

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ROBERT MURPHY & SARAH MURPHY

(Case No. 12625)

A hearing was held after due notice on November 1, 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 variances from the separation distance requirement between units for a proposed structure.

Findings of Fact

The Board found that the Applicants are requesting a variance of 14 feet from the twenty (20) feet separation distance requirements between units in a manufactured home park. The Property is located on the south side of River Road within the Pot-Nets Bayside Manufactured Home Park (911 Address: 34171 River Road, Millsboro) said property being identified as Sussex County Tax Map Parcel Number: 2-34-30.00-2.00-51528. 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 October 18, 2021, a drawing of the property, letters supporting the Application, photographs, 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 six letters in support of and no correspondence in opposition to the Application.
3. The Board found that Sarah Murphy was sworn in to testify about the Application. Ms. Murphy submitted exhibits to the Board to review
4. The Board found that Ms. Murphy testified that the request is for a pad and wheelchair elevator for her husband. She noted that her husband fell and broke his hip and that a year and a half later, her husband is still not walking.
5. The Board found that Ms. Murphy testified that there is currently a temporary ramp which is 62 feet long and costs \$1,000.00 a month to rent.
6. The Board found that Ms. Murphy testified that a veteran's organization has volunteered to install a lift free of charge which will allow her husband to wheel his wheelchair onto the lift and provide easy access to the dwelling.
7. The Board found that Ms. Murphy testified that, if, in the future, the lift is not needed it would be removed.
8. The Board found that Ms. Murphy testified that Tunnel Properties advised her to get County approval first and that, if the variance is approved by the County, she will then need to get approval from Tunnel Properties.
9. The Board found that Ms. Murphy testified that this is the only area on the property to place the lift because it cannot be placed on the opposite side of the house as there is a slope on that side of the property. She noted that she is unable to install a concrete pad on the other side due to the slope of the lot.
10. The Board found that Ms. Murphy testified that there is no flooding on this property but the home does meet FEMA requirements and that houses in the community have to be raised to meet FEMA requirements.
11. The Board found that Ms. Murphy testified that her family has lived on the lot for 53 years.
12. The Board found that Ms. Murphy testified that the lot is graded to avoid flooding problems.

13. The Board found that Ms. Murphy testified that she would not have needed the variance if not for the topography of the lot.
14. The Board found that Ms. Murphy testified that there is electricity where the lift is to be installed.
15. The Board found that Ms. Murphy testified that the existing ramp will be removed.
16. The Board found that Ms. Murphy testified that the lot is a pie-shaped lot.
17. The Board found that Ms. Murphy testified that, if the variance is approved, the Applicants asked if the Board would consider refunding the application fee as this is for a medical need and not just to enhance the home.
18. The Board found that no one appeared in support of or in opposition to the Application.
19. 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 narrow, angled lot, which is improved by a dwelling that is raised to meet FEMA requirements. The lot also has a unique topography. The Property is also unique because it is located in a manufactured home park and is constrained by separation distance requirements which limit the placement of structures on the lot based upon the location of structures on neighboring properties. The effect of the placement of these structures combined with the lot's unique conditions have led to an exceptionally small building envelope. These conditions have created an exceptional practical difficulty and unnecessary hardship for the Applicants who seek to construct a handicap lift on the Property but cannot do so in compliance with the Sussex County Zoning Code. The situation is unique because neighboring homes have been placed on other lots and the Applicants have no control over the placement of those homes and structures. Moreover, Mr. Murphy suffers from ambulatory problems which has limited his ability to access the home safely.
 - b. Due to the uniqueness of the Property and the placement of the manufactured home on a neighboring lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants propose to construct a handicap lift but are unable to do so without violating the separation distance requirements between structures in a mobile home park requirement. The variance is thus necessary to enable reasonable use of the Property. The Board is convinced that the shape and location of the handicap lift are also reasonable (which is confirmed when reviewing the survey). The Board also notes that the Property is sloped and a lift cannot be placed on the other side of the lot due to the lot's topography. The lift is needed for Mr. Murphy to have access to his home as the home is also elevated due to FEMA requirements.
 - c. The exceptional practical difficulty and unnecessary hardship were not created by the Applicants. The Applicants did not create the unique conditions of the lot or place the structures on the neighboring property thereby restricting the building envelope on the Property. This building envelope is further limited due to the narrowness and topography of the lot. The unique conditions of the Property and the development of the adjacent lot have created an exceptional practical difficulty for the Applicants who seek to construct a handicap lift. The Board also notes that the Applicants require the handicap lift due to Mr. Murphy's medical condition.
 - d. The variance 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 handicap lift will not have a negative impact on the neighborhood. The handicap lift will be located in a similar location to an existing handicap ramp so the use should be similar. The Board notes that no complaints were noted in the record about the proposed handicap lift and no evidence was presented which would indicate that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. Rather, the Board received documentation that the neighbors support the Application.

- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicants have demonstrated that the variance sought will allow the Applicants to construct a reasonably sized handicap lift on the lot. The handicap lift will provide the Applicants with reasonable access to the home.
- f. 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.
- g. The Board also directs that the application fee be refunded to the Applicants due to the medical hardship.

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. Jordan Warfel, and Mr. John Williamson. 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 January 24, 2022.