

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: EDWARD C. JACKSON & RUTH G. JACKSON

(Case No. 11963)

A hearing was held after due notice on June 5, 2017. The Board members present were Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, 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 Applicants are seeking a variance of 12.3 feet from the thirty (30) feet front yard setback requirement for an addition and access to the second floor. This application pertains to certain real property located on the north side of Beach Avenue approximately 644 feet east of Coastal Highway (Route 1) (911 Address: 17 Beach Avenue, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-23.06-72.00.

1. The Board was given copies of the Application, a deed to the Property, a survey of the Property dated June 20, 2014, drawings of the proposed addition, an aerial photograph of the Property, the property card for the Property, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of or in opposition to the Application.
3. The Board found that Edward Jackson and Ruth Jackson were sworn in to testify about the Application. Raymond Tomasetti, Esquire, presented the case on behalf of the Applicants and submitted pictures for the Board to review.
4. The Board found that Mr. Tomasetti stated that the Applicants propose to make an addition to the existing home for a relocation of the main entrance, the enlargement of the rooms in the home, and the placement of a small deck. The proposed addition of stairs to the second floor is a safety issue.
5. The Board found that Mr. Tomasetti stated that the Property is unusual due to its shape and size and that the lot is not very deep.
6. The Board found that Mr. Tomasetti stated that the dwelling was in violation of the Sussex County Zoning Code at the time when the Applicants purchased the home in 2014 because the home encroached into the front yard setback area by 4.9 feet.
7. The Board found that Mr. Tomasetti stated that the variance is necessary to enable reasonable use of the Property and the exceptional practical difficulty was not created by the Applicants.
8. The Board found that Mr. Tomasetti stated that the granting of the variance will not alter the essential character of the neighborhood. Other homes in the neighborhood are closer to the road than the Applicants' home and the proposed addition. A front yard variance was granted for a neighboring home in 2003 and there have been four to five variances granted to neighboring properties.
9. The Board found that Mr. Jackson testified that Lots 71, 70, 89, 88, and 66 all received setback variances though one neighboring lot was denied a variance.
10. The Board found that Mr. Jackson testified that permission for the addition was granted by the homeowners association. The addition will include an elevator to be used by his wife's aging parents.
11. The Board found that Mr. Tomasetti stated that the variance sought is the minimum variance necessary to afford relief and the variance sought represents the least modification of the regulation at issue.

12. The Board found that Mr. Jackson, under oath, affirmed the statements made by Mr. Tomasetti.
13. The Board found that Mrs. Jackson testified that the proposed addition will not extend farther into the front yard setback than other structures in the neighborhood.
14. The Board found that Mr. Jackson testified that no variance was granted for the existing home.
15. The Board found that Mr. Jackson testified that Beach Avenue floods at times
16. The Board found that Mr. Jackson testified that the property line is three to four feet from the edge of paving of Beach Avenue.
17. The Board found that no parties appeared in support of or in opposition to the Application.
18. The Application was tabled until June 19, 2017, at which time the Board discussed and voted on the Application.
19. 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 because it is small and rather shallow lot. The small size of the lot and the shallow depth have created a limited building envelope. The Board finds that the unique physical conditions of the Property have created an exceptional practical difficulty for the Applicants who seek to retain and reasonably expand the existing dwelling on the Property. The situation is also unique because the dwelling encroached into the front yard setback area when the Applicants purchased the home and the Applicants now seek to make reasonable additions to the home, in part to accommodate an elevator for their aging parents, but are unable to do so because of the location of the existing dwelling.
 - b. Due to the uniqueness of the Property and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The existing dwelling encroaches into the front yard setback area and the Applicants seek to make reasonable additions to the home, in part to accommodate an elevator for their aging parents. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow a reasonably sized home to remain on the Property and for reasonable additions to be made thereto. The Board is convinced that the shape and location of this home and additions are reasonable, which is confirmed when reviewing the survey and drawings provided by the Applicants.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the size of the lot with its shallow depth and the Applicants did not place the existing home in the front yard setback area. Rather, both of those conditions pre-existed the Applicants' purchase of the Property. The unique situation and physical conditions of the Property have created the exceptional practical difficulty for the Applicants.
 - 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 home and additions will have no effect on the character of the neighborhood. Other variances have been granted in the neighborhood and the homeowners association has approved the proposal. 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 edge

of paving of Beach Avenue does not match the front property line so the front yard of the Property appears larger than it actually is.

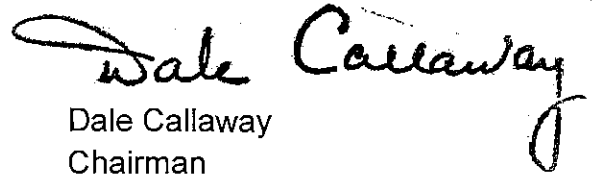
- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to retain the home and make reasonable additions thereto. The Board notes that the addition includes improved access to the home which is important for the Applicants' aging parents.

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, Ms. Ellen Magee, Mr. John Mills, and Mr. Brent Workman. Mr. Norman Rickard 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 August 22 2017