

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MARK BOWER & AMY BOWER

(Case No. 12531)

A hearing was held after due notice on March 1, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the side yard setback requirement for existing structures.

Findings of Fact

The Board found that the Applicants are requesting a variance of 1 foot from the five (5) feet side yard setback requirement on the northwest side for an existing outdoor shower. This property located on the southwest side of Quillen Road within the Rehoboth Manor Subdivision (911 Address: 20592 Quillen Road, Rehoboth Beach) said property being identified as Sussex County Tax Map Parcel Number 334-19.12-36.01. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey of the Property dated December 8, 2015, an affidavit in support from Carl & Darlene Merry, a survey of the Property dated December 7, 2020, a building permit application and authorization, a certificate of compliance dated November 10, 2005, a letter from Chad Meredith, Esquire, 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 Darlene Merry, Melinda Ingram, and Mark Bower were sworn in to testify about the Application. Chad Meredith, Esquire, presented the Application on behalf of the Applicants.
4. The Board found that Mr. Meredith stated that the Applicants purchased the Property in December 2020 from the Merry family and that, when the survey was submitted for approval prior to recording, it was discovered that a variance was needed for the outdoor shower. The Merrys were previously unaware of the need for a variance for the shower.
5. The Board found that Mr. Meredith stated that the subject property is a small lot containing only 4,392 square feet.
6. The Board found that Mr. Meredith stated that a prior variance was approved in 2005 for the side yard of this property and that all other structures comply with the Code.
7. The Board found that Mr. Meredith stated that the outside shower was not part of the original building permit.
8. The Board found that Mr. Meredith stated that, since the prior variance approval, the small lot ordinance was passed by County Council and the side yard setbacks have been reduced but, even with that reduction, the outdoor shower would not meet the reduced setback requirement.
9. The Board found that Mr. Meredith stated that the shower has been on the Property at least since 2015 prior to Mr. and Mrs. Merry owning the home and the Merrys were unaware that the shower was non-compliant when they purchased the Property. The 2015 survey shows the existence of the shower at that time
10. The Board found that Mr. Meredith stated that there have been no complaints or notice of violations regarding the placement of the shower.

11. The Board found that Mr. Meredith stated that there are private restrictions for this subdivision which date back to the 1950s and those restrictions were recorded prior to the enactment of the Sussex County Zoning Code. According to Mr. Meredith, the private restrictions have a side yard setback requirement of 4 feet and the shower meets that setback requirement.
12. The Board found that Mr. Meredith stated that the Property is unique due to its size of less than 4,500 square feet.
13. The Board found that Mr. Meredith stated that it cannot be otherwise developed as the shower is existing.
14. The Board found that Mr. Meredith stated that the exceptional practical difficulty was not created by the Bowers or the previous owners.
15. The Board found that Mr. Meredith stated that the variance will not alter the essential character of the neighborhood as it has been in existence since at least 2015.
16. The Board found that Mr. Meredith stated that there are four letters of support from neighbors.
17. The Board found that Mr. Meredith stated that the variance requested is the minimum variance request to afford relief and to allow the shower to remain in the current location.
18. The Board found that Mr. Meredith stated that the Applicants request a return of \$350.00 of the application fee.
19. The Board found that Ms. Merry and Mr. Bowers affirmed the statements made by Mr. Meredith as true and correct.
20. The Board found that Ms. Merry testified that she owned at the subject property for five years and she affirmed her affidavit as true and correct.
21. The Board found that Mr. Bower testified that he is the current owner of the subject property and there have been no complaints about the location of the outdoor shower.
22. The Board found that Ms. Ingram testified that she has been a realtor since 2005 and that she was the realtor for the seller of the subject property. She believes that, should the variance be approved, it would not have a negative impact on properties in the community.
23. The Board found that no one appeared in support of or in opposition to the Application.
24. 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 for the variance met the standards for granting a variance. The findings below further support the Board's decision to approve the Application for the variance.
 - a. The Property is unique due to its size and shape. The Property is a small lot measuring only 4,392 square feet and is a parallelogram. These unique characteristics of this Property have created a limited building envelope and have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek to retain an outdoor shower on the side of their house.
 - 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 physical characteristics and the buildable area thereof is limited due to those characteristics. The Applicants seek to retain an outdoor shower on the lot but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow this reasonably sized shower to remain on the lot. The Board is convinced that the shape

and location of the shower are also reasonable, which is confirmed when reviewing the survey provided by the Applicants. The Board notes that the shower should provide an area for the Applicants to rinse sand after coming from the beach.

- d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. The lot was created in the 1950s prior to the enactment of the Sussex County Zoning Code. The Property is exceptionally small and these conditions have resulted in a limited building envelope on the Property. These conditions have created the unnecessary hardship and exceptional practical difficulty. Furthermore, the Applicants are constrained by the location of the existing residence which also presents challenges on where the shower can be located. Additionally, the Applicants, nor the prior owners, placed the shower on the lot.
- e. The variance 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 shower will have no effect on the character of the neighborhood. The shower has been on the lot since at least 2015 and no complaints have been noted to the Applicants or the prior owners. The Board notes that neighbors have indicated support of the Application and no evidence was presented that the variance would somehow alter the essential character of the neighborhood.
- f. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicants have demonstrated that the variance sought will allow the Applicants to retain reasonably sized outdoor shower on the Property. No additions or modifications to the shower are proposed. The shower also appears limited in size.
- 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.
- h. The Board also directs the Office of Planning and Zoning to refund \$350.00 of the application fee to the Applicants.

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 the variance were Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. Travis Hastings, 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 May 3, 2021