

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: BRIDGET KELLER

(Case No. 12266)

A hearing was held after due notice on February 4, 2019. The Board members present were Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front yard setback, rear yard setback, and side yard setback requirements for existing and proposed structures.

Findings of Fact

The Board found that the Applicant is seeking a variance of 4.3 feet from the ten (10) feet side yard setback requirement on the northeast side for a proposed addition to provide a bathroom for a person with additional care needs. This application pertains to certain real property located on the northwest side of Robinsons Drive approximately 835 feet northeast of Coastal Highway (Route 1) (911 Address: 38253 Robinsons Drive, Rehoboth Beach) said property being identified as Sussex County Tax Map Parcel Number 3-34-20.05-312.00.

1. The Board was given copies of the Application, a memorandum from Sandia Construction, a survey of the Property dated December 4, 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 no correspondence in support of or in opposition to the Application.
3. The Board found that Bridget Keller was sworn in to give testimony about the Application.
4. The Board found that Ms. Keller testified that her grandfather purchased the home in 1981 and the Property has been in the family ever since.
5. The Board found that Ms. Keller testified that her son has special needs and a bathroom is needed in a common area of the home so that her son does not have to use stairs to access the bathroom.
6. The Board found that Ms. Keller testified that the Property is unique because of the configuration of the house and the Property cannot otherwise be developed as a bathroom is necessary in the common area of the house to accommodate the special needs child.
7. The Board found that Ms. Keller testified that the exceptional practical difficulty was not caused by the Applicant because, when the home was purchased, the need for this additional bathroom could not have been foreseen.
8. The Board found that Ms. Keller testified that the variance will not alter the essential character of the neighborhood as it is a small bathroom and the placement will not be seen by surrounding property owners.
9. The Board found that Ms. Keller testified that new siding will be installed on the home so the addition will look seamless.
10. The Board found that Ms. Keller testified that the addition will measure 5.5 feet by 6 feet and is the smallest modification to accommodate a bathroom.
11. The Board found that Ms. Keller testified that, due to the rise of the house, the proposed location of the addition is the only place where it could be located.
12. The Board found that one person appeared in support of and no one appeared in opposition to the Application.

13. 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 historical development. The Property was purchased in 1981 and is developed by a single-story home which has risers within the home. The home lacks a common bathroom on the northeast side of the home and the installation of such a bathroom is now necessary due to the disability of the Applicant's son who has special needs. Due to the existing layout of the dwelling, there is no other location where the bathroom could otherwise be located and the variance is needed. It is clear to the Board that the unique development of the Property and the Applicant's child's disability have created an exceptional practical difficulty for the Applicant who seeks to construct a reasonably sized bathroom on the Property.
 - b. Due to the uniqueness of the Property and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property is improved by a dwelling and the Applicant needs to add a small addition to accommodate a bathroom for her special needs child but is unable to do so without violating the Sussex County Zoning Code. The existing layout of the home makes it impossible to reasonably add the bathroom to the home while complying with the Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the Applicant to construct a small addition to accommodate a bathroom for her child. The Board is convinced that the shape and location of the addition are also reasonable.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the improvements on the Property. Rather, those improvements were constructed by a prior owner. The layout of the existing dwelling has resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty for the Applicant who seeks to construct a small addition to accommodate a bathroom for her special needs child. The unique characteristics of the dwelling 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 layout of the dwelling and the need for the additional bathroom due to her child's disability.
 - 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 variance will have no adverse effect on the character of the neighborhood. The variance will allow the Applicant to construct a reasonable addition on the Property to accommodate her special needs child. No evidence was presented which convinced the Board that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
 - e. The variance sought is the minimum variance necessary to afford relief and the variance requested represent the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to construct a reasonably sized addition to accommodate a bathroom for her special needs child. The Board is convinced that the Applicant took measures to reduce the encroachment

and otherwise minimize the size of the variance request as the addition is quite small.

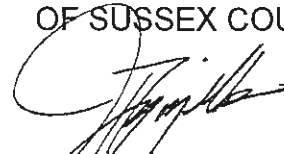
- f. The Board also notes that the granting of the variance represents a reasonable accommodation to a person with disabilities.
- g. The Board notes that additional variances from the front yard, rear yard, and side yard setback requirements for the existing dwelling and sheds are needed but those variances can be handled through the administrative variance process since a certificate of compliance was previously issued.

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. 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 19, 2019.