

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JOHN F. BENDER & COLIN P. HOOD

(Case No. 12301)

A hearing was held after due notice on May 6, 2019. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicants are requesting a variance of 6 feet from the thirty (30) feet front yard setback requirement for a proposed covered porch, a variance of 0.9 feet from the thirty (30) feet front yard setback requirement for a proposed covered porch, a variance of 2.4 feet from the five (5) feet side yard setback requirement on the south side for an existing shed, a variance of 2 feet from the five (5) feet side yard setback requirement on the south side for an addition to a shed, a variance of 0.8 feet from the five (5) feet side yard setback requirement on the south side for an existing dwelling, a variance of 0.9 feet from the five (5) feet side yard setback requirement on the south side for an existing dwelling, a variance of 1.1 feet from the five (5) feet side yard setback requirement on the south side for an existing dwelling, a variance of 3.6 feet from the fifteen (15) feet corner front yard setback requirement along Canal Road for an existing dwelling, a variance of 3.5 feet from the fifteen (15) feet corner front yard setback requirement along Canal Road for an existing dwelling, a variance of 0.1 feet from the five (5) feet side yard setback requirement on the south side for an existing HVAC system, and a variance of 5.2 feet from the thirty (30) feet front yard setback requirement for an existing HVAC system. This application pertains to certain real property located on the west side of Bay Road at the southwest corner of Bay Road and Canal Road (911 Address: 20600 Bay Road, Rehoboth Beach) said property being identified as Sussex County Tax Map Parcel Number 3-34-19.12-52.00.

1. The Board was given copies of the Application, a survey of the property dated March 16, 2015, minutes for Case No. 8503, findings of fact for Case No. 8503, drawings of the proposed addition, 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 John Bender and Colin Hood were sworn in to give testimony about the Application.
4. The Board found that Mr. Hood testified that the house is already non-compliant having been placed on the lot in 1981 and the Applicants purchased the Property in 2003.
5. The Board found that Mr. Hood testified that the Property is unique because the property line runs diagonal to the house and the Property cannot be developed with a front porch without the variance.
6. The Board found that Mr. Hood testified that a variance was approved under Case No. 8503 in 2004 to complete the front porch but the work was not completed and the variance expired.
7. The Board found that Mr. Hood testified that the exceptional practical difficulty was not created by the Applicants as the house was in its current position when purchased by the Applicants.
8. The Board found that Mr. Hood testified that the proposed front porch will be open.
9. The Board found that Mr. Hood testified that the front yard has an odd angle.

10. The Board found that Mr. Hood testified that the variances will not alter the character of the neighborhood.
11. The Board found that Mr. Hood testified that it would be impossible to develop otherwise because there is mature vegetation in the yard and the Applicants would like the rear porch to mirror the side of the house.
12. The Board found that Mr. Hood testified that the structures present no visibility issues.
13. The Board found that Mr. Hood testified that the porch has been designed to incorporate the stairs into the porch to avoid further encroachment into the setbacks.
14. The Board found that Mr. Hood testified that the variances requested are the minimum variances requests to afford relief.
15. The Board found that Mr. Hood testified that that there is about 1 foot between the property line and the edge of paving.
16. The Board found that Mr. Hood testified that the HVAC system is to the front of the Property to the left of the proposed porch but is not shown on the survey.
17. The Board found that Mr. Bender testified that there are many other non-conforming dwellings in the neighborhood.
18. The Board found that Mr. Bender testified that the lots are randomly placed and there are odd lots in the neighborhood.
19. The Board found that Mr. Bender testified that the lot is narrow.
20. The Board found that Mr. Bender testified that the Applicants intend to keep the structures in line with the house.
21. The Board found that Mr. Bender testified that there is mature vegetation along Canal Road.
22. The Board found that Mr. Bender testified that there have been no complaints from neighbors.
23. The Board found that Walter Brittingham was sworn in to give testimony about the Application. Mr. Brittingham testified he is a long-time friend of the Applicants and supports their Application as it a reasonable request.
24. The Board found that one person appeared in support of and no one appeared in opposition to the Application.
25. After the hearing, the Board voted to leave the record open for the limited purpose of allowing the Applicants to submit the measurements and placement of the HVAC system prior to the next meeting. The Applicants submitted this information as required and the Board discussed and voted on the Application at its meeting on May 20, 2019.
26. 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.
 - a. The Property is unique as it is a small and narrow lot. The lot is only 50.02 feet wide and consists of only 7,273 square feet. The Property is also unique because it is a corner lot and has odd angles. As such, the building envelope is exceptionally limited. These unique physical conditions have created an exceptional practical difficulty for the Applicants who seek to retain and construct certain structures on the Property. The situation is also unique because the Property was developed by a prior owner with the existing house.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants seek to retain and construct certain structures 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 HVAC system, dwelling, and shed to remain on the Property and for a proposed porch and

additions to be placed on the Property. 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. There was no evidence that the Applicants created the unique size and shape of the Property. These unique conditions have created an unusually limited building envelope and have created the exceptional practical difficulty for the Applicants who seeks to retain and construct certain structures on the lot. The Board also notes that the house was placed on the lot by a prior owner.
- 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 unrebutted evidence confirms that house, shed, and HVAC system have been on the house for years. The Applicants seek to construct a porch and reasonable additions to the home and shed and that construction should result in improvements to the Property. No complaints were noted about the existing structures in the record. No evidence was presented that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- 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 and construct certain structures on the Property. The Board notes that the Applicants constructed the steps for the porch so that they project no farther than the porch itself. This unique design therefore minimizes the encroachment into the setback. The other additions will encroach no farther than existing structures to which they are constructed.

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. John Mills, Mr. John Williamson, 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 June 18, 2019.