatly affects the Applicants' ability to place a shed on the Property since the building envelope is so small.

- 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 quite small and the building envelope is very limited. The Applicants contracted with Bayside Homes to place a small dwelling on the lot and, while the dwelling can fit within the setback area, the steps needed for access to the home cannot fit within the building envelope. The builder also made an error in placing the home which has resulted in an encroachment mere inches into the rear yard setback area. It is clear to the Board that, due to the small size of the lot, the variances are necessary to enable reasonable use of the Property as a reasonably sized home with reasonable access thereto cannot be placed on the Property without a variance. Likewise, due to the small building envelope, a reasonably sized shed cannot be placed on the lot without a variance. The Board is convinced that the shape and location of the dwelling, 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 small size of the lot and the small building envelope. The Applicants relied on their builder to place the dwelling in compliance with the Sussex County Zoning Code but the home was not placed in compliance with the Code. While the Applicants did place the shed in the front yard, the Applicants consulted with the Planning & Zoning Department and reasonably believed that the shed complied with the zoning requirements because the shed was at least 30 feet from the adjacent Fourth Street. The edge of paving of Fourth Street does not extend to the front property line so the front yard is actually shorter than it appears. This mistake is reasonable and one which the Applicants relied on to their detriment. Ultimately, however, the exceptional practical difficulty was created by the lot's small building envelope which greatly limits the available area where the structures can be placed.
- 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 structures will have no effect on the character of the neighborhood. No complaints were noted in the record about the location of the shed, steps, or dwelling. Rather, the Board received letters supporting the Application. The evidence also demonstrates that there are other similar structures in the neighborhood. The shed will provide needed outdoor storage and will lessen the clutter in the yard; which is an aesthetic benefit to the neighborhood. 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 encroachments into the side

and rear yard setback areas are so small that they are likely unnoticeable by the naked eye.

- e. The variances sought are the minimums variance 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 reasonably sized shed, steps, and dwelling on the Property. No additions to those structures are being proposed and the Board finds that these structures are the minimum size needed to afford reasonable use of the Property. The Board also notes that the shed does not extend into the front yard beyond the steps to the home.

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 of the Motion 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 July 13, 2016