

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: HOWARD BEECHER & JOANNE BEECHER

(Case No. 12269)

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 and side yard setback requirements for existing structures.

Findings of Fact

The Board found that the Applicant is seeking a variance of 24.3 feet from the forty (40) feet front yard setback requirement for an existing dwelling and a variance of 30.8 feet from the forty (40) feet front yard setback requirement for an existing porch. This application pertains to certain real property located on the northeast side of Coastal Highway, (Route 1) approximately 454 feet south of Willow Creek Road (911 Address: 16383 Coastal Highway, Lewes) said property being identified as Sussex County Tax Map Parcel Number 2-35-23.00-5.00.

1. The Board was given copies of the Application, a survey of the property dated December 13, 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 Steve McNulty, who is the Applicants' realtor, was sworn in to testify about the Application. Mr. McNulty presented exhibits to the Board to review.
4. The Board found that Mr. McNulty testified that the Applicants intend to sell the Property and they recently discovered setback issues when a survey was completed.
5. The Board found that Mr. McNulty testified that the Property is located north of Lewes on the northbound side of Route 1. The original cabin was built in the 1950s and an addition was added in 1985. The addition houses the master bedroom and the house only has 2 bedrooms.
6. The Board found that Mr. McNulty testified that there are four neighboring dwellings and each dwelling is set back a similar distance from Route 1.
7. The Board found that Mr. McNulty testified that Keyboard Americana is located to the north and a bike shop is located to the south.
8. The Board found that Mr. McNulty testified that Route 1 was expanded towards to the house.
9. The Board found that Mr. McNulty testified that the Property is unique because it is a small lot of only 8,200 square feet.
10. The Board found that Mr. McNulty testified that the Property cannot otherwise be developed as this addition has existed since 1985 no further additions are planned.
11. The Board found that Mr. McNulty testified that the exceptional practical difficulty was not created by the Applicant but by DeIDOT when Route 1 was expanded.
12. The Board found that Mr. McNulty testified that the variances will not alter the essential character of the neighborhood.
13. The Board found that Mr. McNulty testified that the neighbor supports the Application.
14. The Board found that Mr. McNulty testified that the dwelling will be no closer to Route 1 and that the variances requested are the minimum variances requested to allow relief.

15. The Board found that three (3) people 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 unrebutted, 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 Property is unique due to its size and history. The Property is a small lot consisting of only 8,220 square feet and is developed by a small dwelling that was constructed in the 1950s. A small addition was later added in 1985. The Property was previously larger but a portion of the Property was taken when Route 1 was expanded. The Route 1 expansion reduced the front yard and created a unique condition. The Board also notes that a portion of the Property consists of an asphalt driveway which appears to serve a neighboring property as well. This driveway further reduces the building envelope on the Property. These 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 retain an existing dwelling and porch on the lot.
 - 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 and location of the driveway. The Applicants seek to retain an existing dwelling and porch on the lot 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 a reasonably sized existing dwelling and porch to remain on the lot. 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 Applicants.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual size of the Property and the Applicants did not cause Route 1 to be expanded. These conditions have resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. The small building envelope was further limited by the location of the driveway. 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 by 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 structures will have no effect on the character of the neighborhood. The structures have been on the Property for many years and no complaints were noted in the record about either structure. 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 dwelling or porch had somehow altered the essential character of the neighborhood, the Board would expect some evidence thereof.
 - e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulation at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to retain an existing dwelling and

porch. No additions or modifications to the existing dwelling and porch are proposed.

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. The Board Members in favor of the motion to approve 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.