

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: KEVIN O'REILLY & PATRICIA O'REILLY

(Case No. 12509)

A hearing was held after due notice on December 21, 2020. 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 variances from the front yard and rear yard setback requirements for proposed and existing structures.

Findings of Fact

The Board found that the Applicants are requesting a variance of 9 feet from the thirty (30) feet front yard setback requirement for a proposed addition, a variance of 11 feet from the thirty (30) feet front yard setback requirement for a proposed addition, and a variance of 11 feet from the thirty (30) feet front yard setback requirement for a proposed set of steps. This application pertains to certain real property located on the west side of Hassell Avenue Extension within the Bay View Park Subdivision (911 Address: 34967 Hassell Avenue Ext., Bethany Beach) said property being identified as Sussex County Tax Map Parcel Number 1-34-20.11-22.00. 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 addition, a survey dated April 12, 2017, showing the Property and adjacent lands, a survey of the Property dated April 12, 2017, with drawings of the proposed addition and steps, an email from the Applicant, photographs, 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 Kevin O'Reilly and Patricia O'Reilly were sworn in to give testimony about the Application.
4. The Board found that Mr. O'Reilly testified that the Property is unique and measures 50 feet by 100 feet. He believes that the Property is narrow and the only area for an addition is the front yard.
5. The Board found that Mr. O'Reilly testified that the house is a three bedroom home with one bathroom and limited closet space and that an addition would allow for a master bathroom and more closet space.
6. The Board found that Mr. O'Reilly testified that the house was built in 1984 as a small summer vacation home but the Applicants will be spending more time here throughout the year and need additional space.
7. The Board found that Mr. O'Reilly testified that the essential character of the neighborhood will not change and the proposed addition will not impact the development of the adjacent properties.
8. The Board found that Mr. O'Reilly testified that there are only four homes on the west side of Hassell Avenue Ext. and only one home on the east side.
9. The Board found that Mr. O'Reilly testified that many of the homes in the neighborhood do not meet the 30 foot front yard setback requirement.
10. The Board found that Mr. O'Reilly testified that the new porch and addition gives the house additional curb appeal and the roof line of the addition will match the roof

- line of the existing house. He noted that the front of the house will match up with the front of the house to the south.
11. The Board found that Mr. O'Reilly testified that the variances are the minimum variances that provide additional space for the master bath and closet space.
 12. The Board found that Mr. O'Reilly testified that the Property is located towards the end of Bayview Park and the end of Hassell Avenue.
 13. The Board found that Mr. O'Reilly testified that there are many curves and turns before Hassell Avenue turns into Hassell Avenue Extended and that some houses along Hassell Avenue have less than 30 feet front yard setbacks. He noted that the curve of the road gives the appearance that the house with addition matches the house on the adjacent property even though they are set back differently from the road.
 14. The Board found that Mr. O'Reilly testified that, when turning onto Hassell Avenue Extended from Hassell Avenue, the sight line to the addition does not appear to stick out towards the road.
 15. The Board found that Mr. O'Reilly testified that the addition will not alter the essential character of the neighborhood.
 16. The Board found that Mr. O'Reilly testified that the Applicants have spoken with neighbors and received positive feedback for the addition.
 17. The Board found that Mr. O'Reilly testified that steps do not currently exist and would be new construction.
 18. The Board found that Mr. O'Reilly testified that there is a well in the front yard but it will not be impacted by the addition.
 19. The Board found that Mr. O'Reilly testified that the Applicants will be able to park a car under the addition.
 20. The Board found that Ms. O'Reilly testified that the Applicants can park 7 cars on the site.
 21. The Board found that Mr. O'Reilly testified that they had flooding problems after Hurricane Sandy and the bulkhead is the property line.
 22. The Board found that Mr. O'Reilly testified that granting the variance will not create visibility issue for traffic on Hassell Avenue Ext.
 23. The Board found that no one appeared in support of or opposition to the Application.
 24. The Board left the record open until January 4, 2021, for the limited purpose of allowing the Applicants to submit the original survey so that Planning & Zoning staff could calculate the size variances needed. The Applicants submitted the survey and the Board discussed and voted on the Application on January 4, 2021.
 25. 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 small and narrow lot measuring 50 feet wide and consisting of only 4,979 square feet. The lot is also subject to flooding in the rear yard due to its proximity to a lagoon. The Board also notes that the Applicants are limited in their building envelope since the house was constructed on the lot in 1984. The lot's unique conditions limit the buildable area available to the Applicants and have created an unnecessary hardship and an exceptional practical difficulty for the Applicants who seek to construct an addition and steps.
 - 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 a unique size and shape and the buildable area thereof is limited due to the

conditions of the lot. The Applicants seek to construct an addition and steps 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 reasonably sized addition and steps to be constructed on the Property. The Board is convinced that the shape and location of the structures are also reasonable, which is confirmed when reviewing the survey provided by the Applicants. The addition is needed as the home was constructed as a seasonal cottage but the Applicants are spending more time in the home throughout the year and additional space is needed.

- d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. The Applicants did not create the unusual shape or size of the Property or create the flooding issues with the rear of the lot. The unique size and shape 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. The Applicants' un rebutted testimony is that the addition will appear similar to an addition made to the home on a neighboring property and will enhance the curb appeal of the site. There was no evidence that the location of the structures in the front yard setback area would somehow affect the neighborhood and no evidence was presented that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board also notes that the Applicants will have parking available underneath the addition to allow for off-street parking.
- f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulation at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to construct a reasonably sized addition and steps on the Property. The Applicants are limited in where such an addition could be made due to the conditions of the lot and the prior development of the house. The Applicants have convinced the Board that they have taken measures to otherwise limit encroachments into the setback areas. The Board notes that the steps are turned to minimize the encroachment into the front yard setback area as well.
- 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, and Mr. John Williamson. No Board Member voted against the

Motion to approve the variance application. Ms. Ellen Magee and Mr. Brent Workman did not participate in the vote of this application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



John Williamson
Chairman

If the use is not established within two (2) years from the date below the application becomes void.

Date March 1, 2021