

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: SHANE ESKRIDGE

(Case No. 12554)

A public hearing was held after due notice on May 3, 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 setback requirements for existing structures.

Findings of Fact

The Board found that the Applicant is requesting a variance of 15.6 feet from the forty (40) feet front yard setback requirement for an existing addition and a variance of 19.3 feet from the forty (40) feet front yard setback requirement for existing steps. This application pertains to certain real located on the west side of Zoar Road approximately 700 feet north of Graves Lane (911 Address: 24815 Zoar Road, Georgetown); said property being identified as Sussex County Tax Map Parcel Number 2-34-20.00-2.04. 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 October 17, 2017, a survey of the Property dated April 24, 2000, a zoning violation notice, a drawing of the proposed structures, pictures, letters in support of the Application, 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 the Application.
3. The Board found that Shane Eskridge was sworn in to give testimony about the Application.
4. The Board found that Mr. Eskridge testified that the variance request is to allow him to keep the addition that was built onto his non-conforming dwelling. He noted that the house was built in the 1940s and is not parallel to the road.
5. The Board found that Mr. Eskridge testified that that he obtained a building permit and, when the final inspection was completed, he was told that the addition did not comply with the setback requirement.
6. The Board found that Mr. Eskridge testified that, because the addition was in line with the existing dwelling, he did not know that the addition was out of compliance.
7. The Board found that Mr. Eskridge testified that the Property is unique because the existing house is non-conforming and the property line and the house are not running parallel.
8. The Board found that Mr. Eskridge testified that the structure was completed according to County regulations and cannot be moved.
9. The Board found that Mr. Eskridge testified that the septic system is located 10 feet behind the house and the water and propane systems are also located on the site.
10. The Board found that Mr. Eskridge testified that there was no other place where the addition could be located.
11. The Board found that Mr. Eskridge testified that the original home and steps have been in existence in this location since the 1940s.
12. The Board found that Mr. Eskridge testified that the house is in character with the neighborhood.

13. The Board found that Mr. Eskridge testified that the Property cannot be otherwise developed and that the exceptional practical difficulty was not created by the Applicant.
14. The Board found that Mr. Eskridge testified that the existing front overhang and steps are farther than the corner of the home.
15. The Board found that Mr. Eskridge testified that the request is the minimum variance needed to allow the addition and steps to remain.
16. The Board found that Mr. Eskridge testified that there will be no further changes to the front of the house.
17. The Board found that Mr. Eskridge testified that there have been no complaints from neighbors.
18. The Board found that Mr. Eskridge testified that the addition measures 24 feet by 24 feet.
19. The Board found that Mr. Eskridge testified that the addition does not create visibility issues.
20. The Board found that Mr. Eskridge testified that the driveway is in the center of the lot so it restricted where the addition could be placed.
21. The Board found that two people appeared in support of and no one appeared in opposition to the Application.
22. 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 in its historical development. The lot is developed by a house that was placed on the lot in the 1940s and predates the enactment of the Sussex County Zoning Code. The Applicant made an addition to the side of the house and the addition encroaches into the front yard setback area. The Property is unique because the septic system is located directly behind the house in the building envelope thereby limiting the construction of an addition in that area. The lot is also served by well water and propane gas so the site is further limited. Lastly, the driveway is located in the middle of the lot and further restricts the building envelope. Consequently, the Applicant had little area upon which to construct the addition and the unique conditions of the lot have created an exceptional practical difficulty and unnecessary hardship for the Applicant who seeks to retain the existing structures 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 has unique conditions and the buildable area thereof is limited due to these conditions. The Applicant seeks to retain existing structures but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that front yard variances are necessary to enable the reasonable use of the Property as the variances will allow the Applicant to retain the existing structures. It is clear that the prior house was small and the addition is reasonable in size.
 - d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicant. The Applicant did not create the unusual conditions of the Property. The lot was developed by a prior owner and the Applicant did not acquire the Property until after the house was built. Furthermore, the shape and conditions of the Property predate the Applicant's ownership of the lot. The preexisting conditions have resulted

in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty and unnecessary hardship. The unique characteristics of the Property are clear when reviewing the survey and the Applicant's testimony. The development of the Property by a prior owner also has limited where the addition could be placed; particularly in light of the location of the septic system, well, propane tank, and driveway. The Board is convinced that the exceptional practical difficulty and unnecessary hardship were not created by the Applicant but were created by the lot's unique characteristics and the development thereof by a prior owner.

- 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 variances will have no effect on the character of the neighborhood. The variances will allow the Applicant to retain the existing structures on the lot. The existing structures have been on the Property for some time with no complaints noted in the record. There was no evidence 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 retain the existing structures. No additions or modifications to the structures are proposed.
- 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. Travis Hastings, Mr. John Williamson, and Mr. Brent Workman. Mr. Jeffrey Chorman voted against the motion to approve 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 July 12, 2021