

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JEFF RUSHIE & VICTORIA RUSHIE

(Case No. 12542)

A hearing was held after due notice on May 17, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

This is an application for a variance from the corner front yard setback requirement for proposed structures.

Findings of Fact

The Board found that the Applicants are seeking a variance of 10 feet from the fifteen (15) feet corner front yard setback requirement for a proposed dwelling, steps, and deck. This application pertains to certain real property located at the intersection of North Bay Shore Drive and Maryland Avenue in Broadkill Beach (911 Address: 10 Maryland Avenue, Broadkill Beach); said property being identified as Sussex County Tax Map Parcel Number 2-35-4.13-63.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, an aerial photograph of the Property, a survey of the Property dated December 18, 2020, a site plan of dated February 2, 2021, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received two letters in support of and no correspondence in opposition to the Application.
3. The Board found that Victoria Rushie and Jeff Rushie were sworn in to give testimony about the Application.
4. The Board found that Ms. Rushie testified that the lot is a corner lot measuring 50 feet by 100 feet and that the variance request is due to the narrowness of the Property.
5. The Board found that Ms. Rushie testified that there is no possibility that the Property can be developed in strict conformity with the provisions of the zoning code and that the variance is necessary to enable reasonable use of the Property.
6. The Board found that Ms. Rushie testified that the exceptional practical difficulty was not created by the Applicants.
7. The Board found that Ms. Rushie testified that the existing dwelling has been in place since the 1960s and is 43 feet wide and 13 feet over the setback line but has not altered the character of the neighborhood.
8. The Board found that Ms. Rushie testified that the variance is the minimum variance to afford relief.
9. The Board found that Ms. Rushie testified that the proposed dwelling will encroach less than the existing manufactured home and will be on pilings.
10. The Board found that Ms. Rushie testified that the proposed dwelling will not impede visibility for vehicular traffic.
11. The Board found that Ms. Rushie testified that the Property is served by septic and water is from a public water company.
12. The Board found that Ms. Rushie testified that there have been no complaints from neighbors about the proposed structure.

13. The Board found that Ms. Rushie testified that the Applicants discussed the proposal with the only full-time neighbor and there was no objection.
14. The Board found that Ms. Rushie testified that other lots nearby are vacant.
15. The Board found that Mr. Rushie testified that a new septic system will be installed and that the soil is being tested to find the best location on the property for the septic system.
16. The Board found that Mr. Rushie testified that the proposed dwelling will have three bedrooms and the proposed dwelling will be two stories tall.
17. The Board found that Mr. Rushie testified that the house and deck will be located within the building box and the steps will be under the house and will not encroach farther into the setback than the house.
18. The Board found that Mr. Rushie testified that the house cannot be moved farther back as the septic may have to be placed in that area.
19. The Board found that no one appeared in support of or in opposition to the Application.
20. 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 unrebutted, 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 with conditions.
 - a. The Property is unique due to its size, shape, and physical conditions. The lot is a small lot measuring 50 feet by 100 feet and is a corner lot. The building envelope is limited due to the lot's unique physical conditions and the building envelope is further limited due to the need to locate a septic system on the Property. Due to these conditions, the building envelope is small and narrow. These conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek to build a dwelling and related structures on the Property as noted above.
 - 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 Property and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants seek to construct a proposed dwelling and related structures on the lot but are unable to do so 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 construct the dwelling and related structures on the lot. The Board is convinced that the size, shape, and location of 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 conditions of the lot. 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 variance in order to reasonably develop the Property as proposed.
 - 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 variance will have no effect on the character of the neighborhood. The variance will allow the Applicants to place a reasonably

sized home and related structures as proposed. There was no substantial evidence which demonstrated that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. Moreover, the proposed structures will encroach less into the setback area than the existing home. There is also a significant gap between the edge of paving of North Bay Shore Drive so the encroachment will likely not be as noticeable as it would be otherwise.

- 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 place a reasonably sized home and related structures on the Property. The Board finds that the Applicants took reasonable measures to otherwise limit encroachments into the setback area but were constrained by the Property's unique conditions.
- 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 were Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the motion to approve Application. 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 August 2, 2021