

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ROBERT MCLAUGHLIN & SHERILYN MCLAUGHLIN

(Case No. 12185)

A hearing was held after due notice on August 20, 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, side and rear yard setback requirements for an existing and proposed structures.

Findings of Fact

The Board found that the Applicants are seeking a variance of 2 feet from the five (5) feet rear yard setback requirement for an existing accessory building, a variance of 3.9 feet from the five (5) feet side yard setback requirement on the southeast side for an existing accessory building, a variance of 2.8 from the five (5) feet side yard setback requirement on the northwest side for a proposed dwelling, a variance of 2.2 feet from the five (5) feet side yard setback requirement on the northwest side for a proposed dwelling, and a variance of 14.7 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling. This application pertains to certain real property located on the north side of Washington Street, approximately 237 feet east of Church Street (911 Address: 37499 & 37503 Washington Street, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-13.20-88.00.

1. The Board was given copies of the Application, a site plan of the Property dated May 21, 2018, property record information, photographs, a declaration plan for The Avenue condominium, 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 letters in support of the Application or one (1) letter in opposition to the Application.
3. The Board found that Robert McLaughlin and Sherilyn McLaughlin were sworn in to give testimony. Tim Willard, Esquire, was present on behalf of the Applicants, presented the Application, and submitted an exhibit for the Board to review.
4. The Board found that Mr. Willard stated that the Applicants acquired the Property in 2015. At that time, the Property was improved by a dwelling, a shed, and a cottage. The Applicants intend to renovate the dwelling and cottage and to remove the shed.
5. The Board found that Mr. Willard stated that the dwelling was built in the 1940s and is in poor condition. The Applicants intend to expand the existing dwelling but also to reduce the encroachment into the front yard setback area. The existing porch is, for example, 8.3 feet from the front property line but the renovated dwelling will be 15.3 feet from the front property line.
6. The Board found that Mr. Willard stated that nearby lands are used for condominiums. The Property is zoned C-1 but is in a largely residential area.
7. The Board found that Mr. Willard stated that the Property is unique because there are non-conforming structures on the lot. He stated that the Property is also unique because it is small and consists of approximately 6,000 square feet.
8. The Board found that Mr. Willard stated that there will be no change to the footprint of the cottage but all kitchen facilities will be removed from the cottage.
9. The Board found that Mr. Willard stated that most of the requested variances are for existing buildings and that the exceptional practical difficulty was not created by the Applicants as these buildings were in existence when they purchased the Property.

10. The Board found that Mr. Willard stated that the variances will not alter the essential character of the neighborhood but rather enhance it. Other lots in the neighborhood have similar guest houses. Furthermore, the Applicants plan to build their home in the Craftsman style which is common in the neighborhood. There is also no change to the encroachment to the side yard setback from the cottage. The neighbor opposed to the Application only opposed the side yard encroachment by the cottage.
11. The Board found that Mr. Willard stated that the Applicants will continue to have off-street parking but the home had to be offset on the lot to accommodate the parking spaces.
12. The Board found that Mr. Willard stated that the Applicants want to keep the style of the existing dwelling.
13. The Board found that Mr. Willard stated that these are the minimum variances necessary to afford relief due to the placement of the current buildings.
14. The Board found that Mr. Willard stated that the variances will improve the neighborhood.
15. The Board found that Mr. McLaughlin affirmed the statements made by Mr. Willard as true and correct.
16. The Board found that Mr. McLaughlin testified that the dwelling will be a two-story home and that the intention is to build a home in keeping with the neighborhood and therefore enhance it.
17. The Board found that Mrs. McLaughlin testified that the dwelling and cottage are in poor condition. She expects that, when the renovations are made to their property, property values in the neighborhood will improve.
18. The Board found that Mrs. McLaughlin testified that there is a gap of a couple of feet between the front property line and the edge of paving of Washington Street.
19. The Board found that Daniel Cochran was sworn in to give testimony in support of the Application.
20. The Board found that Mr. Cochran testified that he is the president of the homeowners' association in the nearby condominium and that he and the homeowners' association support the Application.
21. The Board found that two (2) parties appeared in support of the Application.
22. The Board found that no parties appeared in opposition to the Application.
23. 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 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 a small lot consisting of only 6,264 square feet. The Property was originally developed prior to the enactment of the Sussex County Zoning Code and the dwelling and cottage encroach into the front yard, side yard, and rear yard setback areas. 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 renovate the dwelling and cottage.
 - 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 seeks to renovate an existing dwelling and cottage of reasonable size 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 Applicants to renovate the dwelling and cottage. 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 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. Furthermore, the dwelling and cottage were placed on the Property many years ago and have been in their present location since the 1940s. 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.
- 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 renovated cottage and dwelling will have no adverse effect on the character of the neighborhood. These renovations will improve the existing structures, which are in poor condition, and will reduce the size of some encroachments. The Board notes that a neighbor opposed the side yard variance for the cottage only but the opposition presented no evidence as to how the renovation of an existing building in the setback area would alter the essential character of the neighborhood. The opposition referenced new, tall homes in the neighborhood but those homes are not located on the Property. The Board notes that there was no opposition to the variance requests for the dwelling or the rear yard setback requests. Ultimately, no evidence was presented which convinced the Board that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board also notes that the nearby homeowners' association supports the Application and that there is a gap between the edge of paving of Washington Street and the front property line. As such, the front yard encroachment is likely not as noticeable as it would otherwise be.
- 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 renovate the existing dwelling and cottage in a reasonable manner consistent with the development of the neighborhood. The Applicants have reduced the front yard encroachment of the dwelling and will be removing a shed which encroaches into the side yard setback area. The Board is convinced that the Applicants took measures to reduce the encroachments and otherwise minimize the size of the variance requests. The design will also allow for off-street parking of vehicles on the lot.

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 16, 2018.