

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: EARL DOWNING & IRIS DOWNING

(Case No. 12352)

A hearing was held after due notice on August 19, 2019. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, and Mr. John Williamson.

Nature of the Proceedings

This is an application for a variance from the rear yard setback requirement for proposed steps.

Findings of Fact

The Board found that the Applicants are requesting a variance of 9.2 feet from the twenty (20) feet rear yard setback requirement for a staircase and landing to serve the approved transitional home. This application pertains to certain real property located on the south side of Wild Cherry Street approximately 141 feet west of South Old State Road (911 Address: 18366 Wild Cherry Street, Ellendale); said property being identified as Sussex County Tax Map Parcel Number 2-30-26.20-18.00. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a proposed floor plan, a record plan of the Property dated January 22, 2019, a revised record plan dated July 31, 2019, 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 Iris Downing and John Roach were sworn in to give testimony about the Application.
4. The Board found that Mr. Roach testified that the Applicants received a conditional use permit to operate transitional housing in a dwelling that was previously a daycare center.
5. The Board found that Mr. Roach testified that most of the agency approvals have been received but the Applicants are required to have an additional means of egress is part of the Americans with Disabilities Act requirements for this home.
6. The Board found that Mr. Roach testified that the situation is unique because the existing home already encroaches into the rear setback.
7. The Board found that Mr. Roach testified that this is the only placement for the steps to retain ten bedrooms.
8. The Board found that Mr. Roach testified that this is an existing condition and was not created by the Applicants.
9. The Board found that Mr. Roach testified that granting the variance will not alter the essential character of the neighborhood.
10. The Board found that Mr. Roach testified that this is the minimum variance to allow for the steps as an additional means of egress from the dwelling.
11. The Board found that Mr. Roach testified that the stairs are a safety feature.
12. The Board found that no one appeared in support of or in opposition to the Application.
13. 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 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 a small, shallow lot with a limited building envelope. The Property is less than 100 feet deep as is clearly shown on the survey. The Property was also developed by a dwelling which the Applicants are converting to a transitional home. In order to meet certain agency and governmental requirements, the Applicants must build additional steps to the rear of the home. Due to the location of the home and the shallow depth of the lot, however, the Applicants are greatly limited in where these steps can be located. These unique conditions limit the buildable area available to the Applicants and have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek to construct a set of steps 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 and situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a limited buildable area due to its size and shape and the location of the dwelling on the lot. The Applicants seek to construct a set of steps but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow reasonably sized set of steps to be constructed on the Property. The Board is convinced that the shape and location of the steps are also reasonable, which is confirmed when reviewing the survey provided by the Applicants. The Board also notes that the steps are needed in order to provide safe egress to and from the house.
- d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. The Applicants did not create the size and shape of the lot. The Board is convinced that the unnecessary hardship and exceptional practical difficulty were not created by the Applicants but was created by the lot's unique conditions. The Board also notes that the lot is small and shallow so the building envelope is limited. The Applicants also did not create the agency and governmental requirements for the additional steps.
- e. The variance 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 steps will have no effect on the character of the neighborhood. The steps will be located to the rear of the Property and rear of the property is adjacent to farmland. No neighbors have appeared in opposition to the Application and there was no evidence which convinced the Board that the location of the steps in the rear yard setback area would be detrimental to the public welfare or that the variance would somehow alter the essential character of the neighborhood.
- f. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicants have demonstrated that the variance sought will allow the Applicants to construct a set of steps on the Property. The steps are reasonably sized and will afford the Applicants with functional access to the home.
- 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.

h. The Board also finds that the approval of this variance request is a reasonable accommodation.

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 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.