

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: RICHARD BYRD

(Case No. 12400)

A hearing was held after due notice on January 6, 2020. 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, side yard setback and rear yard setback requirements for a proposed structure and existing structures.

Findings of Fact

The Board found that the Applicant is requesting a variance of 8.8 feet from the thirty (30) feet front yard setback requirement for steps; a variance of 11.8 feet from the thirty (30) feet front yard setback requirement for a covered porch; a variance of 2.5 feet from the ten (10) feet side yard setback requirement on the west side for steps; a variance of 3.4 feet from the five (5) feet rear yard setback requirement for a shed; and a variance of 0.1 feet from the five (5) feet side yard setback requirement on the west side for a shed. This application pertains to certain real property located on the south side of 8th Street approximately 167 feet east of Bald Eagle Road (911 Address: 37348 8th Street, Rehoboth Beach) said property being identified as Sussex County Tax Map Parcel Number 3-34-19.16-98.00. 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 August 20, 2019, drawings of the structure, 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 Richard Byrd was sworn in to give testimony about the Application.
4. The Board found that Mr. Byrd testified that he is a builder and recently purchased the house in September 2019. Prior to his purchase, the house was previously vacant for 7 years and, according to Mr. Byrd, the house now needs rehabilitation.
5. The Board found that Mr. Byrd testified that the existing porch is not code compliant and needed to be removed.
6. The Board found that Mr. Byrd testified that he requests the variance to allow him to restore the porch. He noted that the prior porch had no cover and he proposes to install a screen to keep insects away. There will be also be 4 steps projecting off the side of the porch.
7. The Board found that Mr. Byrd testified that he realized he needed the variances before construction.
8. The Board found that Mr. Byrd testified that the shed has been removed but he would like to place a shed on the existing pad.
9. The Board found that Mr. Byrd testified that the Property is unique and cannot otherwise be developed/
10. The Board found that Mr. Byrd testified that the lot is narrow and small.
11. The Board found that Mr. Byrd testified that the proposed work will improve the aesthetics of the area and the variances will not alter the essential character of the neighborhood but will improve the existing dwelling and surrounding area.
12. The Board found that Mr. Byrd testified that the variances requested are the minimum variances necessary to afford relief.

13. The Board found that Mr. Byrd testified that the porch will be on the same footprint as the existing porch.
14. The Board found that Mr. Byrd testified that there is approximately 8-12 feet from the edge of paving of the street to the front property line.
15. The Board found that Mr. Byrd testified that neighbors do not object to the request and he has received no complaints.
16. The Board found that no one appeared in support of or in opposition to the Application.
17. 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 due to the size and shape. The Property is only 50 feet wide and consists of only 5,000 square feet. The Property also has a unique historical development as it was developed by a house and related structures prior to the enactment of the Sussex County Code. The house was vacant for several years and the current owner only recently acquired the Property. The Applicant seeks to renovate the existing porch and to otherwise improve the home but is unable to do so without a variance. These unique conditions have created a limited building envelope and, as such, the unnecessary hardship and exceptional practical difficulty were not created by the Applicant.
 - b. The unnecessary hardship and exceptional practical difficulty related to the structures 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 unique physical characteristics and the buildable area thereof is limited due to those characteristics. The Applicant seeks to retain existing structures and to reasonably improve the Property 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 the Applicant to rehabilitate the Property with a new porch, steps, and shed while retaining existing structures on the lot. The Board is convinced that the shape and location of these structures are also reasonable.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. The Property has a limited envelope due to its size, shape, and historical development. The Board notes that the prior porch needed to be replaced. 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 Property has been developed in this fashion for many years and the improvements proposed by the Applicant are similar to its historical use and will be in similar locations as prior structures. Notably, no complaints were noted in the record about the Property and the Application. The Board also heard no evidence that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board also notes that there is a gap between the edge of paving of the adjacent road and the property line so the front yard

encroachments are likely not as noticeable as it would otherwise be if the property line was closer to the roadbed.

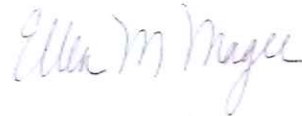
- f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain the existing structures and to make the proposed reasonable improvements to the Property on similar footprints.
- 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 Dr. Kevin Carson, 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.

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 March 3, 2020.