

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: VICTOR N. MORGAN & PEGGY MORGAN

(Case No. 12616)

A hearing was held after due notice on October 18, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

This is an application for a variance from the side yard setback requirement for a proposed structure.

Findings of Fact

The Board found that the Applicants are requesting a variance of 1.3 feet from the ten (10) feet side yard setback requirement on the west side for a proposed dwelling. This application pertains to certain real property located at the intersection of Sand Dollar Lane and Salty Way Drive within the Keenwick West Subdivision (911 Address: N/A); said property being identified as Sussex County Tax Map Parcel Number 5-33-12.19-14.00. 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 site plan of the Property dated July 24, 2020, drawings of the proposed dwelling, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received no letters in support of or in opposition to the Application.
3. The Board found that Victor Morgan and Peggy Morgan were sworn in to testify about the Application.
4. The Board found that Mr. Morgan testified that he is requesting the variance for the proposed dwelling which will be 49 feet wide.
5. The Board found that Mr. Morgan testified that the Property has an odd shape as it is narrow in the front yard.
6. The Board found that Mr. Morgan testified that less than 12 square feet of the house will encroach into the setback area.
7. The Board found that Mr. Morgan testified that most of the houses in the neighborhood are approximately 30 feet from the front property lines and the proposed house would be consistent with that setback.
8. The Board found that Mr. Morgan testified that, if the house was moved back on the Property, it would be farther from the road than neighboring houses and would alter the essential character of the neighborhood. Additionally, he argued that moving the house back would reduce the rear yard and he has plans to place a pool in the rear yard.
9. The Board found that Mr. Morgan testified that this is the house design that suits their family needs.
10. The Board found that Mr. Morgan testified that the dwelling will be a story and a half and there will be 2,600 square feet of living space.
11. The Board found that Mr. Morgan testified that he has owned the Property for approximately one year.
12. The Board found that Mr. Morgan testified that other houses in the neighborhood are wider.
13. The Board found that Mr. Morgan testified that a garage and 2 porches will also be built within the building box shown on the survey.
14. The Board found that Ms. Morgan testified that an additional 1st floor bedroom is needed for her 90-year-old mother who lives with them.

15. The Board found that Mr. Morgan testified that the steps will encroach 5 feet but the HVAC system will comply with the setback requirements.
16. The Board found that Mr. Morgan testified that, if the house complied with the front yard setback requirement, it would have to be pushed back 17 feet.
17. The Board found that Mr. Morgan testified that a neighbor told him there was flooding in the rear yard of the neighbor's lot during Hurricane Sandy.
18. The Board found that Mr. Morgan testified that homeowner association approval has been applied for and the homeowner association is waiting on a decision from this variance hearing.
19. The Board found that Mr. Morgan testified that there is approximately 12 – 15 feet between the edge of paving and the property line.
20. The Board found that Mr. Morgan testified that the water drains from Route 54 into the lagoon behind the house.
21. The Board found that Dean Pantellere was sworn in to give testimony in opposition to the Application.
22. The Board found that Mr. Pantellere testified that he lives in the community and that the lots in the community are large, wide lots.
23. The Board found that Mr. Pantellere testified that the house could be angled slightly to eliminate the need for a variance.
24. The Board found that Mr. Pantellere testified that he has not had any flooding on his property.
25. The Board found that Pam Smith and Dave Smith were sworn in by teleconference to testify in support of the Application.
26. The Board found that Mr. Smith testified that he lives at 37190 Sand Dollar Lane adjacent to the subject property and they experienced flooding on their property during Hurricane Sandy.
27. The Board found that Mr. Smith testified that he and his wife do not support moving the house towards the rear of the lot as it will block their views.
28. The Board found that Mr. Smith testified that the variance is a minimal request.
29. The Board found that two persons appeared in support of and one person appeared in opposition to the Application.
30. 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 failed to meet the standards for granting a variance. The findings below further support the Board's decision to deny the Application.
 - a. The Applicants failed to demonstrate that the Property was unique and that the uniqueness of the Property has created an exceptional practical difficulty. The lot is not a small lot as it measures 10,623 square feet and is shaped like a rectangle. The lot is vacant and the Applicants seek to construct a new home on the lot. Since the lot is vacant, the Applicants have a "blank slate" upon which to design their new home. Rather than design a home in compliance with the Code, the Applicants have designed a home that requires a variance into the side yard setback area. The Applicants did not present evidence of unique topography or other conditions which convinced the Board that the Applicants would be unable to develop the Property in strict conformity with the Code or that those conditions have created an exceptional practical difficulty. Rather, the difficulty is clearly the result of the Applicants' intention to construct the dwelling within the setback area. The apparent reason for this request is that the Applicants do not wish to push the home farther towards the rear of the lot in an area where they are planning to place a pool. Quite simply, there appears to be room to place a dwelling on the lot; albeit not in the Applicants' preferred location. As such, the Applicants have failed to

demonstrate that there was some unique condition which has created the exceptional practical difficulty.

- b. The Applicants failed to prove that the Property could not be developed in strict conformity with the Sussex County Zoning Code. The Property has buildable area to the rear of the lot where the house could be placed without the need for a variance. Rather than comply with the Code, the Applicants propose this variance. It is clear that the Applicants have chosen not to build in strict conformity with the Code rather than developing the lot to comply with the Code's setback requirements. While the location of the steps and landing may not be the location the Applicants prefer, the Applicants failed to demonstrate that they could not otherwise comply with the Code's setback requirements. The Applicants are not entitled to have a dwelling in this location. For these reasons, the Board finds that the Property could be developed in strict conformity with the Code and that the variance is not necessary to enable reasonable use of the Property.
- c. The Board finds that the Applicants are creating their own exceptional practical difficulty by proposing to construct a dwelling which does not fit within the building envelope. The Applicants' decision to construct this structure in this location is the reason for the need for a variance and has nothing to do with the size, shape, or condition of the Property. There is no unusual condition to the Property which has created this difficulty. The building envelope appears to otherwise be able to fit the dwelling, albeit in a location which differs from the Applicants' preference, without the need for the variance. The Board was not convinced that the variance request was the product of a *need*. Instead, the variance request appears to be the product of a *want* as the Applicants seek to build the dwelling as proposed for purposes of convenience, profit, and / or caprice. Since the Applicants can develop the Property in compliance with the Sussex County Zoning Code, the need for the variance is something created by the Applicants' wants rather than an unusual physical condition relating to the Property. The Applicants have thus created their own exceptional practical difficulty.
- d. Since the variance is not necessary to enable the reasonable use of the Property, the Board also finds that the variance requested is not the minimum variance necessary to afford relief. The Applicants testified that he wants the variance to protect views and to allow for room for a pool to the rear yard. He did not indicate or convince the Board that the dwelling could not comply with the Code. Furthermore, the Board finds that no variance is needed to afford relief since there is space to place the dwelling on the Property in compliance with the Sussex County Zoning Code.

The Board denied the variance application finding that it failed to meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was denied. The Board Members in favor of the Motion to deny were Mr. Jeffrey Chorman, Mr. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson. Dr. Kevin Carson voted against the Motion to deny 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 December 13, 2021