

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: KAREN L. HALVERSTADT, TRUSTEE

(Case No. 12052)

A hearing was held after due notice on November 6, 2017. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, 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 Applicant is seeking a variance of 0.3 feet from the thirty (30) feet front yard setback requirement for an existing porch, a variance of 0.3 feet from the ten (10) feet side yard setback requirement on the west side for an existing porch, a variance of 0.2 feet from the ten (10) feet side yard setback requirement on the west side for an existing screened-in porch, and a variance of 0.5 feet from the 3.5 feet fence height requirement for privacy fence around a pool. This application pertains to certain real property is located on the north side of Robinsons Drive, approximately 525 feet west of Silver Lake Drive (911 Address: 38261 Robinsons Drive, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number: 3-34-20.05-311.02.

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 picture of the Property, and a survey of the Property dated August 30, 2017.
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 Patricia Kolosy was sworn in to testify about the Application. Daniel Myers, Esquire, presented the case on behalf of the Applicant and submitted exhibits for the Board to review.
4. The Board found that Mr. Myers stated that the Property was originally plotted in 1929 and the Property was originally a triangularly shaped lot. A small portion in the southeast corner was subdivided at some point and this subdivision created a small side yard for the Property.
5. The Board found that Mr. Myers stated that the subdivision made an already unique property, more unique.
6. The Board found that Mr. Myers stated that the Property has a small building envelope.
7. The Board found that Mr. Myers stated that, in 2003, an old house was removed and a new house constructed. The home nearly complies with the setback requirements.
8. The Board found that Mr. Myers stated that a pool was constructed in 2014.
9. The Board found that Mr. Myers stated that there was not enough room to the rear of the home for the pool so the pool was placed to the side of the house. The pool is technically in the rear yard but the privacy fence required for the pool is located in the front yard.
10. The Board found that Mr. Myers stated that the fence height requirement in a front yard is to limit visibility concerns and that the fence meets the requirements for a safety fence but does not pose visibility concerns.
11. The Board found that Mr. Myers stated that the exceptional practical difficulty was not created by the Applicant. The Applicant did not subdivide the Property, build the house, or construct the pool.

12. The Board found that Ms. Kolosy testified that she is a realtor and the encroachments do not alter the essential character of the neighborhood.
13. The Board found that Ms. Kolosy testified that the statements made by Mr. Myers are true and correct.
14. The Board found that Ms. Kolosy testified that the variances requested are minimum variances necessary to afford relief.
15. The Board found that Mr. Myers stated that the Property is very unique and cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
16. The Board found no parties appeared in support of or in opposition to the Application.
17. 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 clearly unique due to its shape. The Property is approximately 125.53 feet wide in the front, 129.38 feet deep on the west side and only 49.34 feet on the east side. This odd shape has created a unique and small building envelope, which is clearly evident on the survey submitted by the Applicant. These unique physical conditions have, thus, created an exceptional practical difficulty for the Applicant.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The unique shape of the Property greatly limits the building envelope. The Applicant seeks to retain reasonably sized porches which only minimally encroach into the setback areas and to retain a privacy fence for a pool which is slightly larger than allowed. The Applicant, however, is 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 the existing structures 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 Applicant. The pool poses a particular challenge for the Applicant because the pool is located close to the rear yard property line but, since the side yard on the east side is so short, the privacy fence for the pool, which is required to be 4 feet tall, is actually located partially in the front yard. Sussex County requirements, however, restrict the height of fences in the front yard to 3.5 feet.
 - c. The exceptional practical difficulty was not created by the Applicant. The Property has an unusual shape and this shape has greatly constrained the building envelope on the Property. These unique physical conditions have created the exceptional practical difficulty for the Applicant. The Board also notes that the Applicant did not place the structures on the Property. Rather, those structures were placed by a prior owner.
 - 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. No complaints were noted in the record about the structures and 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. This lack of evidence is telling since these structures have been on the Property for some time. The Board also notes that the size of these encroachments is minimal and unlikely to be noticed by the naked eye.
 - e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of

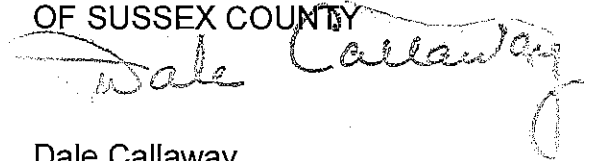
the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain the existing structures on the Property. No additions or modifications to those structures are proposed.

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. Bruce Mears, Mr. John Mills, 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 January 9, 2018.