

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: WADE THOMPSON

(Case No. 12610)

A public hearing was held after due notice on September 20, 2021. The Board members present were: Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

This is an application for variances from the front yard setback requirement for proposed structures.

Findings of Fact

The Board found that the Applicant is requesting variances of 14.8 feet and 15.0 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling with porch. This application pertains to certain real located on the west side of Shady Ridge Drive within the Shady Ridge Subdivision (911 Address: 127 Shady Ridge Drive, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-13.00-579.00. 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 April 7, 2017, a site plan of the Property dated September 1, 2021, schematics and drawings of the proposed dwelling, correspondence in support of and in opposition to the Application, Findings of Fact for Case No. 12610, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received one letter in support of the Application and two (2) letters in opposition the Application.
3. The Board found that Laura Bearsch was sworn in to give testimony about the Application.
4. The Board found that Ms. Bearsch testified that she learned of a previous application which was approved for a 20 foot variance but the approval expired.
5. The Board found that Ms. Bearsch testified that the Property is unique as it consists of only 1/3 acre and approximately 80% of the lot is considered federally protected tidal wetlands upon which no structures can be placed.
6. The Board found that Ms. Bearsch testified that she is the contract purchaser for the lot.
7. The Board found that Ms. Bearsch testified that she cannot use the rear yard as a rear yard due to the wetlands.
8. The Board found that Ms. Bearsch testified that, without a variance to decrease the setback, there is no possibility of building on this lot.
9. The Board found that Ms. Bearsch testified that the house cannot be located immediately adjacent to the retaining wall because there needs to be some separation in case the retaining wall needs repairs or replacement.
10. The Board found that Ms. Bearsch testified that the exceptional practical difficulty is due to the lands's natural topography and was not created by the Applicant.
11. The Board found that Ms. Bearsch testified that the house will be only 26 feet deep and will consist of less than 2,000 square feet.
12. The Board found that Ms. Bearsch testified that the proposal is for a single-family home that will be consistent with all other homes on the Shady Ridge Drive.
13. The Board found that Ms. Bearsch testified that the house will be positioned on one side of the lot to provide some usable outdoor space.

14. The Board found that Ms. Bearsch testified that the variance will not alter the essential character of the neighborhood.
15. The Board found that Ms. Bearsch testified that there are only 3-4 undeveloped lots in the neighborhood and only 3 lots in the neighborhood have retaining walls.
16. The Board found that Ms. Bearsch testified that the variances requested are the minimum variances to afford relief.
17. The Board found that Ms. Bearsch testified that she tried to fit the home within the building envelope.
18. The Board found that Ms. Bearsch testified that the steps will fit within the building envelope.
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 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 topography. The lot consists of 14,175 square feet but 11,812 square feet of the lot is considered undevelopable wetlands. The wetlands are to the rear of the lot so the only buildable area is to the front of the lot and is exceptionally limited. The Property is only 75 feet wide in the front yard as well thereby further limiting the developable area. These unique characteristics of this Property have created a limited building envelope and have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to build a reasonable home and porch on the site.
 - 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 Applicant seeks to place a home and porch on the lot 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 this reasonably sized home and porch to be placed the lot. 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 notes that the home is quite small and the Applicant appears to have taken steps to minimize the need for the variances.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. As previously stated, the Property has unique conditions and these conditions have resulted in a limited building envelope on the Property. These conditions have created the unnecessary hardship and exceptional practical difficulty.
 - 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. While the opposition submitted letters opposing the Application, there was no substantial evidence that the structures would somehow alter the essential character of the neighborhood. The home is a modest-sized home and appears, based on the testimony, consistent with the neighborhood.

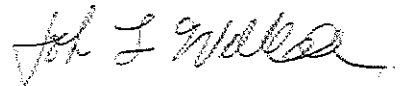
- f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulation at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to place the reasonably sized home and porch on the Property. The Board is convinced that the Applicant explored other options for the size, shape, and location of the structures but was constrained by the conditions of the lot. The proposed placement will also allow the Applicant to have some usable outdoor space since the rear of the Property consists of wetlands. The Board also notes that the structures cannot be placed closer to the retaining wall since there needs to be separation from the retaining wall to allow for maintenance and repairs of that wall.
- 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 Mr. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the motion to approve the Application. Dr. Kevin Carson and Mr. Jeffrey Chorman 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 November 15, 2021.