

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

**IN RE: MANDIL FAMILY, LLC**

**(Case No. 12178)**

A hearing was held after due notice on August 6, 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 side yard and rear yard setback requirements for proposed structures.

Findings of Fact

The Board found that the Applicant is seeking a variance of 19.4 feet from the twenty (20) feet rear yard setback requirement for a proposed shed, a variance of 12.7 feet from the twenty (20) feet rear yard setback requirement for proposed steps, a variance of 5 feet from the five (5) feet side yard setback requirement on the north side for a proposed shed, a variance of 9.7 feet from the twenty (20) feet rear yard setback requirement for a proposed landing, a variance of 0.6 feet from the five (5) feet side yard setback requirement on the south side for the outdoor shower, and a variance of 19.4 feet from the twenty (20) feet rear yard setback requirement for the outdoor shower. This application pertains to certain real property located on the west side of Harbor Road, approximately 60 feet south of S. Rodney Drive in North Shores development (911 Address: 37 Harbor Road, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-14.05-13.00.

1. The Board was given copies of the Application, a survey of the Property dated April 20, 2018, renderings of the proposed improvements, pictures of the properties in the neighborhood, an email supporting the Application, 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 no correspondence in support of the Application or in opposition to the Application.
3. The Board found that Jean Brolund and Patty McDaniels were sworn in to testify about the Application.
4. The Board found that Ms. McDaniels testified that the Property was developed in the 1970s and is improved by a legal, non-conforming townhouse and other structures such as a shed, spiral staircase, HVAC system, and outdoor shower. These features are similar to others in the neighborhood. The Applicant seeks to make improvements to the Property which will be similar to other homes in the neighborhood. Notably, similar variances have been granted nearby as well.
5. The Board found that Ms. McDaniels testified that the Applicant intends to construct a landing to meet Code requirements and to expand the shed to provide additional storage. The existing outdoor shower would also be moved to allow for the extension of the shed.
6. The Board found that Ms. McDaniels testified that the Property is unique because it is approximately 21 feet wide by 100 feet deep and that the lot is so small that there is not enough space to build within the building envelope.
7. The Board found that Ms. McDaniels testified that there is an existing shed and outdoor shower which is characteristic of the neighborhood and that neighbors have erected similar additions, including larger storage sheds.
8. The Board found that Ms. McDaniels testified that the exceptional practical difficulty was not created by the Applicant because the Property was largely developed in its current state prior to the Applicant's acquisition thereof.

9. The Board found that Ms. McDaniels testified that all structures will be placed within the fence line and will fit within the property line.
10. The Board found that Ms. Brolund testified that neighbors support the Application.
11. The Board found that Ms. McDaniels testified that the homeowners' association has approved the plans.
12. The Board found that Ms. McDaniels testified that the HVAC system is located in its original location and that no variance is needed for the spiral staircase because it is considered a legal, non-conforming structure.
13. The Board found that no parties appeared in support of or in opposition to the Application.
14. 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 unique due to its unique size and history. The Property is an exceptionally narrow lot consisting of only 2,067 square feet. The Property was originally developed prior to the enactment of the Sussex County Zoning Code and the townhouse and related structures encroach into the side yard and rear yard setback areas. The unique characteristics of this Property limit the buildable area available to the Applicant and have created an exceptional practical difficulty for the Applicant who seeks to construct a landing, expand a storage shed, and relocate an existing outdoor shower.
  - 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 Applicant seeks to construct a landing, expand a storage shed, and relocate an existing outdoor shower of reasonable size but 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 Applicant to construct a landing, expand a storage shed, and relocate an existing outdoor shower. The Board is convinced that the shape and location of these structures are also 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 Applicant 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. Furthermore, the townhouse and related structures were placed on the Property many years ago and have been in their present location since at least the 1970s. 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 Applicant but was created the lot's unique characteristics.
  - 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 proposed landing, larger shed, and relocated outdoor shower will have no effect on the character of the neighborhood. The structures are similar to others in the neighborhood and no complaints were noted in the record about the proposed locations of the structures. Rather, a letter of support was received from a neighbor. Furthermore, 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.

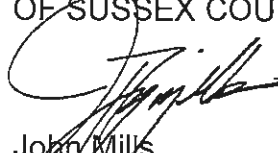
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to construct a landing, expand a storage shed, and relocate an existing outdoor shower in a reasonable manner consistent with the development of the neighborhood.

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

  
John Mills  
Chairman

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

Date October 2, 2018.