

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

**IN RE: LINDA MAJOR DUNBAR**

**(Case No. 12243)**

A hearing was held after due notice on December 17, 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 for a proposed and existing structures.

Findings of Fact

The Board found that the Applicant is seeking a variance of 9.3 feet from the thirty (30) feet front yard setback requirement for existing steps, a variance of 3.7 feet from the five (5) feet side yard setback requirement on the southeast side for a proposed addition, a variance of 3.5 feet from the five (5) feet side yard setback requirement on the southeast side for an existing dwelling, and a variance of 3.2 feet from the five (5) feet side yard setback requirement on the southeast side for an existing dwelling. This application pertains to certain real property located on the southwest side of Washington Street approximately 365 feet southeast of Church Street (911 Address: 37512 Washington Street, Rehoboth Beach) said property being identified as Sussex County Tax Map Parcel Number 3-34-13.20-67.00.

1. The Board was given copies of the Application, an aerial photograph of the Property, photographs of the Property, the Findings of Fact for Board Case No. 6999-1999, drawings of the proposed addition, a survey of the Property dated August 18, 1970, a survey of the Property dated April 26, 1988, a survey of the Property dated November 27, 2018, 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 Linda Dunbar, Paul Dunbar, Patty McDaniel, and Kelsey Hamilton were sworn in to testify about the Application.
4. The Board found that Ms. Hamilton testified that the Applicant seeks to construct a small addition to the existing cottage. The addition will be a one-story addition and will enable the owners to age in place. One owner has a family member who has a wheelchair.
5. The Board found that Ms. Hamilton testified that the Property is unique because it is a very narrow lot measuring only 25 feet wide. The home was built in 1942 and is only 18 feet wide.
6. The Board found that Ms. Hamilton testified that the addition cannot be constructed without the variances and that the need for the variances was not created by the Applicants as they did not build the house but want to modify it to accommodate their needs as they age.
7. The Board found that Ms. Hamilton testified that a house measuring 15 feet wide is not practical.
8. The Board found that Ms. Hamilton testified that the dwelling will consist of 1,080 square feet after the dwelling is complete.
9. The Board found that Ms. Hamilton testified that the variances will not alter the character of the neighborhood but will enhance the area and increase the resale value of other homes.
10. The Board found that Ms. Hamilton testified that the variances requested are the minimum variances requested to afford relief.

11. The Board found that Ms. Hamilton testified that shed which sits in the setbacks will be moved into compliance with the Code.
12. The Board found that Ms. Dunbar testified that the shed was already on the Property when she purchased the Property in 1983.
13. The Board found that Ms. Dunbar testified that neighbors have not complained about the existing and proposed structures.
14. The Board found that Ms. McDaniel testified that the HVAC system will be placed in the rear of the house and will comply with the setback requirements.
15. The Board found that no parties appeared in support of or 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 for the variances met the standards for granting a variance. The findings below further support the Board's decision to approve the Application for the variances for those structures.
  - a. The Board notes that several variances were previously granted for this property in 1999 as noted in the Findings of Fact for Case No. 6999-1999. The variances requested with this application will bring all structures shown on the survey dated November 27, 2018, into conformity with the Sussex County Zoning Code except that the shed shown on the rear of the Property will be brought into compliance with the Sussex County Zoning Code as testified by the Applicant.
  - b. The Property is unique due to its size and shape. The Property is exceptionally narrow as it is only 25 feet wide. The lot also only consists of 3,125 square feet. These 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 retain existing structures on the lot and to construct a reasonable addition. The Board also notes that additional space in the home is needed to accommodate a wheelchair.
  - c. 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 and shape. The Applicant seeks to retain existing structures and to construct a reasonable addition on the lot 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 reasonably sized, existing structures to remain on the lot and for the addition to be constructed. 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 Applicant.
  - d. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual size and shape of the Property. These conditions have 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 Applicant but was created by the lot's unique characteristics. The Board also notes that the dwelling has been on the Property for decades.
  - e. 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. The dwelling and steps have been on the Property since at

least 1970 without noted complaints in the record. No evidence was presented that the variances would somehow alter the essential character of the neighborhood. The lack of evidence is telling since, if the structures had somehow altered the essential character of the neighborhood, the Board would expect some evidence thereof. The proposed addition is designed to be consistent with the existing dwelling.

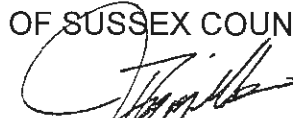
- f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain existing structures and to construct a reasonable addition needed to accommodate a wheelchair. The Applicant will also be bringing an encroaching shed into conformity.

The Board approved 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 of the motion to approve 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 March 5, 2019.