

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DONALD HALL

(Case No. 12343)

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 and corner front yard setback requirements for proposed structures and for the approval of the replacement of a non-conforming manufactured home.

Findings of Fact

The Board found that the Applicant is requesting a variance of 3.25 feet from the thirty (30) feet front yard setback requirement from Johnston Street for the existing manufactured home and a variance of 9.83 feet from the thirty (30) feet front yard setback requirement from Johnston Street for existing steps. The Applicant is also requesting approval for the replacement of a non-conforming manufactured home in the C-1 Zoning District, as required by Section 115-196 of the Sussex County Zoning Code. This application pertains to certain real property located on the southwest corner of Central Avenue and Johnston Street (911 Address: 37386 Central Avenue, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-13.20-29.00. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, rehabilitation specifications, pictures of the Property and neighborhood, an Impacted Communities Study, an email from Brad Whaley, a drawing of the Property, 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 the Application and one letter in opposition to the Application.
3. The Board found that Brad Whaley was sworn in to give testimony about the Application.
4. The Board found that Mr. Whaley testified that his department works closely with HUD to assist the family who resides at this property. The department assists with rehabilitation of the homes but has a limited budget from HUD. Replacement of manufactured homes is permissible under HUD according to Mr. Whaley.
5. The Board found that Mr. Whaley testified that the prior home had fallen into great disrepair and could not be renovated and needed to be replaced. The home has been demolished and removed.
6. The Board found that Mr. Whaley testified that the new manufactured home was placed in the same general footprint of the old dwelling; though the new manufactured home is larger than the old dwelling. According to Mr. Whaley, the new manufactured home is the smallest manufactured home available.
7. The Board found that Mr. Whaley testified that the new home encroaches into the front yard setback.
8. The Board found that Mr. Whaley testified that the Property is unique as the subdivision is over 80 years old and the lots are small.
9. The Board found that Mr. Whaley testified that the Property could not be otherwise be developed as the lot is small and is also a corner lot.

10. The Board found that Mr. Whaley testified that the exceptional practical difficulty was not created by the Applicant as the original dwelling was unable to be renovated and had to be replaced.
11. The Board found that Mr. Whaley testified that the original manufactured home measured 12 feet by 56 feet and the new home measures 14 feet by 70 feet.
12. The Board found that Mr. Whaley testified that the home will not alter the essential character of the neighborhood as there are other manufactured homes in the area and this dwelling will be in better condition than the previous home on the Property. He noted that 31% of the homes in the neighborhood are manufactured homes.
13. The Board found that Mr. Whaley testified that the neighboring homes measure 14 feet by 70 feet.
14. The Board found that Mr. Whaley testified that the prior home was on the Property for many years.
15. The Board found that Mr. Whaley testified that the new manufactured home is a 1997 model and is in good shape.
16. The Board found that Mr. Whaley testified that the house will be 26.9 feet from the edge of pavement.
17. The Board found that Mr. Whaley testified that the variances requested are the minimum variances to place a manufactured home of this size on this property.
18. The Board found that Eleanor Marchtmon, Barbara Baker, and Carman Blackwell were sworn in to give testimony in support of the Application.
19. The Board found that Ms. Marchtmon testified that she was the recipient of the other manufactured home as her home had black mold. She lives in the neighborhood.
20. The Board found that Ms. Marchtmon testified that she is afraid because others are coming into the neighborhood and building houses.
21. The Board found that Ms. Marchtmon testified that the Applicant's home was in terrible condition until Mr. Whaley stepped in.
22. The Board found that Ms. Marchtmon testified that she had a manufactured home measuring 14 feet by 70 feet.
23. The Board found that Ms. Marchtmon testified that her lot is larger as it measures 100 feet by 75 feet. She did not have setback issues and no variance was needed for her home.
24. The Board found that Ms. Baker testified that manufactured homes have always been in the area and that West Rehoboth was historically a residential area but businesses have moved in the area.
25. The Board found that Ms. Baker testified that she believes the manufactured home should remain and that the Applicant needs a home.
26. The Board found that Ms. Baker testified that there are several manufactured homes nearby and that the manufactured home will not change the neighborhood.
27. The Board found that Ms. Baker testified that the community has historically been used for manufactured homes and used to be a manufactured home park.
28. The Board found that Ms. Blackwell, who lives in the neighborhood, testified that she supports the Application and asked the Board to grant the variance for the Applicant.
29. The Board found that Ms. Blackwell testified that the community was a manufactured home park when she grew up.
30. The Board found that Ms. Blackwell testified that there is no yard and that the variance is needed.
31. The Board found that Richard Abbott, Esquire, appeared on behalf of a group of concerned property owners and tenants of West Rehoboth opposing the Application. Mr. Abbott submitted a letter of opposition, a handout, and a list of 15 commercial properties that in close proximity to the subject property. Mr. Abbott's statements were not verified under oath by his clients.
32. The Board found that Mr. Abbott stated that the Property is in a commercial district and is located across the street from Revelation Brewing. He argued that the C-1

- zoning does not allow manufactured homes as a matter of right and the Sussex County Code designates this area as a commercial area
33. The Board found that Mr. Abbott argued that the lot was not always used as a manufactured home lot and, therefore, is not a permissible use.
 34. The Board found that Mr. Abbott stated that, if the use is not a valid non-conforming use, this is not a permissible use and that, under the Delaware Code, the Board cannot grant a variance regarding use of land.
 35. The Board found that Mr. Abbott stated that the parcel is not unique and that the Property could be developed with a stick-built home within the building footprint. He also argued that the Property can otherwise be developed and that the exceptional practical difficulty was created by the Applicant.
 36. The Board found that Mr. Abbott stated that the variance alters the character of the neighborhood.
 37. The Board found that Mr. Abbott stated that, based on these reasons, the Board should deny the variance.
 38. The Board found that Mr. Abbott stated that a stick-built home would be okay and the issue is whether a manufactured home can be placed on the lot.
 39. The Board found that Mr. Whaley testified that this was a residential area although it was zoned commercial prior to the brewery and other businesses setting up in the area.
 40. The Board found that Mr. Whaley testified that he does not know when the prior manufactured home was placed on the lot.
 41. The Board found that Mr. Whaley testified that the current family has been on the Property for 12 years but the home has been on the lot longer.
 42. The Board found that Ms. Marchtmon testified that she moved to the West Rehoboth area in 1968 and that Mr. Hall's property was developed with a manufactured home at that time. She also testified that manufactured homes have been in West Rehoboth since that time and there was a mix of the type of manufactured homes in the neighborhood.
 43. The Board found that Ms. Marchtmon testified that she has been in her manufactured home for 17 years and that the manufactured home recently removed from the Property was on the Applicant's lot when her manufactured home was placed.
 44. The Board found that four parties appeared in support of and one party appeared in opposition to the Application.
 45. The Board voted to table the case until August 19, 2019, to allow for staff and legal counsel to do some further research regarding the history of the use of this property. On August 19, 2019, the Board discussed the Application with staff and voted on the Application. Staff presented evidence that a trailer permit was issued in 1972 and that the Property was zoned General Residential at that time. A manufactured home is a permitted use in the General Residential zone.
 46. 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 met the standards for granting a variance. The findings below further support the Board's decision to approve the Application.
 - a. Based on the property records, it is clear that the Property was previously zoned GR and was improved and permitted with a manufactured home. Testimony from a neighbor, which the Board finds credible and persuasive, also indicates that the Property has been improved with a manufactured home since at least 1968. The Applicant seeks approval to place a newer manufactured home on the lot in largely the same footprint as the previous home the lot. This replacement constitutes a replacement of a non-conforming home pursuant to §115-196 and is approved. The Board also finds that the replacement of the manufactured home was located on the lot

in such a way that, to the greatest extent possible, conforms with all appropriate yard requirements.

- b. The Property is unique due to its size, shape, and historical use. The Property has been historically developed by a small manufactured home in the West Rehoboth community. The testimony from neighbors, which the Board finds credible and persuasive, indicates that the Property has been improved by a manufactured home since at least 1968 – which predates the enactment of the Sussex County Zoning Code. The lot has unique characteristics as the lot is only 50 feet deep and consists of only 5,000 square feet. The Property is also unique because it is a corner lot. As such, the building envelope is exceptionally limited. These unique physical conditions have created an exceptional practical difficulty for the Applicant who replaced a manufactured home with a new home. While the new home is slightly larger than the prior manufactured home, the new home is only 14 feet wide. The Board finds credible the testimony presented by the Applicant that the Applicant could not find a smaller home. Since the Property is a shallow lot, a reasonably sized replacement manufactured home with steps could not be located thereon without a variance. The unique characteristics of this Property have created a limited building envelope and have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to retain an existing manufactured home and steps on the lot.
- c. The unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code. As noted above, the unnecessary hardship and exceptional practical difficulty are being created by the lot's unique conditions.
- d. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has unique physical characteristics and the buildable area thereof is limited due to those characteristics. The Applicant seeks to retain existing structures on the lot 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 these reasonably sized structures 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 exhibits provided by the Applicant. The Board notes that the manufactured home is a narrow singlewide home and the shallow depth of the lot makes it impossible to otherwise place these structures on the lot in compliance with the Code.
- e. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. The Property was developed many years ago with a manufactured home and that home needed to be replaced. The lot is 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.
- f. 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 Property has been developed with a manufactured home for many years and the community has been historically used for manufactured homes. The previous manufactured home had fallen into disrepair and needed to be replaced and it is clear that the new manufactured home is an improvement to the Property. Opposition raised

concerns about the variance requests and noted that nearby properties are used commercially. It is clear to the Board, however, that the community has a mixed-use characteristic with homes and businesses and that many of these businesses came into the neighborhood after the Property was developed with a manufactured home. Many of the homes in West Rehoboth are manufactured homes and this use is consistent with the historical character of the neighborhood and the historical use of the Property. The home is similar in size to other manufactured homes in the neighborhood as well. The Board also notes that the home will be located in a similar location as the prior manufactured home. The Board was not convinced that the variances would somehow alter the essential character of the neighborhood or substantially or permanently impair the appropriate use or development of adjacent property or be detrimental to the public welfare.

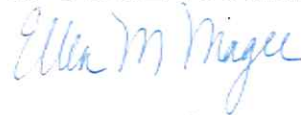
- g. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain existing structures on the lot. The Applicant was significantly constrained by the size and shape of the lot and it is quite clear that, due to unique conditions of the lot, the Applicant was unable to replace the manufactured home without encroaching into the setback area. The Board notes that the home is only 14 feet wide and the Applicant looked for narrower homes to no avail.
- h. 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 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 Dr. Kevin Carson, Mr. Jeffrey Chorman, Ms. Ellen Magee, and Mr. John Williamson. No Board Member voted against the motion to approve the variance application. Mr. Brent Workman did not participate in the vote on this application.

BOARD OF ADJUSTMENT
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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

- 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 elevate the dwelling, either through renovation or rebuild, to avoid flooding problems. The dwelling will encroach no farther into the setback areas as the existing dwelling encroaches. The Board also finds that the Applicants could not move the home to the rear yard due to the flooding problems on the lot.
- g. The Board notes that the Application was for variances for the proposed dwelling. If additional variances are needed for steps, the Applicant will be required to file a new application for those variances.
- h. 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.

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