

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: HILARY T. SCHENCK & CLARK B. SCHENCK**

**(Case No. 12341)**

A hearing was held after due notice on August 5, 2019. The Board members present were: Dr. Kevin Carson, Mr. Jeff 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 setback and side yard setback requirements for proposed structures.

Findings of Fact

The Board found that the Applicants are requesting a variance of 0.2 feet from the five (5) feet side yard setback requirement on the northwest side for an existing dwelling, a variance of 0.4 feet from the five (5) feet side yard setback requirement on the northwest side for an existing dwelling, a variance of 27.1 feet from the thirty (30) feet front yard setback requirement for an existing dwelling, a variance of 29 feet from the thirty (30) feet front yard setback requirement for an existing chimney, a variance of 29.1 feet from the thirty (30) feet front yard setback requirement for an existing chimney, a variance of 27.6 feet from the thirty (30) feet front yard setback requirement for an existing dwelling, and a variance of 11.9 feet from the thirty (30) feet front yard setback requirement for a proposed HVAC system. This application pertains to certain real property located on the west side of South Avenue approximately 357 feet north of Ann Avenue (911 Address: 20892 South Avenue, Rehoboth Beach) said property being identified as Sussex County Tax Map Parcel Number 3-34-20.09-197.00. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey of the property dated November 7, 2005, a drawing of the residence, 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 Hilary Schenck was sworn in to testify about the Application. Ms. Schenck submitted exhibits to the Board to review including a survey of the Property dated May 2, 2019, and drawings of the proposed addition.
4. The Board found that Ms. Schenck testified that the current dwelling is a non-conforming two-bedroom, one-bathroom home and that the proposal is for an addition of an additional bedroom and bathroom.
5. The Board found that Ms. Schenck testified that the house was built in 1959 and no improvements have made since it was purchased by the Applicants in 2005.
6. The Board found that Ms. Schenck testified that the Property is unique as it is a shallow lot with a non-conforming home built within current setback areas.
7. The Board found that Ms. Schenck testified that it cannot otherwise be developed as any expansion of the home would require a variance.
8. The Board found that Ms. Schenck testified that the exceptional practical difficulty was not created by the Applicants as the Property was purchased with the dwelling in the current location.
9. The Board found that Ms. Schenck testified that the variances will not alter the essential character of the neighborhood as it will be compatible with the cottage style homes in the area.
10. The Board found that Ms. Schenck testified that the addition will consist of 760 square feet.

11. The Board found that Ms. Schenck testified that the current dwelling has ceilings measuring 6 feet tall.
12. The Board found that Ms. Schenck testified that she has elderly parents.
13. The Board found that Ms. Schenck testified that the variances requested are the minimum variances to afford relief and allow the Applicants to “age in place”.
14. The Board found that Ms. Schenck testified that the addition will be constructed to the rear of the existing dwelling and will not be visible to neighbors.
15. The Board found that Ms. Schenck testified that the steps to the house are located to the south and east of the house. The proposed steps would be moved to the front yard and steps would remain in the side yard.
16. The Board found that Ms. Schenck testified that the steps will be no wider than the existing chimney.
17. The Board found that Ms. Schenck testified that there is no second story planned with the addition.
18. The Board found that Ms. Schenck testified that the fence will be removed.
19. The Board found that Ms. Schenck testified that there is approximately 3 feet of grass between the edge of the fence to the edge of paving of South Avenue.
20. The Board found that Ms. Schenck testified that South Avenue is a single lane road akin to a driveway.
21. The Board found that Wayne Handy was sworn in to give testimony in support of the Application.
22. The Board found that Mr. Handy testified that he is the builder who has built two other homes in the area which both received similar variances due to the non-conformity of the original dwellings.
23. The Board found that Mr. Handy testified that the house was built on slab and that the house cannot be lifted because it was not built on concrete blocks.
24. The Board found that Mr. Handy testified that the options for the Applicants are to tear down or build an addition. He estimated that it would cost approximately 3 times as much to tear down and rebuilt.
25. The Board found that Mr. Handy testified that the road is narrow.
26. The Board found that Mr. Handy testified that the addition is designed to work off the existing structure.
27. The Board found that Mr. Handy testified that variances were granted for renovations on Lots 35 and 190 and that Lot 190 is similar to this lot.
28. The Board found that two parties appeared in support of and no one appeared in opposition to the Application.
29. The Board voted to leave the record open for the limited purpose of allowing the Applicants to submit a new drawing or updated survey showing the location of the steps and other structures, such as HVAC systems, which may need a variance and that this information be provided to the Board by close of business on August 15, 2019. The Applicant subsequently submitted an updated drawing and the Board discussed and voted on the Application on August 19, 2019.
30. The Board found that no variances are needed for the proposed “steps” because the “steps” are actually concrete slabs only inches off the ground. These slabs are not considered steps.
31. 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 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 due to its shape and historical use. The Property has been historically developed by a small dwelling which is entirely constructed in the front yard setback area. The house was built in the 1950s and predates the enactment of the Sussex County Zoning Code. The

Property is also a small lot measuring only 4,984 square feet and is exceptionally shallow thereby creating a small building envelope. The Applicants seek to add an addition to the rear of the house and otherwise make improvements to the Property. These unique characteristics of this Property, however, have created a limited building envelope and have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seeks to retain existing structures on the lot and to make reasonable improvements on the lot.

- b. The unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code.
- c. 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 physical characteristics and the buildable area thereof is limited due to those characteristics. The Applicants seek to retain existing structures on the lot and to make improvements 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 these reasonably sized structures to remain on the lot and for the Applicants to make reasonable improvements to 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.
- d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. The Property was developed many years ago with the existing house by a prior owner and the Applicants seek to make a reasonable addition thereto. The lot is also exceptionally small and shallow and these conditions have resulted in a limited building envelope on the Property. These conditions have created the unnecessary hardship and exceptional practical difficulty.
- e. 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 house has been its present location since the 1950s and the additions will encroach no farther into the setback than the existing house. The Board notes that there were no complaints noted in the record about those structures. The addition will be added to the lot as part of the house but the addition will be consistent with the use of the Property. 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 structures had somehow altered the essential character of the neighborhood, the Board would expect some evidence thereof.
- f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to retain existing structures on the lot and to make improvements on the Property. The Applicants were significantly constrained by the location of the existing dwelling which was constructed prior to the enactment of the Sussex County Zoning Code and by the unusual conditions of the lot.
- g. The condition or situation of the Property and the intended use of the Property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.

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. Jeffrey Chorman, Ms. Ellen Magee, and Mr. John Williamson. Dr. Kevin Carson voted against the Motion to approve the variance application. Mr. Brent Workman did not participate in the discussion or vote on this 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 October 22, 2019