

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JEANNE MURRAY

(Case No. 12546)

A hearing was held after due notice on April 19, 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 variances from the front yard and side yard setback requirements for proposed and existing structures.

Findings of Fact

The Board found that the Applicant is requesting the following variances: 1) a variance of 18.6 feet from the thirty (30) feet front yard setback requirement for proposed steps; 2) a variance of 16.3 feet from thirty (30) feet front yard setback requirement for a proposed porch; 3) a variance of 0.6 feet from the five (5) feet side yard setback requirement on the northeast side for an existing dwelling; and 4) a variance of 1.2 feet from the five (5) feet side yard setback requirement on the southeast side for an existing shed. This application pertains to certain real property located on the southwest side of Washington Street approximately 225 feet southeast of Church Street (911 Address: 37496 Washington Street, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-13.20-63.00. 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 January 29, 2021, an average front yard setback survey dated December 23, 2020, a survey dated December 23, 2020, portions of the Sussex County Zoning Code, photographs, deeds, 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 Jeanne Murray was sworn in to give testimony about the Application. Mackenzie Peet, Esquire, appeared on behalf of the Applicant.
4. The Board found that Ms. Peet stated that the Property is near the YMCA and Crystal's Restaurant in Rehoboth.
5. The Board found that Ms. Peet stated that the average setback survey shows that the average front yard setback is 19.2 feet.
6. The Board found that Ms. Peet stated that the Applicant owned the Property with her late husband who inherited the cottage from his parents.
7. The Board found that Ms. Peet stated that the Applicant contracted with Oak Construction to make renovations to the cottage but the contractor noted that variances would be required to make the renovations.
8. The Board found that Ms. Peet stated that the existing dwelling sits on a 9,374 square foot lot and is not centered on the lot.
9. The Board found that Ms. Peet stated that there is an existing front porch on the dwelling with a set of stairs which have encroached into setbacks for decades. She also noted that the existing shed has been on the Property for at least a decade.
10. The Board found that Ms. Peet stated that the proposed structure includes an addition and an expansion on the porch with proposed dimensions of 9.3 feet by 3.38 feet in length and a replacement of the existing stairs to be located in the front yard and to be attached to the porch.

11. The Board found that Ms. Peet stated that this property is located in the C-1 General Commercial district and all of the homes on Washington Street have porches or structures that exist in the front yard setback. She noted that the home closest to the intersection of Church Street and Washington Street is only 13.6 feet from the front property line.
12. The Board found that Ms. Peet stated that the shed consists of approximately 100 square feet and projects into the side yard setback.
13. The Board found that Ms. Peet stated that the lot is uniquely shaped in comparison to the other single family lots on Washington Street as this lot is a lot and a half and the existing structure is not centrally located on the lot but is located towards Lot 19 and sits in the side yard setback.
14. The Board found that Ms. Peet stated that the unique conditions on the site are peculiar to this property and create an exceptional practical difficulty for the Applicant to make normal improvements to the existing structure.
15. The Board found that Ms. Peet stated that the Property cannot otherwise be developed because of the lot's size and shape and the placement of the existing structure restrict the Applicant's reasonable use of the Property to make normal improvements to the aged existing structure.
16. The Board found that Ms. Peet stated that the exceptional practical difficulty was not created by the Applicant as the Property was inherited by the Applicant in its current condition.
17. The Board found that Ms. Peet stated that there is an existing porch on the Property and the Applicant is proposing to make normal improvements to improve the existing structure.
18. The Board found that Ms. Peet stated that the variances will not alter the essential character of the neighborhood but are similar to other attached porches on Washington Street and will enhance the neighborhood.
19. The Board found that Ms. Peet stated that these are the minimum variances to afford relief and represent the least modifications of the regulations at issue.
20. The Board found that Ms. Peet stated that the chain of title suggests that the Property and the existing dwelling have existed in the front and side yard setbacks for decades and possibly before the adoption of the Sussex County Zoning Code.
21. The Board found that Ms. Murray testified that the cottage was gifted to her late husband by his parents.
22. The Board found that Ms. Murray testified that she and her husband planned to renovate the cottage but her husband passed before the renovations could begin and she wishes to see her husband's plan be completed.
23. The Board found that Ms. Murray testified that the current porch is small for her family of nine.
24. The Board found that Ms. Murray testified that the cottage is two bedrooms and one bath so there is a need for additional space.
25. The Board found that Ms. Murray testified that she was unsure if the shed is on concrete or grass and it may be possible to move the shed.
26. The Board found that Ms. Murray testified that there have been no complaints about the location of the shed or the dwelling.
27. The Board found that Ms. Peet stated that the Applicant considered moving the steps to the side but ultimately decided to keep them in the front like the existing steps and steps on other homes on Washington Street.
28. The Board found that Ms. Peet stated that the proposed porch would only add an additional 1.1 feet to the existing porch.
29. The Board found that Ms. Murray affirmed the statements made by Ms. Peet as true and correct.
30. The Board found that no one appeared in support of or in opposition to the Application.

31. 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 a small lot that was developed with a dwelling many years ago and the dwelling needs certain upgrades. The dwelling is not centered on the Property and is located close to the front property line. Other homes along Washington Street appear to be similarly situated. These conditions greatly restrict the building envelope on the Property and affect the Applicant's ability to reasonably develop the lot. It is clear to the Board that the lot's unique characteristics have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to retain a reasonably sized dwelling and shed and to construct a porch, addition, and steps on the lot.
 - 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 is a small lot and was developed by a small cottage many years ago. The Applicant seeks to retain a reasonably sized dwelling and shed and to construct a porch, addition, and steps 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 retain a reasonably sized dwelling and shed and to construct a porch, addition, and steps on the Property. The Board is convinced that the shape and location of these structures are also reasonable, which is confirmed when reviewing the survey provided by the Applicant. The Board also notes that the existing porch is too small for the Applicant's needs and the proposed additions are needed for her to reasonably use the Property.
 - d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicant. The Applicant did not create the lot or place the existing dwelling on the lot. Those conditions have limited the building envelope of the lot. The unique characteristics of the Property are clear when reviewing the survey. The Applicant also did not place the shed on the lot. Those structures were placed on the lot by a prior owner years ago. The Board is convinced that the unnecessary hardship and exceptional practical difficulty were not created by the Applicant but was created the lot's unique characteristics. The Applicant was greatly constrained by the existing development of the lot and the small size thereof.
 - 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 dwelling (with porch and steps) and the shed have been on the Property for many years and no complaints about those structures were noted in the record. The structures will be similarly situated to other structures in this neighborhood. There was no evidence that the structures would present visibility concerns along Washington Street. Furthermore, no evidence was presented which would indicate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.

- 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 the Applicant to retain a reasonably sized dwelling and shed and to construct a porch, addition, and steps. The additions are reasonable in size and will afford the Applicant space for her family. The Board notes that a substantial part of the proposed addition will comply with the Code and that the Applicant was constrained by the prior development and the unique conditions of the lot.
- 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. 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 June 21, 2021