

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MILLARD F. HERROLD, III

(Case No. 12116)

A hearing was held after due notice on April 9, 2018. 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 4.9 feet from the five (5) feet side yard setback requirement on the southwest side for an existing shed, a variance of 4.8 feet from the five (5) feet side yard setback requirement on the southwest side for an existing shed, and a variance of 2.7 feet from the 19.575 feet average front yard setback requirement for existing steps. This application pertains to certain real property located on the northwest side of James A Street, approximately 150 feet northeast of Fisher Street (911 Address: 38361 James A Street, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-20.09-89.00.

1. The Board was given copies of the Application, a survey of the Property dated February 21, 2017, a survey of the Property dated November 13, 2015, a building permit application, an average setback survey dated January 27, 2016, pictures, 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 two (2) letters in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Millard F. Herold, III, was sworn in to testify about the Application. Taylor Trapp, Esquire, presented the case on behalf of the Applicant.
4. The Board found that Ms. Trapp stated that the Applicant purchased the Property in November 2015.
5. The Board found that Ms. Trapp stated that the Applicant screened in the front porch and relocated the steps to the porch from the middle of the porch to the southwest corner of the porch. A Certificate of Compliance was issued for the porch and steps.
6. The Board found that Ms. Trapp stated that, in January 2017, the Applicant added a shed to the Property.
7. The Board found that Ms. Trapp stated that the shed was needed for outside storage because there is no outdoor storage on the lot.
8. The Board found that Ms. Trapp stated that the Applicant's contractor obtained the building permit and the Applicant was not involved in the permitting process. The building permit states the setback requirements.
9. The Board found that Ms. Trapp stated that the Applicant was unaware that the shed was built within the setback area. The Applicant was not on the Property when the shed was built.
10. The Board found that Ms. Trapp stated that the Property is unique because it is narrow and there is a large, in-ground pool in the rear yard which was placed by a prior owner.
11. The Board found that Ms. Trapp stated that the rear yard is small.
12. The Board found that Ms. Trapp stated that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.

13. The Board found that Ms. Trapp stated that there is no place to put a small shed due to the location of the pool and the steps of the pool are located in the only place the shed could be located.
14. The Board found that Ms. Trapp stated that the Applicant did not create the need for the variance because the pool was placed on the Property by a prior owner.
15. The Board found that Ms. Trapp stated that the variances will not alter the essential character of the neighborhood.
16. The Board found that Ms. Trapp stated that there are three direct neighbors and twelve other neighbors who have similar sheds.
17. The Board found that Ms. Trapp stated that a Certificate of Compliance was issued for the screened-in porch and steps but not for the shed.
18. The Board found that Ms. Trapp stated that there was previously a shed with a sitting area located near the pool but the Applicant removed that structure because it was too close to the pool.
19. The Board found that Mr. Herold submitted exhibits, including photographs of the Property, for the Board to review.
20. The Board found that Mr. Herold testified that the pre-existing structure was very close to the pool. The structure was a screened-in porch / shed combination and he was concerned about the safety of moving around the back yard. He also believes that the previous structure was an eye sore.
21. The Board found that Mr. Herold testified that he decided to demolish the existing shed structure and to construct a new shed to the side of the house. His contractor, Carl Alessi, pulled the building permit and he relied on the builder.
22. The Board found that Mr. Herold testified that he assumed the shed was included in one permit with the rest of the remodeling and not on a separate permit.
23. The Board found that Mr. Herold testified that there are footers to anchor the shed and that he installed a gutter to drain water away from the neighboring property.
24. The Board found that Mr. Herold testified that he would need to talk with his neighbor if he needed to conduct maintenance on the side of the shed but he is on good terms with his neighbor.
25. The Board found that Mr. Herold testified that there is a walkway between the shed and the house. If the shed was moved closer to the house, it would still block two windows and would still encroach into the setback area.
26. The Board found that Ms. Trapp stated that there is also a drainage area between the shed and the house which would have to be relocated if the shed were moved. The drains direct water from the Property to the culvert near the street.
27. The Board found that Mr. Herold testified that there is approximately six feet from the edge of paving to the front property line.
28. The Board found that Maura Cahill was sworn in to testify in opposition to the Application.
29. The Board found that Ms. Cahill testified that she is the neighbor on the southwest side of the Property. Her lot is located on the corner of Fisher and James A Street.
30. The Board found that Ms. Cahill testified that she does not oppose the front yard variance request.
31. The Board found that Ms. Cahill testified that she spoke with the builder during construction of the shed and asked the builder about the location of the shed. She also called the permitting department in August 2017.
32. The Board found that Ms. Cahill testified that the shed is stick built and was built quickly.
33. The Board found that Ms. Cahill testified that she does not like the shed's location and the shed is an eye sore.
34. The Board found that Ms. Cahill testified that the Applicant raised the area around the shed.

35. The Board found that Ms. Cahill testified that she thinks the shed should be located where the old shed was located.
36. The Board found that Ms. Cahill testified that there are drainage issues on their properties.
37. The Board found that Mr. Herold testified that there is a crawl space to the home and, if the shed were moved closer to the home, it would block access to the crawl space.
38. The Board found that Mr. Herold testified that all neighboring properties have garages or sheds near property lines.
39. The Board found that Mr. Herold affirmed the statements made by Ms. Trapp as true and correct.
40. The Board found that no parties appeared in support of the Application.
41. The Board found that one (1) party appeared in opposition to the Application.
42. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered, the Board determined that the application for the front yard variance for the steps 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 a small and narrow lot. The Property is fifty (50) feet wide and consists of only 5,000 square feet; as is clearly shown on the survey. These unique physical conditions have created an exceptional practical difficulty for the Applicant by creating an unusual and limited building envelope 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 Property was developed by a prior owner and the Applicant relocated steps from the middle of the front porch to the side corner of the front porch. The Applicant seeks to retain the steps on the Property but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance for the steps is necessary to enable the reasonable use of the Property as the variance will allow the steps to remain on the Property. The Board is convinced that the size, shape, and location of the steps are reasonable, which is confirmed when reviewing the survey and pictures provided by the Applicant.
 - c. The exceptional practical difficulty was not created by the Applicant. The Property was created and developed many years ago and is a narrow and undersized lot. The Board notes that the narrowness of the lot limits the building envelope. The Applicant did not create the size and shape of the lot. Rather, those conditions pre-existed the Applicant's acquisition of the Property. Ultimately, these unique physical conditions have resulted in a limited building envelope and have created the exceptional practical difficulty for the Applicant. The Board also notes that the Applicant did not construct the porch on the Property. The porch was constructed by a prior owner and the Applicant merely relocated the steps.
 - d. The variance for the steps 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 steps have been on the Property for some time and the Applicant simply relocated the steps but they appear to be no closer to the front yard property line. Despite the longstanding location and notice to neighbors, no evidence was presented which would indicate that the variance for the steps 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 steps had altered the essential character of the neighborhood. The Board notes that

the front property line is also approximately 6 feet from the edge of paving of James A Street so the encroachment into the front yard setback area is likely not as noticeable as would otherwise be the case.

- e. The variance sought for the steps is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to retain a reasonably sized set of steps on the lot. No additions or modifications to those structures are proposed.

43. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered, the Board determined that the application for the side yard variances for the shed failed to meet the standards for granting a variance. The findings below further support the Board's decision to deny the Application.

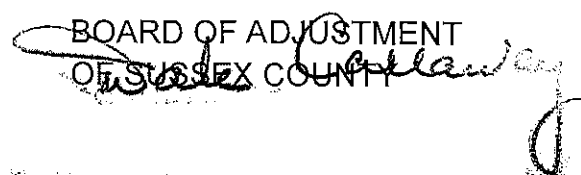

- a. The Board was not convinced that the Property could not be developed with a shed in strict conformity with the Sussex County Zoning Code and that a variance was necessary to enable reasonable use of the Property. The Applicant has constructed a shed within 0.1 feet from the side property line. This shed is used for outdoor storage and replaces a previous shed that was located closer to the Applicant's pool. The Applicant claims that the new shed must be located so close to the side property line so that he can access his crawl space to the dwelling and have safer access to the pool. The Board, however, was not convinced by these arguments because it is clear that there is space to place a shed on the lot in strict conformity with the Sussex County Zoning Code. Notably, the prior shed was 5.3 feet from the side property line. The Board was not convinced that a shed which would otherwise meet the Code requirements would not afford the Applicant with reasonable use of a shed. The Applicant's desire for the variances for the shed clearly appear to be a "want" rather than a "need."
- b. The exceptional practical difficulty was created by the Applicant. As previously discussed, the Applicant can construct the shed in strict conformity with the Sussex County Zoning Code. There are no unique conditions to the Property which would limit its placement elsewhere on the Property. Notably, there is a sufficient space between the side property line and the pool to place a shed. Alternatively, the Applicant could explore other locations on the Property for a shed. The difficulty, if any, appears to be entirely self-created by the Applicant's desire to exceed the setback requirements set forth in the Sussex County Zoning Code. The Applicant can clearly use the Property for a shed without the need for a variance for the shed.
- c. The Board has concerns about the impact of the shed on the adjacent property. As proposed, the shed would be 0.1 feet away from neighboring property and the Board has concerns about the Applicant's ability to maintain the shed without trespassing on his neighbor's lands. The extremely small gap between the edge of the shed and the side property line appear to make it difficult, if not impossible, to access the southwest side of the shed and the Applicant provided no sufficient explanation as to how he intends to maintain the shed while remaining on his property. Approval of this variance would likely result in a shed that would suffer from poor maintenance due to a lack of access or would result in trespassing onto neighboring lands.
- d. Since the variance for the shed is not necessary to enable the reasonable use of the Property, the Board also finds that the variance requested is not the minimum variance necessary to afford relief. Furthermore, the Board

finds that no variance is necessary to afford relief since the Property can be developed by a shed in strict conformity with the Sussex County Zoning Code. Assuming, *arguendo*, that a variance for the shed was necessary, the Board is not convinced that the Applicant explored other means why which to place a shed on the Property to minimize the need for a variance either by reducing the size of the shed or by relocating it elsewhere on the lot.

The Board granted the variance application for the front yard variance for the existing steps finding that it met the standards for granting a variance and the Board denied the variance application for the side yard variances for the existing shed finding that it failed to meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was approved in part and denied in part. The Board Members in favor of the motion 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 in part and to deny the variance application in part.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


Dale Callaway
Chairman

Date May 22, 2018