

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: BRYAN ULISHNEY & JOHN KADASH

(Case No. 12333)

A hearing was held after due notice on July 15, 2019. The Board members present were: Dr. Kevin Carson, Mr. Jeffrey Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicants are requesting the following variances: 1) a variance of 29.83 feet from the forty (40) feet front yard setback requirement from Hebron Road for a proposed dwelling; 2) a variance of 33 feet from the forty (40) feet front yard setback requirement from Hebron Road for a proposed HVAC unit; 3) a variance of 33 feet from the forty (40) feet front yard setback requirement from Hebron Road for a proposed second HVAC unit; 4) a variance of 29.75 feet from the forty (40) feet front yard setback requirement from Hebron Road for a proposed dwelling; 5) a variance of 30.92 feet from the forty (40) feet front yard setback requirement from Hebron Road for proposed steps; and 6) a variance of 19.5 feet from the thirty (30) feet front yard setback requirement from Norwood Street for a proposed dwelling. This application pertains to certain property located on the east side of Norwood Street approximately 29 feet east of Dunbar Street in the West Rehoboth subdivision and on the west side of Hebron Road (911 Address: 158 Norwood Street, Rehoboth Beach) said property being identified as Sussex County Tax Map Parcel Number 3-34-13.16-61.00.

1. The Board was given copies of the Application, a survey of the Property dated December 14, 2018, a first-floor site plan, 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 Bryan Ulishney and John Kadash were sworn in to give testimony about the Application. Ms. Taylor Trapp, Esquire, presented the Application on behalf of the Applicants.
4. The Board found that Ms. Trapp stated that the Property is unique due to the shape and size of the lot and that the Property is a through lot with two front yard setbacks making the building envelope too small to build a reasonable size home. The lot consists of less than 10,000 square feet.
5. The Board found that Ms. Trapp stated that there is a sidewalk along Hebron Road.
6. The Board found that Ms. Trapp stated that the Property cannot otherwise be developed without the requested variances as the home could not exceed 560 square feet if built within the setbacks.
7. The Board found that Ms. Trapp stated that there is less than 2,000 square feet in the triangle portion of the lot.
8. The Board found that Ms. Trapp stated that the exceptional practical difficulty was not created by the Applicants.
9. The Board found that Ms. Trapp stated that the Applicants own the property (Lot 4) adjoining the property on this Application but have no plans to join the lots or to build on the vacant lot at this time.
10. The Board found that Ms. Trapp stated that the Property's unique shape and narrowness existed prior to the Applicants' purchase of the Property.

11. The Board found that Ms. Trapp stated that the variances will not alter the existing character of the neighborhood as many of the lots are pre-existing small lots with dwellings that are built within setbacks.
12. The Board found that Ms. Trapp stated that building this home will increase the value of homes in West Rehoboth.
13. The Board found that Ms. Trapp stated that the only access will be from Norwood Street.
14. The Board found that Ms. Trapp stated that the variances are the minimum variance requests to allow the Applicants to build a reasonably sized home.
15. The Board found that Mr. Ulishney testified that the Property is serviced by public water and sewer.
16. The Board found that Mr. Ulishney testified that the proposed home will be a two-story home.
17. The Board found that Mr. Ulishney testified that there will be no curb cut onto Hebron Road as it was denied by DelDOT and the only access will be from Norwood Street. There is approximately 10 feet from the property line to the sidewalk and approximately another 5 feet to the edge of paving on Hebron Road. He believes that there will be no visibility issues having the home closer to the road.
18. The Board found that Mr. Ulishney affirmed the statements made by Ms. Trapp as true and correct.
19. The Board found that Eleanor Marchtmon, Laura Mattheu, Brenda Milbourne, Tara May, Stephanie Shelton, Gwendoline Ballen Blackburn, Barbara Baker, Angelita Jarvis, Carman Blackwell, and Michael May were sworn in to give testimony in opposition to the Application.
20. The Board found that Ms. Marchtmon testified that she lives on Dunbar Street and has lived in the neighborhood for 41 years. She argued that larger, 2-3 story homes are not in the character of the neighborhood. She believes that the Applicants' proposed dwelling will alter the character of the neighborhood.
21. The Board found that Ms. Mattheu testified that the proposed house will overshadow the home of the Applicants' neighbor (Ms. Shelton) and that she has concerns about the fencing.
22. The Board found that Ms. Shelton testified that she owns lot 2 on Norwood Street next to the Applicant's property and that granting the variances would place the proposed home too close to her home.
23. The Board found that Ms. Ballen Blackburn testified that she is a local realtor. She noted that most of the neighbors have lived in West Rehoboth their entire lives and that most of the homes in the area are mobile homes. She believes that a two-story home will overshadow neighbors and that the Applicants failed to meet the criteria for granting a variance.
24. The Board found that Ms. Milbourne testified that she is concerned about the safety of Ms. Shelton in case of fire should the variances be granted for this home to be built.
25. The Board found that Ms. May testified that she and her husband own lot 3 next to Ms. Shelton and they are building a three-story home. She argued that her lot is narrow but they were able to construct the home within the building envelope. She believes the Applicants could meet the setback requirements and she testified that there is a bike lane along Hebron Road.
26. The Board found that Ms. Blackwell testified that she lives in the neighborhood and that the Applicants should build within the building envelope. She argued that the Applicants knew what they were buying when they purchased the lot and that she is concerned for Ms. Shelton's safety if the variances are granted.
27. The Board found that Ms. Hood Baker testified that she grew up in this neighborhood and that there was a house on the lot previously. She is concerned about the size of the variances requested and that granting these variances will set a precedent for

- granting future variances. She believes that the variances will alter the character of the neighborhood and that there is room to build a decent sized house on the lot.
28. The Board found that Mr. May testified that a variance is not necessary to enable the reasonable use of the Property and the variance requests are not the minimum variances necessary to afford relief. He also shares safety concerns for Ms. Shelton and for all the bike traffic on Hebron Road.
 29. The Board found that Mr. Ulishney testified that placing the dwelling within the building envelope would mean reducing the house by 380 square feet which would make the house too small to be feasible.
 30. The Board found that Mr. Kadash testified that the Applicants are building a cottage style home and that the architect originally designed a larger home but the design was then scaled back.
 31. The Board found that no one appeared in support of and nine (9) people appeared in opposition to the Application.
 32. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered, the Board determined that the application failed to meet the standards for granting a variance. The findings below further support the Board's decision to deny the Application.
 - a. The Applicants failed to prove that the structures could not be built in strict conformity with the Sussex County Zoning Code. The Property is a vacant lot and the Applicants have failed to convince the Board that the variances are necessary to construct a house and related structures on the lot in compliance with the Code. The Applicants even acknowledge that there is a building envelope of which to build a house; albeit one which is smaller than the Applicants prefer. Rather, the Applicants seek to construct a larger house which will greatly encroach into multiple setback areas. Perhaps the building envelope is not large enough to accommodate the size home that the Applicants want but the Property can be developed with a home without the need for these large and numerous variances. For these reasons, the Board finds that the Property could be developed in strict conformity with the Code and that the variances are not necessary to enable reasonable use of the Property.
 - b. The Board finds that the Applicants are creating their own exceptional practical difficulty by proposing to construct a house and related structures which do not fit within the building envelope. The Applicants' decision to construct a house in this location is the reason for the need for a variance. The lot is a vacant lot and the building envelope appears to otherwise be able to fit a house without the need for these large and numerous variances. The Board was not convinced that the variance requests were the product of a *need*. Instead, the variance requests appear to be the product of a *want* as the Applicants seek to build the house and related structures as proposed for purposes of convenience, profit, and / or caprice. Since the Applicants can build a house, albeit a smaller house, that can comply the Sussex County Zoning Code, the need for the variance is something created by the Applicants' wants rather than an unusual physical condition relating to the Property. The Applicants have thus created their own exceptional practical difficulty. The Board also notes that the Applicants chose the design of the house and related structures.
 - c. The Applicants have failed to demonstrate that the variances will not alter the essential character of the neighborhood or be detrimental to the public welfare or permanently impair the appropriate use and development of adjacent property. The house, which is proposed to be 2 stories tall, is larger than many homes in the neighborhood. The neighborhood has many

single-story homes and a few larger homes. The Board has particular concern for the proposed dwelling's impact on adjacent lands owned by Stephanie Shelton. Ms. Shelton's lot has a narrow frontage on Norwood Street, as is shown on the survey and tax map and the significant encroachment into the front yard setback area along Norwood Street would likely affect her visibility from Norwood Street and create unnecessary congestion. The Board notes, for example, that there is no cul-de-sac at the end of Norwood Street which would otherwise provide some relief. The opposition also expressed concerns about the proximity of the proposed structures to the sidewalk and bike lane of Hebron Road. The proposed structures on that side of the Property will be very close to the sidewalk and bike lane along Hebron Road and could threaten the public welfare.

- d. Since the variances are not necessary to enable the reasonable use of the Property, the Board also finds that the variances requested are not the minimum variances necessary to afford relief. Furthermore, the Board finds that no variances are necessary to afford relief since there is space to build a reasonably sized house on the Property in compliance with the Sussex County Zoning Code.

The Board denied the variance application finding that it failed to meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was denied. The Board Members in favor of the Motion to deny were Dr. Kevin Carson, Mr. Jeffrey Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to deny the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



Ellen M. Magee
Chair

If the use is not established within two (2) years from the date below the application becomes void.

Date September 10, 2019.