

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: SCOTT SCHOENFELD & LESLIE SKELLEY

(Case No. 12101)

A hearing was held after due notice on February 19, 2018. The Board members present were: Mr. Dale Callaway, 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 Applicants are seeking a variance of 9.8 feet from the thirty (30) feet front yard setback requirement for a proposed garage addition, a variance of 8.2 feet from the thirty (30) feet front yard setback requirement for a proposed covered entry addition, and a variance of 0.4 feet from the thirty (30) feet front yard setback requirement for an existing dwelling. No variance is needed from the side yard setback requirement on the south side for the existing dwelling because the lot consists of less than 20,000 square feet and was created prior to January 1, 1971, so the side yard setback requirement on the south side is ten (10) feet and the existing dwelling complies with that requirement. This application pertains to certain real property located on the east side of Mulberry Knoll Road (Road 284), approximately 218 feet north of the intersection of Concerto Lane and Mulberry Knoll Road (Road 284) (911 Address: 20683 Mulberry Knoll Road, Lewes); said property being identified as Sussex County Tax Map Parcel Number 3-34-18.00-57.00.

1. The Board was given copies of the Application, an aerial photograph of the Property, a survey of the Property dated January 23, 2018, a survey of the Property dated August 24, 2011, photographs of the Property, and a portion of the tax map of the area.
2. The Board found that the Property is a corner lot. Bayshore Drive is the front yard and East Sands Street is the corner front yard. The variances requested are from Bayshore Drive.
3. The Board found that the Office of Planning & Zoning received twelve (12) letters in support of the Application and no correspondence in opposition to the Application.
4. The Board found that Scott Schoenfeld was sworn in to testify about the Application. William Schab, Esquire, presented the case on behalf of the Applicants and submitted exhibits for the Board to review.
5. The Board found that Mr. Schab stated that the Property is similar in shape to a parallelogram and the dwelling was constructed parallel to Bay Shore Drive less than 30 feet from the road.
6. The Board found that Mr. Schab stated that the Applicants had a survey conducted as part of the settlement process when purchasing the Property but they were not aware of the encroachments which existed at the time they purchased the lot.
7. The Board found that Mr. Schab stated that the septic system takes up the southern rear portion of the lot.
8. The Board found that Mr. Schab stated that the existing garage will be moved closer to Bay Shore Drive and the rear of the existing garage will be converted to living space.
9. The Board found that Mr. Schab stated that an addition is proposed for the rear of the dwelling but no variances are needed for that addition.
10. The Board found that Mr. Schab stated that the existing front porch encroaches into the front yard setback area. The Applicants intend to modernize the porch and

- these renovations will increase the porch's encroachment into the front yard setback area by approximately 5 inches.
11. The Board found that Mr. Schab stated that the existing dwelling, which was built by a prior owner, encroaches into the front yard setback area by 0.4 feet.
 12. The Board found that Mr. Schab stated that the Applicants have met with most of the neighboring property owners and reviewed these plans with those neighbors. The neighbors support the Application.
 13. The Board found that Mr. Schab stated that the Applicants intend to live in the home full-time and need to modernize the home to accommodate year-round use.
 14. The Board found that Mr. Schab stated that the Applicants did not create the need for the variances.
 15. The Board found that Mr. Schab stated that the location of the septic system, the corner lot setback requirements, and the original design of the dwelling have limited the building envelope.
 16. The Board found that Mr. Schab stated that the variances will not adversely affect the neighborhood.
 17. The Board found that Mr. Schoenfeld affirmed the statements made by Mr. Schab as true and correct.
 18. The Board found that Mr. Schoenfeld testified that the Property is serviced by a well.
 19. The Board found that Mr. Schoenfeld testified that the Property is located in a subdivision.
 20. The Board found that Mr. Schoenfeld testified that there is approximately 10 feet from the front property line to the edge of paving of Bay Shore Drive and the structures will be no closer than 30 feet from the edge of paving of Bay Shore Drive.
 21. The Board found that Mr. Schoenfeld testified that the laundry room will be placed to the rear of the garage and there are structural reasons why the garage could not be located farther away from Bay Shore Drive.
 22. The Board found that Mr. Schoenfeld testified that the garage will hold 2 cars.
 23. The Board found that no parties appeared in support of or in opposition to the Application.
 24. 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 as it is oddly shaped. The front property line has an unusual angle. This shape has created a unique building envelope which is further limited because the Property is a corner lot subject to additional setback requirements and the Property is serviced by a septic system which takes up a large portion of the rear yard. These unique physical conditions have created an exceptional practical difficulty for the Applicants by creating an unusual and limited building envelope for the Applicants who seek to retain and improve existing structures on the Property.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property was created many years ago as part of subdivision and the dwelling was placed on the Property by a prior owner. The Applicants seek to retain the home and to make reasonable additions to the front of the home for a garage and a covered porch 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 the

dwelling to remain on the Property and for the Applicants to make these reasonable improvements. The Board is convinced that the size, shape, and location of these structures are reasonable, which is confirmed when reviewing the survey and pictures provided by the Applicants.

- c. The exceptional practical difficulty was not created by the Applicants. The Property was created and developed many years ago and is an unusually shaped lot. The Board notes that the unusual shape of the lot greatly limits the building envelope. The Applicants did not create the size and shape of the lot. Rather, those conditions pre-existed the Applicants' acquisition of the Property. Furthermore, the rear of the Property is used for a septic system and has exacerbated an already difficult situation for the Applicants. Ultimately, these unique physical conditions have resulted in a limited building envelope and have created the exceptional practical difficulty for the Applicants. The Board also notes that the Applicants did not place the dwelling on the Property. The dwelling was placed on the lot 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. The dwelling has been on the Property for many years and, despite its longstanding location and notice to neighbors, 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 the Board would expect some evidence if the dwelling had altered the essential character of the neighborhood. Rather, the Board received evidence that many neighbors support the Application. The Board notes that the Applicants are also seeking to make reasonable improvements to the dwelling by adding a garage and covered porch. These additions will likely enhance the Property. The Board also notes that there is a gap of approximately 10 feet from the edge of paving of Bayshore Drive and the front property line thereby giving the appearance that the front property line is larger than it actually is. The structures will be no closer than 30 feet from the edge of paving of Bayshore Drive.
- 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 retain a reasonably sized dwelling on the lot and to make reasonable additions to the home by adding a covered porch and garage. The Applicants were unable to place the garage elsewhere on the lot due to structural issues with the existing home and the porch will only encroach into the front yard setback area by 5 inches more than the existing porch.

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. Bruce Mears, Mr. John Mills, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Ms. Ellen Magee did not participate in the discussion or vote on this application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY

Dale Callaway

Dale Callaway
Chairman

If the use is not established within two (2)
years from the date below the application
becomes void.

Date April 17, 2018