

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: WILLIAM CHIPMAN & KIMBERLE CHIPMAN

(Case No. 12469)

A hearing was held after due notice on September 14, 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 and side yard setback requirements for proposed structures.

Findings of Fact

The Board found that the Applicants are requesting a variance of 9.7 feet from the thirty (30) feet front yard setback requirement for a proposed covered porch and a variance of 0.8 feet from the ten (10) feet side yard setback requirement on the west side for a proposed dwelling. This application pertains to certain real property that is located on the south side of Carla Avenue within the Seabreeze subdivision (911 Address: 306 Carla Avenue, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-20.13-220.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, drawings of the proposed structures, letters from the Board of Adjustment, property record information, a letter from the Seabreeze Property Owners Association, the application for Case No. 10588 with materials, the findings of fact for Case No. 10588, restrictive covenants for the community, a survey of the property dated July 2, 2020, 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 four letters in support of and no correspondence in opposition to the Application.
3. The Board found that William Chipman was sworn in to give testimony about the Application.
4. The Board found that Mr. Chipman testified that he and his wife purchased the home in 2005 and that it will become the full-time residence so improvements are necessary.
5. The Board found that Mr. Chipman testified that the Property is unique as it is subject to historical community set-back lines which pre-date the County Code as the community was created in the 1950s.
6. The Board found that Mr. Chipman testified that several homes in the neighborhood were constructed to the historical setback lines.
7. The Board found that Mr. Chipman testified that the proposed structures will use the same foundation and footprint as the existing house.
8. The Board found that Mr. Chipman testified that the property previously received a variance for the porch.
9. The Board found that Mr. Chipman testified that the plans have the existing renovated porch connect to a side porch and that, in order to allow for the connection of the two porches, the existing variance needs to be extended.
10. The Board found that Mr. Chipman testified that their immediate neighbors support the request.
11. The Board found that Mr. Chipman testified that, without the variance for the extended porch, the front and side porches will not connect and would not allow the homeowner reasonable use of the home in a safe manner.

12. The Board found that Mr. Chipman testified that the plans were drawn by an architect based on the communities lesser setbacks and were not created by the Applicants.
13. The Board found that Mr. Chipman testified that the Applicants did not create the differences between the historical setback lines and the County setback requirements.
14. The Board found that Mr. Chipman testified that the variances are needed for use and enjoyment of the porches.
15. The Board found that Mr. Chipman testified that the variances will not alter the essential character of the neighborhood but improve it.
16. The Board found that Mr. Chipman testified that neighbors have submitted letters of support.
17. The Board found that Mr. Chipman testified that the variances requested are the minimum variance requests necessary to afford relief.
18. The Board found that Mr. Chipman testified that other houses in the neighborhood are outside the building envelope with most houses being 20-25 feet from the property line.
19. The Board found that Mr. Chipman testified that there is approximately 10-12 feet from the edge of paving to the front property line and that the house will be 30 feet from the edge of paving.
20. The Board found that no one appeared in support of or 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 its historical development. The Property was previously developed with a house and porch. The house pre-dated the Sussex County Zoning Code and the porch was constructed after obtaining a variance from the Board. The Property is located in a community which predates the enactment of the Sussex County Zoning Code and has different setback requirements. The Applicants now seek to renovate the home on the same footprint as the existing home. They intend to use the same foundation. These conditions are unique and have created an exceptional practical difficulty and unnecessary hardship for the Applicants who seek to construct a new dwelling and porch on the Property.
 - 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, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has unique historical conditions which limit the developable options for the home. The Applicants seek to construct a dwelling and porch on an existing foundation on the Property but are 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 Applicants to construct these structures on the site. The Board is convinced that the shape and location of these structures are also reasonable, which is confirmed when reviewing the survey provided by the Applicant.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. The Applicants did not create the unusual conditions of the Property. These conditions have resulted in a limited development options for the Applicants and have created the exceptional practical difficulty and unnecessary hardship. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the unnecessary hardship and exceptional practical difficulty were not

created by the Applicants but were created by the lot's unique characteristics.

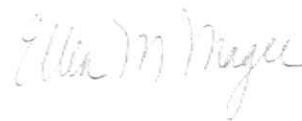
- e. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the structures will have no effect on the character of the neighborhood. Similar structures have been on the Property for many years and no objections were noted in the record. Rather, the Board has received evidence of support for the proposal. There was no evidence as to why the variances for these structures would alter the alter the essential character of the neighborhood. Furthermore, there is a gap between the edge of paving of Carla Avenue and the front property line so the front yard encroachment will not be as noticeable. The side yard encroachment is also de minimis.
- 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 them to construct a new house and porch on the existing foundation and to connect the front and side porches. The Applicants are limited by the Property's unique conditions but the location of these structures minimizes the need to further encroach into the setback areas.
- 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 November 2, 2020