

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: RC MARSHALL, INC.**

**(Case No. 12515)**

A hearing was held after due notice on January 25, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the side yard, front yard setback requirements and the landscape buffer requirement in the Combined Highway Corridor Overlay Zone (CHCOZ) for proposed structures.

Findings of Fact

The Board found that the Applicant is requesting following variances: 1) a variance of 17.9 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling; 2) a variance of 21.8 feet from the thirty (30) feet front yard setback requirement for a proposed second story deck; 3) a variance of 18.8 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling; 4) a variance of 22.9 feet from the thirty (30) feet front yard setback requirement for a proposed deck and stairs; 5) a variance of 22 feet from the thirty (30) feet front yard setback requirement for a proposed HVAC system; and 6) a variance of 20 feet from the thirty (30) feet front yard setback requirement for a proposed HVAC system. These variances are shown on the revised site plan provided by the Applicant which is dated February 23, 2021. For purposes of clarity, Washington Street is considered the front yard of the Property. Based on this survey, no variances from the Combined Corridor Highway Overlay Zone are needed. This application pertains to certain real property that is located on the northeast side of Washington Street at the intersection of Coastal Highway (Route 1) (911 Address: 20469 Washington Street, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-19.08-173.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a Proposed Conditions Plan of the Property dated August 26, 2020, a survey of the Property dated August 26, 2020, property record information, 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 Robert Marshall was sworn in to give testimony about the Application.
4. The Board found that Mr. Marshall testified that he wishes to replace the current dwelling and increase the height to accommodate flood and to allow for parking underneath the structure.
5. The Board found that Mr. Marshall testified that the current setbacks would not allow for such a structure.
6. The Board found that Mr. Marshall testified that the new dwelling will be built on the existing footprint. He noted that there is a little room on the south side to move the building back but he would prefer to keep it on the existing footprint; though he is willing to move the building south.
7. The Board found that Mr. Marshall testified that the Property is unique as it is a corner lot at the intersection of Coastal Highway and Washington Street and the Property has an irregular shape.
8. The Board found that Mr. Marshall testified that the small size and irregular shape make it impossible to construct a new dwelling without a variance.



9. The Board found that Mr. Marshall testified that the lot was purchased in 1998 with the existing dwelling and no changes have been made to the footprint of the house.
10. The Board found that Mr. Marshall testified that the newly constructed house will comply with current building codes and will not change the character of the neighborhood.
11. The Board found that Mr. Marshall testified that the use of the Property will not change.
12. The Board found that Mr. Marshall testified that the requested setback is similar to the existing setbacks and is the least amount necessary to build a new structure on the irregular lot.
13. The Board found that Mr. Marshall testified that the house was built in the 1950s and is habitable but needs repairs.
14. The Board found that Mr. Marshall testified that other homes in the neighborhood are being replaced in a similar manner.
15. The Board found that Mr. Marshall testified that the proposed house will be 2 stories tall with a block foundation with 2,000 to 2,500 square feet of livable space and a garage below the house. According to Mr. Marshall, the house will meet the County's height requirements.
16. The Board found that Mr. Marshall testified that there will be no visibility issues with the intersection as the intersection is a right turn intersection only.
17. The Board found that Mr. Marshall testified that the deck will measure 3 feet wide except on the corner.
18. The Board found that Mr. Marshall testified that there is not much off-street parking in the area and he intends to park under the house.
19. The Board found that Mr. Marshall testified that the driveway is off Washington Street.
20. The Board found that Mr. Marshall testified that neighbors support the request and prefer to have the house replaced.
21. The Board found that Mr. Marshall testified that there is approximately 10 feet between the property line and the edge of paving of the street.
22. The Board found that Mr. Marshall testified that he can move the house away from Washington Street and that there is approximately 15 feet from Washington Street to the deck.
23. The Board found that Mr. Marshall testified that the motel on the property to the south (Rehoboth Inn) is also being remodeled.
24. The Board found that Mr. Marshall testified that, if denied, he would have to remodel the house.
25. The Board found that Mr. Marshall testified that the house is used for students who work at other locations and a smaller dwelling would not suit his needs.
26. The Board found that Mr. Marshall testified that he has to elevate the home for insurance reasons.
27. The Board found that Mr. Marshall testified that he is willing to move it 3.2 feet closer to the Rehoboth Inn property.
28. The Board found that Mr. Marshall testified that he planned to put an HVAC system on the south side of the house. The HVAC system will be one or two units and he prefers to have the HVAC system on the south side but he could put the HVAC system under the deck on the northeast corner of the Property.
29. The Board found that Mr. Marshall testified that he is willing to obtain a new survey showing the relocation of the house closer to the south side and to show the HVAC.
30. The Board found that Walter Brittingham was sworn in to give testimony about the Application. Mr. Brittingham was neither for or against the Application.
31. The Board found that Mr. Brittingham testified that he is a former commissioner and Rehoboth fireman who travels the area frequently. He noted that his is a busy intersection.



32. The Board found that Mr. Brittingham testified that there is parking is tenuous in the area and that there is no room for parking on the street.
33. The Board found that Michael Behringer was sworn in by teleconference to testify in opposition to the Application.
34. The Board found that Mr. Behringer testified that he is opposed to the Application due to the size of the proposed dwelling and the proximity to his own residence.
35. The Board found that Mr. Behringer testified that there are 70 condominium units nearby.
36. The Board found that Mr. Behringer testified that the Applicant parks illegally on the site now.
37. The Board found that Mr. Behringer testified that the house is too big for the site.
38. The Board found that Mr. Behringer testified that the existing house is an eyesore and he commends the Applicant for cleaning it up.
39. The Board found that Mr. Marshall testified that he normally parks where the truck is located on the aerial photograph and that the plan is to park under the new dwelling.
40. The Board found that Mr. Marshall testified that there is only 1 parking spot on the Property now and 2 cars park off-site. He believes that the plan will improve parking as he would have 2 parking spaces with the proposal.
41. The Board found that Mr. Marshall testified that he plans low landscaping as well and he plans to comply with the CCHOZ landscape requirements. He testified that he has no plans to make the property more visible from Route 1.
42. The Board found that no one appeared in support of and one person appeared in opposition to the Application.
43. The Board moved to leave the record open until the meeting on March 1, 2021, for the limited purpose of allowing the Applicant to submit an updated survey showing the dwelling moved closer to the Rehoboth Inn, a landscape plan, and the location of the HVAC units. The Applicant submitted to the Board a revised site plan dated February 23, 2021. Per the new plan, the proposed dwelling was moved closer to the Rehoboth Inn.
44. On March 1, 2021, the Board reviewed the updated survey provided by the Applicant and the Board discussed and voted on the Application.
45. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered, the Board determined that the application, as amended, 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 a small and oddly shaped lot. The lot is only 49.84 feet deep and is thereby extremely limited in how it can effectively be developed. The buildable area is also further limited because the front property line is angled towards Coastal Highway. The corner front yard along Coastal Highway is only 4.81 feet wide. Consequently, the Property has a unique shape that results in an exceptionally limited building envelope. The Property was previously developed with a dwelling that was built in the 1950s and needs to be replaced. The house pre-dated the Sussex County Zoning Code. The Applicant now seek to replace the home on a similar footprint as the existing home but the Applicant proposes to move the proposed dwelling closer to the rear yard to improve the parking area available in the front yard. These conditions are unique and have created an exceptional practical difficulty and unnecessary hardship for the Applicant who seeks to construct a new dwelling and related structures 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 conditions which limit the developable options for the home. The Applicant seeks to construct a dwelling and related structures on 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 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 updated survey provided by the Applicant.
- d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. The Applicant did not create the unusual conditions of the Property. These conditions have resulted in a limited development options for the Applicant 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 Applicant 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 the Applicant proposes to replace an older structure with a new one. The new structure will be set back farther from the road and will afford better parking on the lot. The Board was not convinced that 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 Washington Street and the front property line so the front yard encroachment will not be as noticeable as it would be otherwise.
- 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 him to construct a new house and related structures on the site. The Applicant is limited by the Property's unique conditions but the proposed placement of these structures minimizes the need to further encroach into the setback areas. The Board notes that the Applicant moved the proposed dwelling farther towards the rear yard to minimize the encroachments into the front yard and the Applicant relocated its HVAC system to enable the home to be moved to the southeast.
- 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, as amended, finding that it met the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application, as amended, was approved. The Board Members in favor of the Motion to approve were Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application, as amended. Mr. Travis Hastings did not participate in the discussion or vote on this application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY



John Williamson  
Chair

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

Date May 3, 2021.