

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: CAROLE E. RICKERT

(Case No. 12356)

A hearing was held after due notice on September 9, 2019. The Board members present were: 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 side yard setback, rear yard setback, and separation distance requirements for proposed structures.

Findings of Fact

The Board found that the Applicant is requesting a variance of 7.1 feet from the ten (10) feet rear yard setback requirement for the proposed dwelling; a variance of 6.5 feet from the twenty (20) feet separation distance requirement from Lot 86 for proposed deck, steps, and ramp; a variance of 3.5 feet from the twenty (20) feet separation distance requirement from Lot 82 for the proposed dwelling; and a variance of 3.5 feet from the twenty (20) feet separation distance requirement from Lot 86 for the proposed dwelling. The Property is located on the northwest side of Center Avenue approximately 702 feet south of Skyview Street within Sea Air Village (911 Address: 19976 Center Avenue, Rehoboth Beach) said property being identified as Sussex County Tax Map Parcel Number: 3-34-13.00-310.00-3128. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey of the Property dated July 9, 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 Carole Rickert and Gil Fleming were sworn in to testify about the Application.
4. The Board found that Mr. Fleming testified that the Applicant is replacing a manufactured home located in Sea Air Village.
5. The Board found that Mr. Fleming testified that the existing home is a 1970 model and is not energy efficient.
6. The Board found that Mr. Fleming testified that this property is unique because it is a shallow and narrow lot.
7. The Board found that Mr. Fleming testified that the proposed dwelling will not encroach into the rear to the extent that the current dwelling encroaches.
8. The Board found that Mr. Fleming testified that lot is less than 40 feet wide.
9. The Board found that Mr. Fleming testified that the shed will be removed.
10. The Board found that Mr. Fleming testified that the exceptional practical difficulty was not caused by the Applicant but by the size of the lot and the fact that the neighboring dwellings have encroachments into setbacks.
11. The Board found that Mr. Fleming testified that the variances will not alter the essential character of the neighborhood but improve it as the current dwelling will be replaced with a newer, more energy efficient home.
12. The Board found that Mr. Fleming testified that the variances requested are the minimum variances to allow a new home on the Property.
13. The Board found that no one appeared in support of or in opposition to the Application.

14. 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 is narrow lot measuring only 39.87 feet wide. The Property is also unique because it is located in a manufactured home park and is constrained by separation distance requirements which limit the placement of structures on the lot based upon the location of structures on neighboring properties. In this case, the dwelling on the adjacent Lot 86 is exceptionally close to the shared property line. The effect of the placement of these structures combined with the already narrow shape of the lot have led to an exceptionally small building envelope. These conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to place a new dwelling with related structures on the Property but cannot do so in compliance with the Sussex County Zoning Code. The situation is unique because neighboring homes have been placed on other lots and the Applicant has no control over the placement of those homes and structures.
 - 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 Property and the placement of the manufactured home on a neighboring lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant proposes to place a new dwelling with related structures but is unable to do so without violating the separation distance requirements between structures in a mobile home park requirement. The variances are thus necessary to enable reasonable use of the Property. The Board is convinced that the shape and location of the structures are also reasonable (which is confirmed when reviewing the survey).
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. The Applicant did not create the size of the lot or place the houses on the neighboring properties thereby restricting the building envelope on the Property. This building envelope is further limited due to the narrowness the lot. The unique conditions of the Property and the development of the adjacent lot have created an exceptional practical difficulty and unnecessary hardship for the Applicant who seeks to place a new dwelling with related structures.
 - 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 not have a negative impact on the neighborhood. The structures will replace an older manufactured home and should be an improvement to the lot. The prior home has been on the lot some time in a similar location as the proposed house and structures yet no complaints were noted in the record about its location. No evidence was presented which would indicate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
 - 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 Applicant has demonstrated that the variances sought will allow the Applicant to place a new dwelling with related structures. The dwelling is similar in size to the prior home and is farther

from the rear property line than the existing home. As part of this project, the Applicant will also be removing an existing shed which encroaches into the rear yard setback area thereby minimizing the encroachment.

- 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 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. Jeffrey Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Dr. Kevin Carson 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 November 19, 2019.