

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: FRANK BRENNEN GARRISON

(Case No. 12315)

A hearing was held after due notice on June 3, 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 setback requirements for proposed structures.

Findings of Fact

The Board found that the Applicant is requesting a variance of 16.5 feet from the thirty (30) feet front yard setback requirement for a partial renovation and proposed addition to an existing dwelling and a variance of 19.5 feet from the thirty (30) feet front yard setback requirement for proposed steps. This property is located on the west side of Rogers Ave. approximately 230 feet southwest of Coastal Highway (Route 1) in the Ann Acres subdivision (911 Address: 20980 Rogers Avenue, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-20.13-41.00.

1. The Board was given copies of the Application, a proposed site plan dated February 24, 2019, a drawing dated February 24, 2019, a survey of the Property dated June 14, 1978, a building permit application, 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 four letters in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Frank Garrison was sworn in to give testimony. Shannon Carmean Burton, Esquire, presented the application on behalf of the Applicant and she submitted exhibits to the Board to review.
4. The Board found that Mrs. Burton stated that the Property is located in Ann Acres and was developed with the existing dwelling in the 1950s. The Applicant purchased the Property in January 2019.
5. The Board found that Mrs. Burton stated that the open porch was converted to a screened porch in 1978 but the porch had to be removed because it was structurally deficient.
6. The Board found that Mrs. Burton stated that the Applicant worked with a contractor to build the addition and a building permit was issued. Construction, however, was halted when setback violations were noted and the variance application was then submitted.
7. The Board found that Mrs. Burton stated that the Property is unique because it is a narrow, rectangular lot measuring only 50 feet by 100 feet. The minimum lot size in the MR zoning district is 10,000 square feet and the minimum lot width is 75 feet. The Property is smaller than required in that zoning district.
8. The Board found that Mrs. Burton stated that the building envelope is compact and the Property cannot be developed without the variance due to the size of the lot and the location of the dwelling.
9. The Board found that Mrs. Burton stated that the exceptional practical difficulty was not created by the Applicant as he purchased this non-conforming property this year.

10. The Board found that Mrs. Burton stated that granting the variance will not alter the essential character of the neighborhood or be detrimental to the public welfare. A letter of support from the adjacent property was submitted with the Application.
11. The Board found that Mrs. Burton stated that other variances have been granted in the neighborhood.
12. The Board found that Mrs. Burton stated that there is approximately 15 feet from the front property line to the edge of paving of Rogers Avenue.
13. The Board found that Mrs. Burton stated that the Applicant is unaware of any complaints.
14. The Board found that Mrs. Burton stated that the variances requested are the minimum variances requests necessary to afford relief.
15. The Board found that Mr. Garrison affirmed the statements made by Mrs. Burton as true and correct.
16. The Board found that Mr. Garrison testified that the contractor submitted the drawing for the building permit and that demolition started and then the issue was discovered.
17. The Board found that Mr. Garrison testified that 2 steps will project into the front yard as well and a variance is needed for the steps. He estimates the steps will project 3 feet farther than the proposed addition.
18. The Board found that three (3) parties appeared in support of and no parties appeared in opposition to the Application.
19. 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 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 feet wide and consists of only 5,000 square feet. As such, the building envelope is exceptionally limited. These unique physical conditions have created an exceptional practical difficulty for the Applicant who seeks to construct certain structures on the Property. The situation is also unique because the Property was developed in the 1950s 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 Applicant seeks to construct certain structures 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 a reasonably sized porch, addition, and steps 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 Applicant.
 - c. The exceptional practical difficulty was not created by the Applicant. There was no evidence that the Applicant 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 Applicant who seeks to construct certain structures on the lot. The Board also notes that the house was placed on the lot by a prior owner many years ago.
 - 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 and a porch have been on the Property for years. The Applicant seeks to replace the

porch and construct steps and reasonable additions to the home and that construction should result in improvements to the Property. No complaints were noted about the variance requests 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. The Board also notes that there is approximately 15 feet from the edge of paving of Rogers Avenue to the front property line so the front of the lot appears larger than it actually is.

- 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 Applicant has demonstrated that the variances sought will allow the Applicant to construct certain structures on the Property. The Applicant is significantly constrained by the location of the existing house and the uniqueness of the lot. The Applicant seeks to construct a reasonably sized addition and to replace a porch and steps. The work will result in a slightly larger structure but the Board is convinced that the Applicant has taken steps to minimize the encroachment into the front yard setback area by limiting the size and scope of the project.

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 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.