

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: CYNTHIA J. MYERS

(Case No. 12214)

A hearing was held after due notice on October 15, 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 setback requirement for a proposed structure.

Findings of Fact

The Board found that the Applicant is seeking a variance of 5.4 feet from the thirty (30) feet front yard setback requirement for a proposed covered front porch. This application pertains to certain real property on the southside of South Drive in the Tru Vale Acres development (911 Address: 306 South Drive, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-13.00-39.00.

1. The Board was given copies of the Application, a survey of the Property dated October 18, 2005, a site plan dated August 10, 2018, 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 eleven (11) letters in support of the Application or no correspondence in opposition to the Application.
3. The Board found that Cynthia Myers was sworn in to testify about the Application. William Schab, Esquire, presented the Application on behalf of the Applicant and he submitted two (2) additional letters of support.
4. The Board found that Mr. Schab stated that the Property is located in Tru Vale Acres.
5. The Board found that Mr. Schab stated that the Property is unique due to the small size of the original lot. The Applicant has since purchased additional lots to increase the size of her property.
6. The Board found that Mr. Schab stated that the dwelling has been on the Property since the 1970s and encroached into the front yard setback area. The Applicant seeks to replace the home with a modern modular home that will allow her to age in place. She was not previously aware of the encroachment of the existing dwelling.
7. The Board found that Mr. Schab stated that the deck and pool are located in the rear yard and that is not possible to move the house back on the lot because of the placement of the deck and pool.
8. The Board found that Mr. Schab stated that the Applicant seeks the minimum variance to afford relief and is replacing the current dwelling with a home that is almost the same size as the original. The dwelling will fit on the lot but a variance is needed for the porch.
9. The Board found that Mr. Schab stated that the exceptional practical difficulty was not created by the Applicant.
10. The Board found that Mr. Schab stated that the variance will not alter the essential character of the neighborhood. Notably, neighbors have received variances for similar reasons.
11. The Board found that Ms. Myers affirmed the statements made by Mr. Schab as true and correct.
12. The Board found that Ms. Myers testified that the new house will be smaller than the current house but will allow her to age in place. She believes that the house will improve the neighborhood.

13. The Board found that Ms. Myers testified that the dwelling will encroach less into the setback area than the prior dwelling.
14. The Board found that Ms. Myers testified that there is a gap between the edge of paving and the front property line.
15. The Board found that one (1) person appeared in support of and no one appeared in opposition to the Application.
16. 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 as it was developed in the 1970s with a home that needs to be replaced. The rear of the Property is developed with a deck, garage, and pool which are adjacent to the existing dwelling. Those structures are not being relocated. Accordingly, the area where the dwelling can be located is quite limited. This building envelope is further limited since the existing dwelling encroaches into the front yard setback area. These unique conditions have created an exceptional practical difficulty for the Applicant who seeks to replace the dwelling and to have a reasonably sized covered porch on the front of the home.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to place a covered porch on the Property but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the covered porch to be placed on the Property. The Board is convinced that the shape and location of the proposed covered porch are reasonable, which is confirmed when reviewing the survey provided by the Applicant.
 - c. The exceptional practical difficulty was not created by the Applicant. There was no evidence that the Applicant created the lot or placed the prior dwelling and structures on the lot. Rather, those conditions predated the Applicant's ownership of the Property and have limited the building envelope. These conditions have created the exceptional practical difficulty for the Applicant who seeks to replace the dwelling with a new dwelling and covered porch. While the dwelling will comply with the Code, the porch will not. It is clear to the Board that the exceptional practical difficulty was not created by the Applicant.
 - d. The variance 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 covered porch will have no effect on the character of the neighborhood. No evidence was presented that the variance would somehow alter the essential character of the neighborhood. The lack of evidence is telling since the existing dwelling and porch encroach into the front yard setback area and, if those structures had somehow altered the essential character of the neighborhood, the Board would expect some evidence that the proposed porch would alter the character of the neighborhood. Instead, the Board notes that the proposal appears to have significant support from neighbors. The Board also notes that the front property line is a significant distance from the edge of paving of South Drive so the encroachment into the front yard setback area is likely not that noticeable.

- e. The variance sought 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 place a reasonably sized covered porch on the Property. The Board is convinced that the Applicant took steps to minimize the encroachment but was limited by the Property's conditions.

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 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 December 18, 2018.