

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DANIEL F. CONATY & JOANNE M. CONATY

(Case No. 12103)

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, side yard, and rear yard setback requirements.

Findings of Fact

The Board found that the Applicants are seeking a variance of 3.0 feet from the five (5) feet rear yard setback requirement for an existing shed, a variance of 4.4 feet from the five (5) feet side yard setback requirement on the southeast side for an existing shed, a variance of 4.1 feet from the five (5) feet side yard setback requirement on the southeast side for an existing shed, a variance of 5.3 feet from the ten (10) feet side yard setback requirement on the southeast side for a proposed set of steps, a variance of 5.2 feet from the ten (10) feet side yard setback requirement on the southeast side for an existing dwelling, a variance of 10.4 feet from the thirty (30) feet front yard setback requirement for a proposed set of steps, a variance of 11.4 feet from the thirty (30) feet front yard setback requirement for a proposed addition, and a variance of 3.0 feet from the ten (10) feet side yard setback requirement on the northwest side for the proposed addition and an existing dwelling. This application pertains to certain real property located on the north side of South Avenue, approximately 460 feet northwest of the intersection of Ann Avenue and South Avenue. (911 Address: 20889 South Avenue, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-20.09-190.00.

1. The Board was given copies of the Application, a survey of the Property dated September 1, 2017, a site plan of the Property dated September 26, 2017, pictures of the Property, assessment information, an aerial photograph of the Property, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received six (6) letters in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Daniel Conaty 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.
4. The Board found that Mr. Schab stated that the dwelling was built prior to the enactment of the Sussex County Zoning Code.
5. The Board found that Mr. Schab stated that the Property is a commercially-zoned lot.
6. The Board found that Mr. Schab stated that the Applicants seek to make some additions and improvements to the home but that 5 variances would still be needed regardless of whether the Applicants sought to make these improvements.
7. The Board found that Mr. Schab stated that there is an existing deck which encroaches into the front yard setback area. The Applicants propose to enclose the deck. The enclosed deck will be no closer to the front property line than the existing open deck.
8. The Board found that Mr. Schab stated that the Applicants discovered that the shed was partially located on a neighboring property so they moved the shed entirely onto their lot as far as possible.

9. The Board found that Mr. Schab stated that trees are located near the shed and limit the area where the shed could be located. There is no other place the shed could be placed.
10. The Board found that Mr. Schab stated that none of the additions to the home are creating additional encroachments into the setback areas than would otherwise exist with the existing structures.
11. The Board found that Mr. Schab stated that the additions will not alter the essential character of the neighborhood. Rather, he believes that the additions will enhance the Property.
12. The Board found that Mr. Schab stated that the variances requested are the minimum variances necessary to afford relief.
13. The Board found that Mr. Schab stated that the additions will not increase the degree of non-conformity.
14. The Board found that Mr. Conaty affirmed the statements made by Mr. Schab as true and correct.
15. The Board found that Mr. Conaty testified that the Applicants have lived in the home for 36 years and have a growing family. The dwelling consists of only 1,200 square feet and that the addition will better accommodate their family.
16. The Board found that Mr. Conaty testified that neighbors have not objected to the proposal and his 6 closest neighbors support the Application.
17. The Board found that Mr. Conaty testified that the neighbor to the southeast is a townhouse community and the fence separating the two lots was built 3-4 feet onto the townhouse community parcel thereby making the Property appear larger than it actually is.
18. The Board found that Mr. Conaty testified that the front and rear decks are proposed to be enclosed.
19. The Board found that Mr. Conaty testified that the landing on the front of the dwelling is existing and measures 8 feet wide.
20. The Board found that Mr. Conaty testified that the steps for the existing deck in the front yard will be relocated to the side of the proposed deck / addition. The landing and steps off the front addition can be reduced in size so that no side yard setback variance is needed for that structure.
21. The Board found that no parties appeared in support of or in opposition to the Application
22. 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 unrebutted, 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 size. The Property is quite small as evidenced by the survey. The Property is 50 feet wide by 101.02 feet deep and consists of only 5,046 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 retain existing structures on the lot and to make certain additions thereto.
 - 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 retain existing structures on the lot and to make certain additions thereto 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, existing structures to remain on the lot and for the Applicants to make certain reasonable additions thereto. The Board is

convinced that the shape and location of these structures 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 unique lot size 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. The Board also notes that the dwelling was placed on the Property by a prior owner prior to the enactment of the Sussex County Zoning Code.
- 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 structures will have no effect on the character of the neighborhood. Many of the structures have been on the Property for quite some time without noted complaints in the record. In fact, the Applicants provided six (6) letters supporting their application. No evidence was presented that the variances would somehow alter the essential character of the neighborhood. The lack of evidence is telling since, if the structures had somehow altered the essential character of the neighborhood, the Board would expect some evidence thereof. The Board also notes that the fence to the southwest of the Property is located off the side property line thereby giving the impression that the side property line is larger than it actually is.
- 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 existing structures and to make reasonable additions thereto. The Board is convinced that the Applicants have taken reasonable measures to reduce 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. 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
Chairman

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

Date April 17, 2018