

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DAVID GOODRICH & HEATHER GOODRICH

(Case No. 11904)

A hearing was held after due notice on March 6, 2017. 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 13.8 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling, a variance of 17.8 feet from the thirty (30) feet front yard setback requirement for proposed steps, a variance of 3.2 feet from the ten (10) feet side yard setback requirement on the east side for a proposed dwelling, and a variance of 2.0 feet from the ten (10) feet side yard setback requirement on the west side for a proposed dwelling. This application pertains to certain real property is located on the south side of Delaware Avenue approximately 153 feet east of Coastal Highway (Route 1) Fenwick Island (911 Address: None Available); said property being identified as Sussex County Tax Map Parcel Number 1-34-23.20-137.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, a survey of the Property dated October 14, 2016, and a preliminary site plan of the Property dated November 9, 2016.
2. The Board found that the Office of Planning & Zoning received one (1) letter in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Heather Goodrich was sworn in to testify about the Application. Tim Willard, Esquire, presented the case on behalf of the Applicants and submitted exhibits for the Board to review.
4. The Board found that Mr. Willard stated that the lot had a dwelling, shed, and concrete pad. The existing dwelling and concrete pad have been removed and the existing shed will be removed. The house was built in the 1940s.
5. The Board found that Mr. Willard stated that the lot measures 50 feet by 100 feet, which is relatively small.
6. The Board found that Mr. Willard stated that a series of unique circumstances have created an exceptional practical difficulty.
7. The Board found that Mr. Willard stated that the lot is a part of the southernmost lands of Fenwick Island which are not in town limits.
8. The Board found that Mr. Willard stated that the lot is zoned C-1 Commercial but there are a wide variety of uses on adjacent properties.
9. The Board found that Mr. Willard stated that the side yard setback requirement for a commercial building is five feet but the side yard setback requirement for a dwelling it is ten feet.
10. The Board found that Mr. Willard stated that the Property fronts on the south side of Delaware Avenue and there are two existing buildings located on the south side of the street. A Candy Kitchen is located on the west side and the Rickmor Hotel is located nearby as well and is owned by the Applicants' family. Those buildings are approximately 16 feet from Delaware Avenue.
11. The Board found that Mr. Willard stated that the proposed dwelling is consistent with the front yard setbacks for other structures in the neighborhood.

12. The Board found that Mr. Willard stated that Candy Kitchen is set back approximately 2 feet from the side yard.
13. The Board found that Mr. Willard stated that many of the properties in the neighborhood were developed prior to the enactment of the Sussex County Zoning Code and there have been well over one dozen variances approved on neighboring properties.
14. The Board found that Mr. Willard stated that the variances will not have an impact on the uses of neighboring properties.
15. The Board found that Mr. Willard stated that the Board has previously noted the unique circumstances on nearby properties as well.
16. The Board found that Mr. Willard stated that the Property is unique because it is a commercially zoned property used for residential use.
17. The Board found that Mr. Willard stated that the variances are necessary to enable reasonable use of the Property.
18. The Board found that Mr. Willard stated that the conditions were not created by the Applicants.
19. The Board found that Mr. Willard stated that the variances are needed to construct a modest, single-family home and that the front yard variances are for a porch and steps.
20. The Board found that Mr. Willard stated that the variances will improve the character of the neighborhood.
21. The Board found that Mr. Willard stated that the variances requested are the minimum variances necessary to afford relief.
22. The Board found that Mrs. Goodrich, under oath, affirmed the statements made by Mr. Willard.
23. The Board found that Mrs. Goodrich testified that the proposed dwelling will consist of approximately 2,000 square feet and that the proposed home is one of the smaller homes to choose from.
24. The Board found that Mr. Willard stated that the rear of the proposed dwelling cannot be moved because of an existing fence.
25. The Board found that no parties appeared in support of or in opposition to the Application.
26. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board finds 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 small size; as evidenced by the survey. The Property consists of only 4,988 square feet. The unique characteristics of this Property limit the buildable area available to the Applicants and have created an exceptional practical difficulty for the Applicants who seek to build a home on the lot. The Board also notes that the Property is unique because it is a commercially zoned lot but has been traditionally used as a residence. While a commercial building could be built closer to the side yard property lines, a residential building must be set back farther from the side property lines. This restriction has further limited an already small building envelope. The Board also notes that other properties in close proximity to the Property are located a similar distance from Delaware Avenue as the proposed dwelling.
 - 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 build a dwelling 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 dwelling, porch, and stairs to be constructed on the Property. The Board is convinced that the shape and location of the dwelling, porch, and stairs are also reasonable, which is confirmed when reviewing the survey provided by the Applicants.

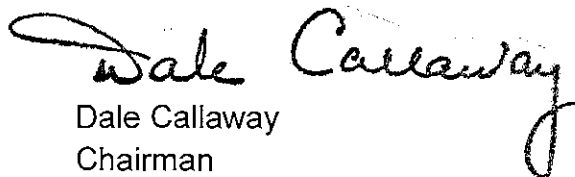
- c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual size of the Property. The Property was originally developed prior to the enactment of the Sussex County Zoning Code. The original dwelling was placed on the rear property line and needed to be replaced. The Applicants have removed that dwelling and seek to build a replacement home which is much more compliant with the Code. The unique lot size, however, 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. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created the lot's unique characteristics.
- 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 dwelling, porch, and stairs will have no effect on the character of the neighborhood. The Property has been used for residential purposes for many years and the prior home was significantly more out-of-compliance with the Code than the proposed home will be. The Board notes that other structures nearby encroach into the setback requirements and numerous variances have been granted over the years. No evidence was presented which demonstrated that the variances would alter the essential character of the neighborhood, substantially or permanently impair the appropriate use or development of adjacent property, 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 construct a reasonably sized dwelling, porch, and stairs on the Property. The Board is convinced that the Applicants have attempted to minimize the encroachments into the setback areas.

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 April 4, 2017.