

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: D. LEE MCCREARY & SUSAN MCCREARY**

**(Case No. 12109)**

A hearing was held after due notice on March 5, 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 10.2 feet from the thirty (30) feet front yard setback requirement for a proposed addition and a variance of 3.5 feet from the five (5) feet side yard setback requirement on the southwest side for an existing landing. This application pertains to certain real property located on the north side of Ann Avenue, approximately 435.06 feet southwest of the intersection of Ann Avenue and Coastal Highway (Route 1) (911 Address: 20964 Ann Avenue, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-20.13-21.00.

1. The Board was given copies of the Application, an aerial photograph of the Property, a survey of the Property dated September 20, 2017, property record cards, minutes for Case No. 11340, a Certificate of Compliance, 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 Wayne Hanby was sworn in to testify about the Application. David Hutt, Esquire, presented the case on behalf of the Applicants and submitted exhibit booklets for the Board to review.
4. The Board found that Mr. Hutt stated that the Applicants acquired the Property in 2013. Mr. Hanby is a contractor who performed work on the dwelling in 2014 and will build the proposed addition if the variances are approved.
5. The Board found that Mr. Hutt stated that the Property measures 50 feet by 107 feet and is identified as Lot 35 in the Poynter's Addition to Rehoboth subdivision. The subdivision was created in 1952.
6. The Board found that Mr. Hutt stated that the dwelling was built prior to the adoption of the Sussex County Zoning Code as the dwelling is a beach-style cottage that was built in 1953. The property record card shows the dwelling being 832 square feet.
7. The Board found that Mr. Hutt stated that the Board previously granted a variance for the addition of a covered porch to the rear of the dwelling in 2014.
8. The Board found that Mr. Hutt stated that the dwelling encroached into the side yard setback area and the porch was constructed to line up with the dwelling. The Applicants received a Certificate of Occupancy for the porch and the dwelling was also renovated at that time.
9. The Board found that Mr. Hutt stated that the Applicants own the adjacent Lot 36.
10. The Board found that Mr. Hutt stated that the proposed addition will be used as a bedroom for the Applicants' parents. The addition will provide first-floor accessibility.
11. The Board found that Mr. Hutt stated that the proposed addition will be 9.8 feet from the front property line and will not encroach any farther than the dwelling on the adjacent Lot 34.
12. The Board found that Mr. Hutt stated that the landing as shown on the survey is at grade level and is not raised.

13. The Board found that Mr. Hutt stated that the Property is unique in size and shape. Lots in the MR zoning district are required to have a minimum lot size of 10,000 square feet and a minimum lot width of 75 feet. The Property is smaller and narrower than is required by the Code.
14. The Board found that Mr. Hutt stated that the variances are necessary to enable the reasonable use of the Property because the lot was created before the adoption of the Sussex County Zoning Code.
15. The Board found that Mr. Hutt stated that the lot's size and shape have created a compact building envelope. The Applicants did not create the lot size and shape as the lot was created prior to their ownership thereof.
16. The Board found that Mr. Hutt stated that the variances will not alter the essential character of the neighborhood.
17. The Board found that Mr. Hutt stated that the immediate adjacent property encroaches the same distance into the front yard setback area. Also, the edge of paving of Ann Avenue is 10 feet from the front property line and the area between the front property line and Ann Avenue is landscaped. The dwelling will be approximately 30 feet from the edge of paving of Ann Avenue.
18. The Board found that Mr. Hutt stated that the variances requested are the minimum variances necessary to afford relief.
19. The Board found that Mr. Hutt stated that the dwelling is a small and modest sized home and the proposed bedroom is as small as it can be while providing necessary accessibility.
20. The Board found that Mr. Hanby testified that he is familiar with the Property and that he worked on the home in 2014.
21. The Board found that Mr. Hanby testified that the landing consists of wood planks at grade level.
22. The Board found that Mr. Hanby affirmed the statements made by Mr. Hutt as true and correct.
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 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 and shape. The Property is quite small and narrow as evidenced by the survey. The Property is 50.48 feet wide by 107.35 feet deep and consists of only 5,418 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 an existing landing on the lot and to make certain additions to the dwelling.
  - 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 shape and the buildable area thereof is limited due to these conditions. The Applicants seek to retain an existing landing on the lot and to make certain additions to the dwelling 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 landing to remain on the lot and for the Applicants to make certain reasonable additions to the dwelling. 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. The Board also notes that the addition

is for a first floor bedroom for the Applicants' parents who need first floor accessibility.

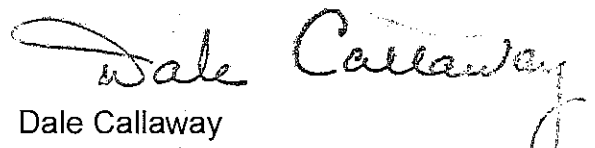
- c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual size and shape of the Property. The unique lot size and shape has resulted in a limited building envelope on the Property and the small building envelope has created the exceptional 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 by 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. No evidence was presented that the variances would somehow alter the essential character of the neighborhood. The landing is a small landing at grade level from the existing porch and has been on the Property since 2014 without noted complaints in the record. The addition will encroach into the front yard but will be no closer to Ann Avenue than the front porch on the adjacent lot. The Board also notes that the edge of paving of Ann Avenue is approximately 10 feet from the front property line thereby giving the impression that the front yard is larger than it actually is thereby minimizing the impact of the front yard encroachment.
- 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 the existing landing and to make reasonable additions to the dwelling. 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 May 8, 2018