

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: RAY PATTON & CAROLYN V. PATTON

(Case No. 12517)

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 front yard and rear yard setback requirements for existing structures and variances from the minimum lot size requirement and the minimum lot width requirement for proposed lot line adjustments.

Findings of Fact

The Board found that the Applicants are requesting the following variances: 1) a variance of 1.5 feet from the 5 feet rear yard setback requirement for an existing shed; 2) a variance of 8.1 feet from the 30 feet front yard setback requirement for an existing porch and deck; 3) a variance of 10.5 feet from the 30 feet front yard setback requirement for an existing set of steps; 4) a variance of 12.7 feet from the 30 feet front yard setback requirement for an existing porch and deck; 5) a variance of 13.68 feet from the 75 feet lot width requirement; and 6) a variance of 4,516 square feet from the minimum square footage requirement of 10,000 square feet. This application was heard in conjunction with Case No. 12516 (Daisey Road, LLC c/o Ray Patton) since the relief requested is similar and affects the relief sought in the other application. The Applicant in Case No. 12516 is an entity owned by the Applicants in Case No. 12517. This application pertains to certain real property located on the northeast side of Daisey Road within the Rehoboth Manor Subdivision (911 Address: 20637 Daisey Road, Rehoboth Beach) said property being identified as Sussex County Tax Map Parcel Number 3-34-19.12-38.01. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, photographs, and a lot line adjustment survey plan dated July 22, 2020.
2. The Property which is the subject of this Application is identified as Lot 47 on the aforementioned survey.
3. The Board found that the Office of Planning & Zoning received no correspondence in support of or in opposition to the Application.
4. The Board found that Carolyn Patton was sworn in to testify about the Application. William Schab, Esquire, presented on behalf of the Applicants. Mr. Schab submitted additional letters of support and photographs to the Board.
5. The Board found that Mr. Schab stated that the Applicants own Lot 47, which is improved by a dwelling and shed and the Applicants propose to renovate the existing dwelling by constructing an addition. The Applicants also propose to adjust the shared lot line with Lot 48 (which is owned by the Applicants' LLC). The variances are needed to allow the dwelling with addition and shed to remain and for the lot line to be adjusted. The Applicants are not creating an additional lot. Rather, they are adjusting the existing shared lot line so that Lot 47 receives additional square footage and Lot 48's lot area is reduced.
6. The Board found that Mr. Schab stated that the homes on Lots 47 & 48 are old homes on older lots which do not conform to the current Sussex County Zoning Code. According to Mr. Schab, the existing lots are non-conforming lots.

7. The Board found that Mr. Schab stated that the Applicants purchased Lot 47 in 2007 and the lot was undersized when purchased as it only consists of 4,895 square feet.
8. The Board found that Mr. Schab stated that the Applicants proposed to take one non-conforming lot and make it more non-conforming in order to expand the property next to it to make that property less non-conforming
9. The Board found that Mr. Schab stated that Applicants intend to renovate the house on Lot 47 and use that home as their residence. According to Mr. Schab, when the Applicants purchased Lot 47, the house was uninhabitable but the Applicants have made improvements to the original house but they have not increased the degree of non-conformity.
10. The Board found that Mr. Schab stated that the Applicants now wish to improve the dwelling with an upper floor addition and that the house will not be expanded into the building envelope but will be expanded upwards.
11. The Board found that Mr. Schab stated that the Applicants are not extending the footprint of the house to the front.
12. The Board found that Mr. Schab stated that the variance for Lot 48 to decrease the lot size will allow the Applicants to increase the house on Lot 47 on the side without requiring an additional variance.
13. The Board found that Mr. Schab stated that the line between Lot 47 and Lot 48 is straight but, if the variance is granted, the line would be moved to take approximately 600 square feet from Lot 48. As a result, Lot 48 would go from 7,245 square feet to 6,656 square feet and the lot width of Lot 48 would be reduced from 75 feet to 64.22 feet.
14. The Board found that Mr. Schab stated that, if the variance is granted for Lot 48, there will be no changes made to the dwelling on Lot 48. Rather, only the lot size and width will be reduced and the additional space will be added to Lot 47.
15. The Board found that Mr. Schab stated that the Applicants propose to enclose a porch and add a bedroom to the house on Lot 47 and that the deck will comply with the side yard setback requirement but will need a front yard variance.
16. The Board found that Mr. Schab stated that both properties are unique as they are two small non-conforming lots, owned by the same applicant.
17. The Board found that Mr. Schab stated that granting the variances will only affect the two subject properties.
18. The Board found that Mr. Schab stated that the Applicants did not create the issue since both dwellings were in place when the Applicants purchased the properties.
19. The Board found that Mr. Schab stated that neither lot can ever be developed under Sussex County Code as they are legal non-conforming lots and can never be 10,000 square feet.
20. The Board found that Mr. Schab stated that granting the variances will not alter the essential character of the neighborhood because the front of the house on Lot 47 may look a little different and Lot 48 will be slightly smaller.
21. The Board found that Mr. Schab stated that the variances are the minimum variances that will bring Lot 47 into as much compliance with County Code as possible.
22. The Board found that Mr. Schab stated that two neighbors have submitted letters of support.
23. The Board found that Mr. Schab stated that there was one letter of opposition where the writer said they do not want construction of another dwelling on Lot 48 but the Applicants are not proposing to add another dwelling.
24. The Board found that Mr. Schab stated that the Applicants also request a variance for the existing shed on Lot 47.

25. The Board found that Mr. Schab stated that the shed was built on the same location the prior shed by a contractor and the Applicants were unaware of the shed's encroachment.
26. The Board found that Mr. Schab stated that the shed can only be seen by persons on Lot 48.
27. The Board found that Mr. Schab stated that that the HVAC units on Lot 48 need to be 5 feet from the side property line which is another reason why the lot line is crooked.
28. The Board found that Ms. Patton affirmed the statements made by Mr. Schab as true and correct.
29. The Board found that Ms. Patton testified that, when they bought the properties, the houses were in terrible condition but neighbors have been happy with the improvements that have been made to both properties.
30. The Board found that Ms. Patton testified that the house on Lot 47 was built by a former spy and the porch encroached.
31. The Board found that Ms. Patton testified that the front yard variance for Lot 47 is important as wider steps are needed for safety.
32. The Board found that Ms. Patton testified that it would be expensive and difficult to move the shed in the rear. She also noted that a neighbor liked the shed so much that the neighbor purchased a similar one.
33. The Board found that Ms. Patton testified that the neighbors have been supportive and complimentary of the improvements.
34. The Board found that Ms. Patton testified that there will be no visibility concerns by approving the variances and they are able to park cars in the front yard.
35. The Board found that Ms. Patton testified that there is a gap between the edge of paving and the front property line.
36. The Board found that Ms. Patton testified that they have improved the off-street parking on both lots.
37. The Board found that Jewell Estes was sworn in to give testimony in support of the Application. She testified that the Applicants have improved their property and she supports the relief sought.
38. The Board found that one person appeared in support of and no one appeared in opposition to the Application.
39. 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 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 development, size, and historical use. The Property has been developed by a shed, dwelling, and related structures on an undersized lot. The lot measures only 4,895 square feet and is only 50 feet wide. The existing house on the lot was uninhabitable and the Applicants seek to renovate the home by adding on the same footprint. The existing structures, however, encroach into the setback areas. In order to provide some relief from the setback requirements, the Applicants have agreed to a lot line adjustment with the owner of the adjacent lot, whereby the lot line will be moved to the southeast. As a result, this lot will receive additional square footage and lot width. Even with this additional square footage, however, the lot remains undersized and the existing and proposed structures do not comply with the setback requirements. Lots 47 and 48 are limited in size and the lot line cannot be adjusted so that both lots comply with the lot width and size requirements. Furthermore, the existence of the location of the existing structures is such that they cannot comply with the Code either. These conditions are unique and have created an

unnecessary hardship and exceptional practical difficulty for the Applicants who seek to reasonably adjust the lot line and retain and construct proposed and existing structures.

- 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 situation and the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants seek to reasonably adjust the lot line for the property, to add additional space, to retain existing structures, and to add proposed structures on Lot 47 but are unable to do 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 reasonably adjust the lot lines and to retain the existing structures and to construct the addition. The Board is convinced that the size, shape, and location of the proposed lot lines and the structures 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. The Applicants did not create the unique shape and size of the lot or place the houses on the lots. 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 need the variances in order to reasonably adjust the lot line of the Property as proposed and to retain and construct the existing and proposed structures. The Board also notes that the shed was constructed by a contractor and the Applicants were unaware of the encroachment until the survey was prepared. The Applicants appeared to have relied upon the contractor to their detriment.
- 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 proposed lot line adjustment and variances will have no effect on the character of the neighborhood. The proposed lot line adjustment will add space to this undersized lot, which makes Lots 47 and 48 closer in size. There will be no apparent change in the use of these lots after the lot line adjustment takes place because the lots will be used in the same manner which they are used now. The improvements proposed by the Applicants should also enhance the neighborhood as they are renovating a home that was previously uninhabitable. There was no evidence that the shed would alter the character of the neighborhood and the Board heard no substantial evidence 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 front yard property line does not match the edge of paving of Daisey Road so the front yard encroachments are likely not as noticeable as they 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 Applicants have demonstrated that the variances sought will allow the Applicants to reasonably adjust the lot lines and to retain and construct the existing and proposed structures in a manner similar to the historical use of the parcels.

- 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, 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



John Williamson
Chair

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

Date March 15, 2021