

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: RALPH MCBRIDE & PATRICIA MCBRIDE

(Case No. 12024)

A hearing was held after due notice on September 19, 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 variances from the rear yard setback requirement.

Findings of Fact

The Board found that the Applicants are seeking a variance of 6.1 feet from the ten (10) feet rear yard setback requirement for a chimney and a variance of 4.1 feet from the ten (10) feet rear yard setback requirement for an addition to the home. This application pertains to certain real property located on the northwest side of Mute Swan Lane, approximately 540 feet east of Dot Sparrow Drive (911 Address: 34831 Mute Swan Lane, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-12.00-796.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, a survey of the Property dated May 23, 2017, and building permit information.
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 Ralph McBride was sworn in to testify about the Application. Mr. McBride submitted an exhibit to the Board.
4. The Board found that Mr. McBride testified that the Applicants built an addition to the home based on the original plot plan. The plot plan showed that there was 26 feet from the rear of the home to the rear property line and the Applicants believed that they could build a 16 feet addition within the building envelope. There were no survey markers on the Property prior to the construction of the addition.
5. The Board found that Mr. McBride testified that the dwelling was constructed in 2007.
6. The Board found that Mr. McBride testified that the Woods Cove development and a storm water management pond are located to the rear of the Property.
7. The Board found that Mr. McBride testified that the permits were obtained based on the plot plan and a builder constructed the addition.
8. The Board found that Mr. McBride testified that he learned of the encroachment after an inspection was conducted after the addition was constructed. A new survey proved that the original plot plan was incorrect and the structure encroached into the rear yard setback area.
9. The Board found that Mr. McBride testified that the situation is unique because the original plot plan was incorrect.
10. The Board found that Mr. McBride testified that the problem was not created by the Applicants.
11. The Board found that Mr. McBride testified that the variances will not alter the essential character of the neighborhood and his neighbors do not object to the addition.
12. The Board found that Mr. McBride testified that the addition was put on to expand the living space to make it more comfortable to live there.
13. The Board found that Mr. McBride testified that the Applicants obtained approval from the homeowners association.

14. he Board found that no parties appeared in support of or in opposition to the Application.
15. 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 an oddly shaped lot located on a cul-de-sac. The unique shape is clearly shown on the survey provided by the Applicants. These unique physical conditions have created an exceptional practical difficulty for the Applicants who seek to retain a chimney and addition. The situation is also unique because the Applicants previously obtained a survey when the original home was built and the survey clearly shows that the home is 26 feet from the rear property line. The more recent survey, however, demonstrates that the home is much closer to the rear property line. The Applicants reasonably designed the addition based on the original survey and relied on that survey to their detriment. This situation is clearly unique and has exacerbated the difficulty created by the Property's unique physical conditions.
 - 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 building envelope due to its odd shape. The Applicants seek to retain an addition and chimney of reasonable size but are unable to do so without violating the Sussex County Zoning Code. The variances are thus necessary to enable reasonable use of the Property as the variances will allow a reasonably sized addition and chimney to remain on the Property. The Board is convinced that the shape and location of these structures 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 unique size and shape of the lot which have resulted in a limited building envelope on the Property. The unique characteristics of the Property are clear from the record and the survey. The difficulty was exacerbated by the surveying error which gave the Applicants a false impression as to the size of the Property's rear yard. The Applicants relied on this survey to their detriment and did not create the exceptional practical difficulty. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created by the lot's unique characteristics and was exacerbated by their detrimental reliance on the incorrect survey.
 - 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 addition and chimney will have no effect on the character of the neighborhood. These structures will be located in the rear of the Property adjacent to common area and a storm water management pond. The Board notes that the homeowners association approved the structures and neighbors indicated their support of the Application to the Applicants. 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 regulation at issue. The Applicants have demonstrated that the

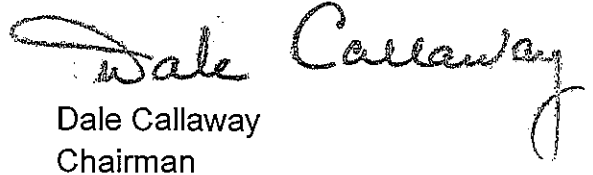
variances sought will allow the Applicants to retain a reasonably sized addition and chimney on the Property which can be reasonably used by the Applicants. No additions to those structures are sought or proposed.

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, Ms. Ellen Magee, 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
become void.

Date November 21, 2017