

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: RICHARD JOHNSON & JOYCE FLANAGAN

(Case No. 12442)

A hearing was held after due notice on July 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 requirement for proposed structures.

Findings of Fact

The Board found that the Applicants are seeking a variance of 6.33 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling and a variance of 7.8 feet from the thirty (30) feet front yard setback requirement for proposed steps. This application pertains to certain real property located on the southeast side of Rogers Avenue within the Ann Acres subdivision (911 Address: 21001 Rogers Avenue, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-20.13-56.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, an aerial photograph of the Property, a survey of the Property dated June 10, 2020, 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 Bryan Elliott and Richard Johnson were sworn in to give testimony about the Application.
4. The Board found that Mr. Elliott testified that the Property is unique as it is both narrow and shallow.
5. The Board found that Mr. Elliott testified that the lot consists of only 5,000 square feet.
6. The Board found that Mr. Elliott testified that there are steps and mechanicals in the rear of the home and the backyard will allow for access to and maintenance of the HVAC system.
7. The Board found that Mr. Elliott testified that the Property cannot otherwise be developed and that the variances are necessary to enable the reasonable use of the Property.
8. The Board found that Mr. Elliott testified that the difficulty has not been created by the Applicants as the existing home has a greater encroachment into the setback area.
9. The Board found that Mr. Elliott testified that granting the variances will not alter the essential character of the neighborhood but enhance it with a newer dwelling.
10. The Board found that Mr. Elliott testified that this is one of the smallest model homes available as most are at least 10 feet wider.
11. The Board found that Mr. Elliott testified that these are the minimum variances to afford relief and to allow reasonable use of the Property.
12. The Board found that Mr. Elliott testified that the pad to the side of the house will be at grade level.
13. The Board found that Mr. Elliott testified that the house will be 2 stories tall and will be 23.67 feet from the front property line.

14. The Board found that Mr. Elliott testified that there is approximately 5 feet from the edge of paving and the front property line and that other homes in the neighborhood are closer to the road.
15. The Board found that Mr. Elliott testified that the Applicants did not create the lot.
16. The Board found that Mr. Elliott testified that the lot is narrow for the area.
17. The Board found that Mr. Johnson testified that there is approximately 15 feet between the house and the rear property line.
18. The Board found that Mr. Johnson testified he purchased the Property five years ago.
19. The Board found that Mr. Johnson testified the original house was built in the 1960s and the original intent was to renovate the existing dwelling but it was not economically feasible.
20. The Board found that one person appeared in support of and no one appeared in opposition to the Application.
21. 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 of the lot. The lot is only 50 feet wide and consists of only 5,000 square feet. These conditions have created a limited building envelope. The Property was developed by a house in the 1960s and the prior house was closer to the front yard property line. That house needs to be replaced and the proposed dwelling will decrease the degree of non-conformity. The unique conditions of the lot have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek to construct a new dwelling and 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 Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants seek to to construct a new dwelling and steps on the lot but are unable to do so while complying with the Sussex County Zoning Code. The Board is thus convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the Applicants to construct a reasonably sized dwelling and steps on the lot. The Board is convinced that the size, shape, and location of the dwelling and steps are reasonable.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. As discussed above, the Property has unique conditions which have limited the Applicants' ability to reasonably develop the Property and those conditions predated the Applicants' acquisition of the lot. The Applicants did not create the unique conditions of the lot or construct the original house. The Board was convinced that the Applicants have not created the exceptional practical difficulty and unnecessary hardship. Furthermore, the Board is convinced that the Applicants did not come to the Property with an illegal use in mind. Rather, the Applicants are limited by the physical conditions of the Property and the Applicants need the variances in order to construct a new dwelling and steps.
 - 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 variances will have no effect on the character of the neighborhood. The variances will allow the Applicants to replace an older dwelling with a newer home which should enhance the neighborhood.

There were no complaints about the proposed location of the dwelling. The Board finds that no evidence was presented which demonstrate that the variances 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 of approximately 5 feet from the front property line and the edge of paving so the Property appears larger than it actually is.

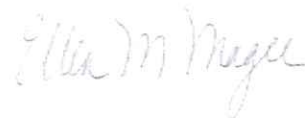
- f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to construct a new dwelling and steps on the Property. The model home is smaller than other model homes offered by the builder.
- 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 were Dr. Kevin Carson, Mr. Jeffrey Chorman, Ms. Ellen Magee, Mr. Brent Workman, and Mr. John Williamson. No Board Member voted against the motion to approve 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 August 17, 2020.