

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MATTHEW RHINEHART & JACQUELYN RHINEHART

(Case No. 12599)

A hearing was held after due notice on August 16, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson. A second hearing was held on September 20, 2021. The Board members present were: Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson. Mr. Jeff Chorman reviewed the record and the audio from the September 20th meeting.

Nature of the Proceedings

This is an application for variances from the front yard, corner front yard, side yard, and rear yard setback requirements for proposed and existing structures.

Findings of Fact

The Board found that the Applicants are requesting the following variances: 1) 1.9 feet from the five (5) feet side yard setback requirement on the south side for existing dwelling; 2) 4.4 feet from the five (5) feet side yard setback requirement on the south side for an existing 2nd story deck and steps; 3) 4.2 feet from the five (5) feet rear yard setback requirement for an existing 2nd story deck and steps; 4) 4.0 feet from the five (5) feet rear yard setback requirement for an existing 2nd story deck; 5) 0.7 feet from the fifteen (15) feet corner front yard setback requirement for the existing dwelling; 6) 9.3 feet from the fifteen (15) feet corner front yard setback requirement for the existing second story deck; 7) 11.1 feet from the fifteen (15) feet corner front yard setback requirement for an existing dwelling and proposed 2nd floor addition; 8) 7.3 feet from the fifteen (15) feet corner front yard setback requirement for an existing boardwalk / front porch; 9) 14.6 feet from the forty (40) feet front yard setback requirement for existing and proposed structures; and 10) 21.9 feet from the forty (40) feet front yard setback requirement for an existing dwelling, porch, and boardwalk. This application pertains to certain real property that is located on the northeast side of Hebron Road at the intersection of Hebron Road and Harmon Street (911 Address: 19875 Hebron Road, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-13.19-77.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a drawing dated June 30, 2021, regarding the floor plan, photographs, a site plan dated January 26, 2021, findings of fact for Case No. 11357, Superior Court decision in Riker v. Sussex County Board of Adjustment, property record information, a comparison site plan, letters in opposition to the request, an aerial photograph of the property, and a portion of the tax map of the area.
2. The Board notes that a prior application was heard for this property in Case No. 11357, which was denied by the Board but reversed on appeal to the Superior Court on grounds that the Board used the incorrect legal standard. While the Superior Court decision reversed the Board's decision, the Court's ruling did not include remand language so the variances were not granted.
3. The Board found that the Office of Planning & Zoning received no letters in support of and two letters and a 38-signature petition in opposition to the Application.
4. The Board found that Freddy Bada, Matthew Rhinehart, and Aleksandra Jankovska Fallang sworn in to give testimony about the Application.
5. The Board found that Mr. Bada testified that Mr. Rhinehart was not the person who applied for the original variances and that the Applicants recently purchased the Property.

6. The Board found that Mr. Bada testified that the Property was developed in the 1940s prior to the current zoning regulations and that the existing home has been on the Property since 1949.
7. The Board found that Mr. Bada testified that, as a result of the current setback regulations, the house now sits entirely over the setback lines and that no further work can be performed on the house since the house is over the setback lines.
8. The Board found that Mr. Bada testified that this property is also subject to a corner-front setback requirement.
9. The Board found that Mr. Bada testified that the exceptional practical difficulty was not created by the Applicants but by the previous owner.
10. The Board found that Mr. Bada testified that the Applicants are trying to make improvements to the house for their family and that the additions will not add to the existing footprint.
11. The Board found that Mr. Bada testified that these variances will not alter the character of Hebron Road as the neighborhood is a mixed use area with both commercial and residential.
12. The Board found that Mr. Bada testified that granting these variances will allow the Applicants to make improvements to the Property and improve the area.
13. The Board found that Mr. Bada testified that the Applicants included an outdoor shower on the existing deck / boardwalk but are willing to remove that from the current request.
14. The Board found that Mr. Bada testified that this is a minimum request as the Applicants are not adding to the footprint of the existing house and will be removing the gazebo from the Property.
15. The Board found that Mr. Bada testified that the house was built in 1949 and the additions were completed prior to the adoption of the Sussex County Zoning Code.
16. The Board found that Mr. Bada testified that the decking around the existing building is to remain but it is not shown on the A1 site plan.
17. The Board found that Mr. Bada testified that the survey dated January 26, 2021, shows the existing improvements that will remain.
18. The Board found that Mr. Bada testified that the focus of the Application is on building the second story to allow the house to be more functional. He noted that the house is currently a Cape Cod style home and the proposed house will have 2 stories.
19. The Board found that Mr. Bada testified that the steps will not project farther and that there will not be an outdoor shower.
20. The Board found that Mr. Bada testified that the pole barn in the rear is used for storage.
21. The Board found that Mr. Bada testified that that the house has an attic that is finished but is not habitable since the ceiling is less than 7 feet tall.
22. The Board found that Mr. Rhinehart testified that the Property had not been maintained by the prior owner and he is aware of the issues with the Property created by the previous owner and that his goal is to improve the Property.
23. The Board found that Mr. Rhinehart testified that the decks around the existing house are ground level but the decks around the pole barn are elevated.
24. The Board found that Mr. Rhinehart testified that there is approximately 36 inches between the edge of paving of the street and the property line.
25. The Board found that Mr. Rhinehart testified that there is not much traffic in the area.
26. The Board found that Mr. Rhinehart testified that he intends to use the Property for a single-family dwelling.
27. The Board found that Ms. Tara May, and Ms. Brenda Milburn, who is the Executive Director of West Side New Beginnings, were sworn in to give testimony in opposition to the Application.
28. The Board found that Ms. Milburn testified that Harmon Street is a busy street with many large delivery trucks going to nearby businesses and that the bikes exiting from

- the bike trail turn down Harmon Street to avoid the busier Hebron Road. She noted that there is not enough room for trucks to turn down the street and they have hit bushes when trying to turn.
29. The Board found that Ms. Milburn testified that the community opposes the request.
 30. The Board found that Ms. May testified that there were two previous requests for variances in the West Rehoboth area and both were denied.
 31. The Board found that Ms. May testified that the new owner of the Property created this hardship by knowing that the previous variances were not approved.
 32. The Board found that Ms. May testified that this will set a precedent for the area.
 33. The Board found that Ms. May testified that there is an efficiency apartment in the pole building.
 34. The Board found that Ms. May testified that there are parking issues for the lot and that the parking in front of the house poses problems.
 35. The Board found that Ms. May testified that bikers are in the community due to the proximity to the bike trail.
 36. The Board found that Ms. May testified that the elevated decks are not permitted.
 37. The Board found that Mr. Robert Paul was sworn in to give testimony by teleconference in support of the Application
 38. The Board found that Mr. Paul testified that the Applicants are not asking to increase the footprint of the existing building and that the proposed addition will be an asset to the neighborhood.
 39. The Board found that Mr. Paul testified that there is parking for at least four vehicles.
 40. The Board found that Mr. Paul testified that large trucks do not use Harmon Street.
 41. The Board found that Mr. Paul testified that there is a 3 story warehouse nearby that is an eyesore.
 42. The Board found that Mr. Rhinehart testified that there are parking issues but the shallow well and gazebo will be removed to create additional parking on the lot. He believes that 2-3 cars can be parked in the front yard.
 43. The Board found that Mr. Rhinehart testified that the site uses public water and sewer.
 44. The Board found that Mr. Rhinehart testified that the owner of the lot to the south has agreed to allow him to stage construction materials on their property during the renovations.
 45. The Board found that Mr. Rhinehart testified that the encroachments will not disrupt traffic.
 46. The Board found that Mr. Rhinehart testified that there is not an efficiency unit in the barn and that the upper level of the barn was studded out but was not finished and will not be used as residential space.
 47. The Board found that Mr. Rhinehart testified that the wiring in the pole building was done incorrectly and has to be pulled out. He believes the prior owner did a poor job of building the pole building.
 48. The Board found that Mr. Rhinehart testified that it would be a huge financial burden to remove the decks attached to the pole barn.
 49. The Board found that Mr. Bada testified that the existing footprint will not be expanded but that more than 50% of the house is in the setback area.
 50. The Board found that Mr. Bada testified that the steps are close to the property line and are the only steps to the second floor and he estimates it will cost \$6,000-10,000 to move the steps.
 51. The Board found that Mr. Bada testified that the Applicants will be reducing the footprint and are trying to make the house more functional.
 52. The Board found that Mr. Bada testified that it is an existing residence for over 70 years.
 53. The Board found that Mr. Bada testified that the Applicants have no control over trucks or bicycle traffic in the area.

54. At the second hearing, the Board found that one person appeared in support of and two people appeared in opposition to the Application.
55. The Board voted to leave the record open until the Board of Adjustment meeting on September 20, 2021, for the limited purpose of allowing the Applicants to submit a detailed drawing showing the location of the proposed dwelling and related structures by August 31, 2021, and to allow public comments specific to the drawing.
56. The Board held a second hearing on September 20, 2021, at which time the Board entertained comments on the drawing submitted by the Applicants. At that hearing, Mr. Rhinehart, Ms. Milburn, Ms. May, and Ms. Laura Mathews were sworn in to give testimony about the submitted drawing.
57. The Board found that Mr. Rhinehart testified that his goal is to fix up the house and that the drawing shows that the improvements will not increase the footprint of the dwelling. He noted that the house will be renovated on the same footprint.
58. The Board found that Mr. Rhinehart testified that there will be no changes made to the pole building or deck but he intends to make the Property less of an eyesore.
59. The Board found that Mr. Rhinehart testified that the fence is less than 6 feet tall and will likely be removed.
60. The Board found that Mr. Rhinehart testified that the outside shower is no longer part of the plan and the gazebo will be removed.
61. The Board found that Mr. Rhinehart testified that he is getting public water to the site.
62. The Board found that Mr. Rhinehart testified that the deck on the house is at ground level but the deck around the pole building is elevated.
63. The Board found that Ms. Matthews testified that there will be no permeable ground on the Property and that there is concrete below the decks.
64. The Board found that Ms. Matthews testified that there are only 2 parking spaces on the Property and that she has concerns about parking spaces.
65. The Board found that Ms. Matthews testified that businesses can be run out of the pole building.
66. The Board found that Ms. Matthews testified that the house is grandfathered but the pole building was built in 2014 without permits.
67. The Board found that Ms. Milburn testified that she is opposed to the variances for the pole building but does not object to the variances for the dwelling.
68. The Board found that Ms. Milburn testified that she is concerned about traffic.
69. The Board found that Ms. Milburn testified that she agrees with Ms. Matthews.
70. The Board found that Ms. May testified that she objects to a precedent being set for old construction being grandfathered in.
71. The Board found that Ms. May testified that the survey does not show the propane tank on the Property.
72. The Board found that Ms. May testified that the survey is not accurate for the pole building and that there is a concrete pad under the deck to the pole building.
73. The Board found that Mr. Rhinehart testified that he plans to make parking in the front permeable and that the propane tank will be removed.
74. The Board found that Mr. Rhinehart testified that he discussed renting the pole building to a nonprofit because he has no real use for it and that the pole building could be used as studio space for artists but he does not intend to use it commercially.
75. The Board found that Mr. Rhinehart testified that there are no other structures on the Property.
76. The Board found that Mr. Rhinehart testified that there is no place to park a car for commercial use.
77. The Board found that no one appeared in support of the Application and three people appeared in opposition.
78. The Board tabled the Application until its meeting on October 18, 2021, at which time the Board discussed and voted on the Application.

79. 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 size, shape, and development. The lot is a small lot measuring only 5,000 square feet and is located at the intersection of two roads. Due to the shape and size of the lot, the buildable area is extremely small and is further limited by the corner front yard setback requirements. Moreover, the Property was developed by a dwelling prior to the enactment of the Sussex County Zoning Code and the home needs some reasonable improvements thereto in order for the Applicants to reasonably use the Property. The Applicants testified that the dwelling has an attic that is unusable due to the height of the ceiling and that the Applicants seek to renovate the home to make it more functional for their family. The Property was also developed by a pole building and related structures by a prior owner and those improvements further limit the developable area of the lot. These conditions are unique and have created an exceptional practical difficulty and unnecessary hardship for the Applicants who seeks to develop the lot as proposed.
 - 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 which limit the developable options for the home, porch, steps, pole building, and decks. The Applicants seek to retain these structures and to make other reasonable improvements but are 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 Applicants to develop the Property as proposed. 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 Applicants. The Board further notes that the existing dwelling is over 70 years old and needs reasonable improvements to make it more functional for the Applicants' family.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. The Applicants did not create the unusual conditions of the Property. The structures on the lot were placed by prior owners and, in some cases, those structures have been on the lot for decades. These conditions have resulted in a limited development options for the Applicants and have created the exceptional practical difficulty and unnecessary hardship. The unique characteristics of the Property are clear when reviewing the survey and the testimony presented by the Applicants. The Board is convinced that the unnecessary hardship and exceptional practical difficulty were not created by the Applicants but were created by the lot's unique characteristics and the development thereof by prior owners. The Board also notes that the Applicants did not place the existing house on the lot as that house has been on the Property for over 70 years.
 - 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 testimony indicates that the existing home has been on the Property for many years and one neighbor who testified in opposition to

part of the variance request even indicated support for the dwelling variances. There was no substantial evidence which convinced the Board that the variances for these structures would alter the alter the essential character of the neighborhood. The area is a mixed used area with residential and commercial structures and the use is consistent with the area. The Board also notes that there is a gap between the edge of paving and the property line so that will help minimize the effect of the encroachments onto the setback area. The Board further notes that the gazebo in the front yard will be removed and that will help reduce encroachments into the front yard.

- 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 them to retain the existing structures and to make reasonable improvements on the lot. The Applicants are limited by the Property's unique conditions but the location of these structures minimizes the need to further encroach into the setback areas. The Board notes that the Applicants have eliminated the request for the outdoor shower variance and will remove the gazebo. Furthermore, the dwelling additions will not encroach farther into the setback than the existing dwelling.
- 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 notes that, originally the Applicants sought a variance of 5 feet from the five (5) feet side yard setback requirement on the south side for a proposed outdoor shower. During the presentation, however, the Applicants indicated that they would not be constructing that shower in that location so the variance for the outdoor shower was no longer needed.
- i. Furthermore, the gazebo located in the front yard will be removed as testified to by the Applicants and as shown on the site plan dated September 7, 2021.

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 Mr. Jeffrey Chorman, Mr. Travis Hastings, Mr. Jordan Warfel, Mr. John Williamson. No Board Member voted against the Motion to approve the variance application. Dr. Kevin Carson 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 December 13, 2021